Aboriginal History

Volume nineteen 1995

Aboriginal History aims to present articles and information in the field of Australian ethnohistory, particularly in the post-contact history of the Aborigines and Torres Strait Islanders. Historical studies based on anthropological, archaeological, linguistic and sociological research, including comparative studies of other ethnic groups such as Pacific Islanders in Australia, will be welcomed. Future issues will include recorded oral traditions and biographies, narratives in local languages with translations, previously unpublished manuscript accounts, resumes of current events, archival and bibliographical articles, and book reviews.

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ABORIGINAL HISTORY

VOLUME NINETEEN 1995

Part 1

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PART 1

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SHARED EXPERIENCES: INTERACTIONS OF ABORIGINAL PEOPLES AND THE 'OUTSIDERS'

Elspeth Young

This volume of Aboriginal History presents a diverse group of papers concerned with historical and political issues and experiences of aboriginal peoples in their interactions with the 'outsiders', the adventurers, government officers, traders and settlers who came uninvited into their countries from foreign lands. They focus not only on indigenous Australians but also on indigenous minorities in New Zealand, Canada, the United States of America and Norway. While some papers deliberately use comparative approaches in their discussion others concentrate on only one of these regional settings, leaving the reader to draw out some of the similarities and differences for him or herself. The lengthy gestation of this collection reflects the complexities of bringing together papers from such a diverse range of authors, some of whom responded to initial calls for papers and others of whom fortuitously happened to submit papers which coincided with this theme. I hope that the final collection is not only of interest but also generates further inquiries which may lead to more discussion on these topics in future.

Common themes highlighted in this collection of papers include the early contact experiences of indigenous groups with explorers, traders and others; the process and effects of land alienation, land rights recognition and negotiations; the impact of assimilationist policies; and the realities of contemporary indigenous international networks.

Early contact experiences

Two papers - Baker and Scott - use very different types of information to describe early contact experiences. Baker, using Thomas Mitchell's journals of his travels in Australia and Lewis and Clark's accounts of their journeys in North America, presents the explorers' perspective and speculates on the similarities and differences between these frontier experiences. An interesting contrast was the close interaction between the American explorers and the Indian peoples whom they encountered, demonstrated by the explorers' willingness to live off local natural resources and mix with their 'hosts'; and the deliberate distancing of Mitchell and his party from such contact, an approach which made their survival in the 'bush' much more precarious. On the other hand both Mitchell and Lewis and Clark stress the common assumption on the part of the Indian and Aboriginal groups whom they met that the strangers were 'spirits'. Scott, using Cree narrative histories and mythologies, confirms the persistence of such beliefs and speculates on the importance of reciprocal behaviours in enabling relatively peaceful contact with the 'whiteman'.

Land Alienation, Land Rights Recognition and Negotiation

Craufurd-Lewis' overview of the development of treaties in Australia, New Zealand, Canada and the United States of America explores contrasts in the perceptions of the value

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of the assets which the indigenous customary landholders brought to negotiation with the land hungry 'outsiders, and how differences in these perceptions affected the processes of land acquisition. Parallel themes revealed in all four countries include the deliberate extermination and 'invisibility' of indigenous 'first peoples', policies of assimilation, sometimes including slavery, and persistent observation of moral and cultural degradation occurring as a result of contact policies. Cant and James and Pawson, in examining the particular case of New Zealand, concentrate on the recent past and present situation as shown through claims mounted with the Waitangi Tribunal. They highlight important issues concerning not only the role of the tribunal in dealing with events during the time elapsed since the original Treaty but also problems concerning conflicting information within the Maori community. McIntyre approaches these issue from a somewhat different direction, describing conflicts and negotiations arising from land tenure allocations in southern Arizona.

Assimilation

Parry and Taffe both examine issues concerning Australia's policies promoting the assimilation of its indigenous minority peoples. They highlight different themes and offer analyses on very different scales. Parry identifies racially based ideas of non-Aboriginal superiority as fundamental to the process of removing 'half-caste' children from their Aboriginal mothers; while Taffe explores the Australian government's defensive responses to increasing international publicity about Aboriginal policies and issues in the crucial period of the early 1960s, immediately prior to the referendum.

Contemporary Indigenous Networks

Jull's commentary, focusing on the circumpolar movement which has linked Inuit/Eskimo/Sami peoples from Alaska, Canada, Greenland and Scandinavia, discusses how such a network has helpd to empower indigenous minority groups in their negoiations with the majority and speculates on how that experince might be used by other such peoples, including those from the southern hemisphere. It provides a fitting conclusion for the whole collection.

WANDERERS IN EDEN: THOMAS MITCHELL COMPARED WITH LEWIS AND CLARK

Don Baker

A comparison of the exploring experiences of Australian explorer Thomas Mitchell with those of his American counterparts Lewis and Clark shows certain similarities; their difficulty in talking to the indigenous people, their respect for indigenous property, the suspicion of the indigenous people that whites were not really men but spirits of some sort and their anxiety to get the explorers out of their territory as quickly as possible. But the differences between the Australian and the American experiences were greater and more important. Lewis and Clark, both born in Virginia, came from a society established there for generations. They were at home anywhere in America; they lived off the land and had close relations, usually amicable, with the native born Indians. None of the Australian explorers were born in the country which to them was a strange and often frightening land. They carried their food with them and rarely had more than tenuous relations with the Aborigines. Yet Mitchell was more thoughtful than the Americans about the nature of the indigenous people and their future relations with white society.

The Explorers and their Backgrounds

Thomas Mitchell, like the Americans, Meriwether Lewis and William Clark, was a great explorer. As Surveyor General of New South Wales from 1828 till 1855, he made four exploring expeditions between 1831 and 1846, each a little longer than the previous one. The first lasted three months, the last just over a year. Lewis and Clark made their one great, epic journey from St. Louis, Missouri, to the Pacific coast and back from 1804 to 1806. They were away for twenty-eight months though they were not travelling all that time, having twice to go into winter quarters.

As a consequence of this epic journey, Lewis and Clark have become far more familiar to the American public than Burke and Wills are to Australians,. In America today there are Lewis and Clark societies: there are both national and state Lewis and Clark Trail Commissions; there are Lewis and Clark National Historical Landmarks; there is an internationally known company providing Lewis and Clark tours; there is a Lewis and Clark opera and a Lewis and Clark academic industry which produces an apparently endless stream of learned books and articles, a literature well described by P.R. Cutright, in *A History of the Lewis and Clark Journals*, 1976.

All three men were army officers. Lewis and Clark were captains in the United States army and Mitchell was a major in the British army, having served in the peninsular campaigns against the French from 1811, when he was nineteen, till the French were driven from Spain in 1814. All three men kept a daily journal even if one American sometimes merely copied the words of the other to guard against the danger of a journal being lost. These journals in some ways are very similar; they record the events of the journey, the weather, impressions of the country and detailed, often technical, descriptions of newly found plants and animals. All three men seem to have looked on the world about them as a

Don Baker, a visiting fellow in the Department of History, Faculties, Australian National University, has recently completed a book to be published in 1997 and entitled 'The Civilised Surveyor: Thomas Mitchell and Australian Aborigines'.

great big question to be answered. All show a sense of freshness and excitement in discovery.

Mitchell, much more than the Americans, was keen to push his own barrow. He was by far the most literary of the three explorers. He was well educated, having attended the University of Edinburgh before going off to the war. In the peninsula he quickly became fluent in Spanish and Portuguese. Later he translated Luis de Camoens's *Lusiad* into English verse. He knew French and took lessons in German. After the war he brushed up his Latin, learned at Edinburgh, so he could read Virgil with greater ease. He was also very widely read in English literature and history. His pages are scattered with literary allusions and quotations. His writing, even in the field, was polished. The published accounts of his journeys differ only slightly and infrequently from the pages of his manuscript note books. He knew how to deal with publishers and, to enhance his reputation, he got his journeys before the public very soon after they were completed. His *Three Expeditions into the Interior of Eastern Australia* was published in two substantial volumes in 1838 with a second edition in 1839; and his *Journal of an Expedition into the Interior of Tropical Australia* came out in 1848.

There was no such speed of publication of the American journals or literary skill in their compilation. In contrast to Mitchell, Clark was almost illiterate. The *Dictionary of American Biography* says he had little formal education and this is apparent. His knowledge of the English language was so limited it is sometimes hard to understand him. He muddles up the meaning of words when, for example, he *contributes* a man's illness to his drinking dirty water.

Lewis was better schooled than Clark and a much better writer. He had studied Latin with a local clergyman and knew something of European painting and English literature. His spelling strikes the modern reader as being highly eccentric; one of his editors has ingeniously described it as 'creative'. But we must remember that spelling had not yet become standardised for most Americans, nor indeed for all but the most highly educated Englishmen.

Nevertheless, Lewis really could write. He had exceedingly few literary graces but his writing vividly conveys the heroic story of their struggles through the wilderness. Although one knows before reading the journals that the expedition was successful, time and again, when reading Lewis's words, one wonders how are they going to escape this predicament or avoid that disaster. The dangers were so great and their material resources so slight that the expedition's destruction often seemed certain. Besides imparting this sense of menace, Lewis has many splendid passages of description. His account of shooting grizzly bears, of the great falls on the Missouri and of the many drowned buffaloes are as powerful and memorable as anything Mitchell wrote.[1]

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1 For an account of the Americans' education and their attempts at 'Finding Words' see Furtwangler 1993: 27, 80-1 and especially 154-70.

The first publication of Lewis's and Clark's journals was by Nicholas Biddle in 1814 in a work entitled *The History of the Lewis and Clark Expedition.* Biddle paraphrased about a quarter of the million and a half words Lewis and Clark had written putting into proper and polite language what the explorers had expressed crudely and vividly. Nor did he scruple to add bits entirely his own to embellish the literary quality of the work. Although departing very widely from the original text, Biddle's edition proved immensely popular and was frequently reprinted. The Biddle tradition was reinforced when Elliot Coues published a new edition of *The History* in 1893. He claimed to give the Biddle text 'with scrupulous fidelity' but he did not hesitate to alter the text in a 'mere matter of grammar or punctuation'. He also added a new chapter in the Biddle style. The main feature of the Coues edition, however, is

There were artistic differences as well as literary ones between Mitchell and Lewis and Clark. Clark was the artist on the American expedition. His drawings of flora and fauna are often very crude and at best are mediocre. He never seems to have attempted landscapes or portraits. Mitchell, on the other hand, was perhaps the best draftsman in the British army. He was also very skilful in portraying what he saw whether it was a tree, a bird, a person, a mountain or a river. Mitchell was so superior there can be no real comparison between them.

There is another way in which Mitchell excelled. Lewis and Clark made astronomical observations from time to time to determine their latitude and longitude and Clark made some sketch maps. But their chief task was to reach the Pacific and then get back home. Mitchell, on the other hand, always regarded his explorations as part of the general survey of New South Wales. As a consequence he made astronomical observations whenever he could and ensured that every mile he travelled was measured by a chain. These careful measurements were supplemented by triangulation. He was forever ascending hills, chopping down all the trees bar one, which remained as a trig point, and, with a theodolite, taking the angles between the hills around him. The result was that he built up a remarkably accurate map of the colony. On his journey south in 1836 he made a traverse of nearly two and a half thousand miles and the error in closing this traverse when he got back to Sydney was only one and three quarter miles.[2]

The Expeditions and Styles of Exploring

Personal accomplishments account for some of the differences between the American and Australian expeditions. Others were more significant. Lewis and Clark's party was composed of about forty soldiers and discipline was maintained by courts martial. Early in the trip two men were tried for stealing whisky. The court was presided over by a sergeant and consisted of four privates. The first pleaded not guilty, was convicted and sentenced to a hundred lashes. The second pleaded guilty and was sentenced to fifty lashes.[3]

A fortnight later another man was charged with sleeping while on sentry duty. This was a capital offence so the court martial consisted of the two officers, Lewis and Clark.

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the extensive footnotes, almost as long as the text, in which Coues identifies places, gives topographical information, elaborates on biographical details and gives much scientific information about flora and fauna. Coues has also been frequently reprinted. The last edition of which I am aware was published by Dover Books in 1965.

Probably comparatively few people have read the words Lewis and Clark actually wrote. They could not do so until Reuben Gold Thwaites published his *Original Journals of the Lewis and Clark Expedition, 1804-1806* in 1904-5. This work consists of seven volumes of text and one of maps. Even though it has been reprinted at least once, in 1959, the size, cost and rarity of these volumes put them beyond the reach of most readers. Two commendable attempts have been made to bring the original journal to a wider public. Bernard De Voto published *The Journal of Lewis and Clark* in 1953 reprinting about a third of the Thwaites original. Frank Bergon was another populariser. His book, *The Journal of Lewis and Clark* , is about as big a De Voto's and was published by Penguin Books in 1989. Because of their unusual publishing history with many different editions, the best one being relatively inaccessible, references will be made to the Lewis and Clark journals (L&C) by date rather than by volume and page number.

2 Mitchell 1839, II:337.

3 L&C, 29 June 1804.

The man was found guilty but the sentence was lenient - one hundred lashes, no more than the unrepentant whisky stealer got.[4]

Privates never sat on a court martial in the British army. The English rightly regarded the British soldier as a cross between a peasant and a thug. The Duke of Wellington, for example, once said that he did not know how his soldiers affected the French but that they absolutely terrified him. American privates serving on courts martial were a resounding vote of confidence in the idea of social equality - a fanfare for the common man.

Mitchell probably could have got soldiers if he had wanted them but in fact he always used convicts, or, now and then, ex-convicts who had been with him on an earlier expedition. Up to 1840 New South Wales was a colony to which the British government continually transported convicted felons. In 1831, when Mitchell set out on his first expedition, over forty percent of the population were convicts undergoing penal servitude. Some were assigned to private settlers but many were retained by the government to perform all the menial tasks of the public service. Convicts built roads and public buildings. They were even employed as clerks and constables. In the Survey Department they carried stores, drove carts and wagons, acted as chain men and did all the lowly tasks to assist the surveyors out in the field. So when Mitchell went exploring he simply employed convicts as he had always done when surveying. On each of his journeys he had with him an Assistant Surveyor as second in command and on two journeys he took with him another gentleman, a botanist or a doctor, to collect specimens of natural history. But all the rest of the men were convicts or ex-convicts. The numbers varied from fifteen on the first expedition to twenty six on the fourth.[5]

Although his men were convicted criminals Mitchell's methods of preserving discipline were much more relaxed than the American. He never brought his men before a court or had them flogged. The only punishments he ever imposed were to deprive some men of tobacco or to make them serve extra time on guard duty at night. He had a commanding personality. His men respected him and quite a number volunteered to accompany him again on a later trip. However, the big inducement he had for good behaviour was the prospect he held forth of writing a favourable recommendation to the Governor of the colony to reduce or terminate each convict's period of servitude.[6]

One critical difference between the American and Australian explorers is that the Americans were completely dependant on the good will and assistance of the indigenous people to complete their journey. The Australians received a lot of assistance from the Aborigines but, at a pinch, could almost certainly have got by without them. But twice the Americans *had* to have Indian assistance. The first occasion was on the westward journey when Lewis and Clark purchased horses from the Shoshone to cross the Rockies. The purchase hung in the balance and as Lewis clearly realised, the fate of the expedition 'appeared at this moment to depend in a great measure upon the caprice of a few savages who are ever as fickle as the wind.'[7] The second occasion was on the return journey when Lewis despaired of ever escaping from the stupendous snow covered Rockies without the assistance of Indian guides who were, he thought, the 'most admireable pilots.'[8]

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4 L&C, 12 July 1804.

5 Mitchell 1839, I:16. Mitchell 1848: 6-7.

6 Ibid, 418-9.

7 L&C, 16 August 1805.

8 L&C, 27 June 1806.

Another very important difference between the American and the Australian expeditions, and one that strikes an Australian very forcibly, is the fact that the Americans travelled through a country that was enormously rich in many different foodstuffs. Lewis and Clark and their men lived by hunting and sometimes by purchasing a variety of foods from the Indians. Very often they were surrounded by far more food than they could eat. Lewis once estimated that there were at least 10,000 buffaloes within two miles of where he was standing at Great Falls, Montana.[9] There were many other animals which they killed and ate - there were many varieties of deer and squirrels. There were bears, badgers, beavers, grouse, goats, hares. The rivers teemed with fish. There was an abundance of wild apples, cherries, currants, grapes, berries and onions.

Clark records 'takeing a Sumptious brackfast of Venison which was rosted on Stiks exposed to the fire.'[10] Of course they did not always eat so well. In winter game was scarce or it was too cold to hunt it. Crossing the Rockies was a hungry exercise. After wintering on the Pacific coast, Clark thankfully observed that 'we were never one day without 3 meals of some kind either pore Elk meat or roots.'[11]

Sometimes these men were hungry and reduced to eating food we might find repulsive. They ate horses. Often they ate dogs which they purchased in large numbers from the Indians, sometimes forty at a time. Eventually, through frequent use, the men became quite fond of dog meat. Once, near the end of the expedition, their meat being exhausted, the men ate a mixture of boiled roots and bear's oil which Clark, at least, found an agreeable dish. So the Americans, although sometimes with difficulty, always managed, in one way or another, to live off the land. With this very varied diet the Americans were never troubled by scurvy, a disease which caused some sickness but no deaths among the Australian explorers.[12]

Mitchell's expeditions could never live off the land. Australia, for the most part, is an arid country and has nowhere near the natural food resources of North America. Australian Aborigines, perhaps about half a million of them over the whole of the continent, could live off the land - often quite well - on fish, ducks, emus, kangaroos, wombats, possums and so on. But white men lacked the knowledge and skills to do so. Mitchell, therefore, was obliged to take the great bulk of his food with him. He loaded up large bullock-drawn wagons with tea, sugar and, above all, flour. Accompanying the wagons was a flock of sheep which steadily diminished in size day by day. The expedition therefore proceeded at walking pace and on a normal day might travel ten or a dozen miles, the exact distance being measured by the chain. Lewis and Clark, when returning home down the Missouri, went 40, 60, even as far as 80 miles a day, or so Clark claimed, though the accuracy of these figures is questionable as he did not measure the distance but relied on primitive and inaccurate maps for the estimates.[13]

On every expedition Mitchell took with him one or two portable boats. They were sometimes useful in *crossing* rivers but with one minor exception they were never useful in sailing *along* a river. The typical Australian river is usually a dry bed of stones and carries water only infrequently. There are some rivers which rarely or never dry up but only

9 L&C, 11 July 1806.

10 L&C, 19 November 1805.

11 L&C, 23 March 1806.

12 L&C, passim. Furtwangler 1993: 91-109.

13 L&C, 20-26 August 1806.

a few of the very biggest are navigable for any distance. So it was inevitable that while Lewis and Clark mainly used boats, Mitchell had to rely on bullocks.

There is another and a more subtle reason for the differing styles of exploration which is indicated by one of the best known passages of Frederick Jackson Turner's *The Frontier in American History.*

'The wilderness', he wrote, 'masters the colonist. It finds him a European in dress, industries, tools, modes of travel, and thought. It takes him from the railroad car and puts him in the birch canoe. It strips off the garments of civilization and arrays him in the hunting shirt and the moccasin. It puts him in the log cabin of the Cherokee and Iroquois ... Before long he has gone to planting Indian corn and ploughing with a sharp stick ...'

Lewis and Clark were both from Virginia which had been settled by English colonists since 1607. It was a long established society. By the nineteenth century these men were truly American. They were at home everywhere on the American continent however much they longed, when on the Pacific coast, to return to the United States.[14] As Turner suggested, they readily adopted many Indian customs. They travelled first in vessels they called Perogues, presumably a sort of flat-bottomed barge propelled by oars or sail.[15] But they also used canoes which they could make out of suitable trees. Whatever their dress when setting out they soon, as did Indians, made clothes for themselves out of animal skins. Presently, if not from the beginning, they wore moccasins not shoes or boots. With exposure to the elements, their face and hands darkened to an Indian hue. So Indian did they appear that Lewis sometimes thought it necessary to display some usually covered skin to demonstrate that he was a white man.[16]

They wintered in log huts they made themselves. Their ropes for towing boats were made from animal skins. They purchased Indian horses. They frequently smoked tobacco in a pipe in an Indian fashion to cement relations with the several nations they met even though they could not converse with them in words. They learned to geld horses in an Indian manner as it was superior to the European practice to which they were accustomed.[17] In many ways, then, the American explorers accepted Indian customs and their manner of doing things. The wilderness, in Turner's phrase, had mastered the colonist.

The same was *not* true of Australia. Mitchell's expeditions were composed of men *all* of whom had been born in the United Kingdom, almost all in England or Scotland. They had little or no experience of the Australian outback. They were very far from being at home in Australia. Each of Mitchell's expeditions now and then shot a kangaroo or emu or experimented with an Australian vegetable but each expedition carried all it needed in its bullock wagons. If supplies ran low men were sent back to base to get more. If they failed to return, the expedition had to retreat to Sydney before it starved.[18] Whereas the American explorers learned the ways of wilderness life from the Indians, the Europeans learned nothing from the Aborigines.

They did not even learn the art of tracking to any great degree. To this day black trackers are legendary for their ability to trace people's tracks through the bush. Mitchell said they could read the events of the day on the forest floor as fluently as he could read a newspaper. A ludicrous incident on Mitchell's fourth expedition illustrated the Europeans'

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14 L&C, 1 January 1806.

15 Coues [1965]: 4.

16 L&C, 11 and 13 August 1805.

17 L&C, 13 August and 19 October 1805; 14 May 1806.

18 Mitchell 1839, I: 110-1.

obtuseness. The bullock drivers lost two of their animals. They had to be found. The men searched and searched in vain for these large animals which left obvious tracks behind them. At last they had to beg Dicky, a ten year old Aboriginal boy, to find the bullocks. This he quickly did.[19]

The difference between America and Australia in this respect is epitomised by the dead whales. In January 1806 a whale died on the Pacific beach. The Indians at once stripped the skeleton of all that could be eaten and the Americans, to share in the spoils as they wished, had to purchase 300 pounds of blubber and little oil from the Indians.[20]

In 1836 Mitchell was on the south coast of Australia at a newly founded settlement called Portland. European whalers there chased whales in their small whaling boats. Aborigines soon realised that the more boats that chased a whale the greater was the chance that the whale would elude them all by running up on the beach. The whalers could not then cope with the animal and abandoned it. The dead whale, though, was a feast for the Aborigines. They therefore kept watch and whenever they saw a whale they sent up a smoke signal to encourage as many boats as possible to give pursuit. There had been *no* contact between Europeans and Aborigines and Mitchell simply recorded the practice as an example of Aboriginal sagacity.[21]

Why were the Europeans so slow to learn from Aborigines? Partly, as I have suggested, it was because the Europeans were so new to the country. But, more importantly, I think, it was because Aboriginal society was so different from their own that it seemed to have nothing to offer the white man.

The colonists quickly concluded that Aboriginal society was backward and Aborigines were racially or genetically inferior to white men. The question was sometimes raised whether they were really human at all. Although most Europeans thought they were, most also thought they were a form of humanity inferior to their own. I am not aware of any student of Aboriginal society who believes it inferior to European society. But all are aware of its great differences. Some scholars explain these differences by pointing to the limited food supplies, compared with those of most other parts of the world, and to the isolation of Australia till the eighteenth century. Some Aborigines deny this and claim that their ancestors deliberately *chose* not to follow the European path of growing crops, herding animals and building cities. By cooperating with the creatures of nature rather than by trying to harness and coerce them, they claim, they avoided the disasters inherent in Europe's so-called 'progress' and evolved instead a cooperative society which achieved a balance and a stability lasting for an unparalleled 40,000 years. Whatever the explanation, it was, I believe, the profound difference between the two races that made it impossible for the white man to learn from the black.[22]

Points of Contact

It may be profitable to look more specifically at the relations between the explorers and the Indians on one hand and Aborigines on the other. There are several incidents or situations in which the American explorers participated that an Australian finds worthy of comment.

First, the Indian reaction to the legal flogging of American soldiers. The chief who witnessed this was greatly alarmed and cried out aloud at the horrid spectacle. Clark explained it was a necessary punishment. The chief thought it might be necessary to *kill*

19 Mitchell 1848: 64.

20 L&C, 8 January 1806.

21 Mitchell 1839, II:242-3.

22 Hennessy 1993.

people but he would never flog them. His nation, the Arikaras, never shipped their children. Australian Aborigines reacted to the flogging of convicts in exactly the same way when they first saw it, in Sydney, back in 1788.[23]

On both continents the explorers had great difficulties in communicating with the local inhabitants. In both places there was a multiplicity of languages. In both, explorers used native interpreters. In both, the conversation sometimes had to be conducted through several interpreters each using a different language. In both, it sometimes proved impossible to converse by speech at all and the parties were reduced to pantomime. Lewis believed that all the Indian nations he had met had a common sign language which, though imperfect and liable to error, enabled 'the strong parts' of a message to be communicated. Certainly the Americans seem to have been better at this than Mitchell and his men but they may have been merely more optimistic about their success. It is hard to make a judgment.[24]

In both countries, again, the explorers, at least the officers if not the men, made a point at all times not to take anything belonging to the local communities, in the American case, not even their firewood.[25] Mitchell even went so far as to order his men to leave the sheep bones lying round the camp to show the Aborigines they had not been eating kangaroos or emus.[26]

Some Indians, like some Aborigines, had probably never before seen a white man. They thought these pale faces came from the clouds, that they were not really men but spirits of some sort.[27] They were greatly relieved though when they saw the Indian wife of the French interpreter who accompanied the party. This was reassuring because no woman ever accompanied a war party in that quarter.[28] The Australian Aborigines often thought at first that the white men were the returned spirits of those who had died.[29]

Now and then it happened in America, and it probably happened more often than the explorers realised, that a particular nation was anxious to encourage the explorers to go through their territory as quickly as possible and into that of the neighbouring nation.[30] This was so common in Australia that the term 'passing on' has been coined. Aborigines would 'pass on' travellers in a variety of ways. They might tell them there was plenty of food and water a few days' journey further down this river, they would point out carefully the best route the wagons might take; perhaps they would provide a guide to ensure the explorers did not get lost and to introduce them to their neighbours. In many such cases it was probably fear rather than hospitality or friendliness which inspired such cooperation.[31]

Another common feature of both Aboriginal and Indian behaviour was a wish to impress the white men by their knowledge of the English language, sometimes with unintentionally funny results. Mitchell was once obliged, in separating from an Aboriginal elder soon after breakfast, to wish him 'Goodnight' in return for the elder's repeated farewell

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23 L&C, 14 October 1804; Tench 1793:17.

24 L&C, 14 August 1805.

25 L&C, 14 October 1805.

26 Mitchell 1848: 268.

27 L&C, 13 August 1805.

28 L&C, 19 October 1805.

29 Hosking and McNicoll 1993: 41, Dixon, Ramson and Thomas 1990: 232. Cf. Ramson 1988: 206, djanga.

30 L&C, 24 October 1805.

31 Mitchell 1839, I: 192-4, 200-4.

in those words.[32] The Indians on the Pacific coast assured Lewis that they were sometimes visited by English or American traders by repeating such words as musket, powder, shot, knife, son of a bitch etc.[33]

There were, then, many ways in which the American experience was parallelled by the Australian. But for reasons I have already suggested, the differences seem much more significant as the links between explorers and the local inhabitants were much more intimate in America than in Australia. The Americans, for example, not only ate Indian food, they often ate *with* Indians. They socialised. Lewis records how, on meeting the Shoshones, he and his men were so cordially embraced that 'we were all carresed and besmeared with their grease and paint till I was heartily tired of the national hug.'[34]

Clark tells of an evening when about 350 Indians, men, women and children came to the camp and waited patiently to see the explorers dance. One of them was an accomplished fiddler and the soldiers danced for an hour or so to his music. Then they asked the Indians to dance which they happily did till about ten o'clock. Most danced by simply jumping up and down where they stood but some of the braves came to the centre of the group and danced round in a circle sideways.[35]

Such a gathering was quite unknown in Australia although Aborigines did, now and then, dance a corroboree in front of Europeans. In 1830, soon after he came to the colony, Mitchell saw a corroboree and thought it better than any ballet he had seen at Covent Garden in London.[36]

The Americans sometimes enjoyed the hospitality of Indian chiefs who erected large leather tents for their reception. This, too, was quite unknown in Australia although occasionally Mitchell and his men slept in Aboriginal huts when they found them unoccupied.

In the summer of 1806, while waiting for snow to melt before re-crossing the Rockies, the Americans were camped in one place for five weeks and got to know the local Indians quite well. They had footraces and one of the Indians was quite as fleet of foot as the quickest American. They also had horse races together. There is no record of any inter-racial games in Australia.[37]

Another feature of Lewis and Clark's contacts with the Indians was the extensive medical aid they provided. Clark made quite a reputation as a medical practitioner: 'Several applyed to me to day for medical aide ... I administered as well as I could to all. in the evening a man brought his wife and a horse both up to me. the horse he gave me as a present' for treating his wife.[38]

Towards the end of the expedition, when their supply of goods to trade was running low, the American explorers began systematically to trade medicine and medical advice for horses or provisions. Clark once had a queue of more than fifty patients waiting to see him. The business became so profitable that it seems medical ethics were soon forgotten and medicines were supplied which the physicians knew would do no good. Lewis excused the

32 Mitchell 1848: 111.
33 L&C, 9 January 1806.
34 L&C, 13 August 1805.
35 L&C, 28 April 1806.
36 Mitchell 1828-30: 3 July 1830.
37 L&C, 8 June and 2 July 1806.
38 L&C, 29 April 1806.

practice by saying that they took care to give them nothing that could possibly injure them.[39]

Once again, these practices were unknown in Australia. The one exception occurred in 1836. One of Mitchell's Aboriginal guides and interpreters was a widowed mother accompanied by her four year old daughter, Ballandella. The girl fell under the wheel of a wagon which broke her leg. One of Mitchell's convicts was the medical orderly and he skilfully set Ballandella's leg in splints. She recovered and at the end of the journey her mother married again and gave Ballandella to Mitchell to bring up in his own home.[40]

The last point to consider is the matter of sexual relations between the explorers and those born in the country. As with other contacts, they were much more intimate and extensive with the American Indians than with the Australian Aborigines.

Sexual mores among the Indians no doubt varied from one nation to another just as in Australia they must have differed among the various communities of Aborigines. But whatever they were they differed from common European practices.

The first difference that Clark noticed was what he termed 'a curious custom' with the Sioux and some other nations, that of giving handsome women to those whom they wished to thank. The explorers got clear of the Sioux without taking any of their women but the Indians persisted and followed the explorers for two days trying to make them change their minds. This persistence suggests the Sioux were trying to place the white strangers under an obligation to them.[41]

A little further up the Missouri the explorers camped with the Arikaras or Ricarees, who received them very kindly and who seemed very pleased with the attention paid to them. Clark rather dryly observed, 'Their womin verry fond of carressing our men etc.' It was apparent that the 'tawney damsels' were available and compliant.[42]

But not in all circumstances. The explorers had to learn which women were available and how they might be taken. Clark was once told that an Indian was about to murder his wife because he thought she had been sleeping promiscuously with the white men. Clark told him that it was not so; that no one had touched her except Sergeant Odway to whom the Indian had loaned his wife for one night. Clark told Odway to give the Indian certain articles and advised the husband to take his wife home and live happily with her in future. He also ordered the men not have anything to do with this woman in future nor with the wife of any other Indian. The injured Indian was forgiving. He later brought his two wives to the camp and seemed to want to be reconciled with the man who had made him jealous.[43]

The expedition settled into winter quarters at the end of 1804, not far from Bismarck, North Dakota. Nearby was an Indian village and the explorers saw quite a lot of Indian life. They were intrigued by a Buffalo dance which went on for three nights. The old men of the village sat in a circle. The young men had their wives at the back of the circle and each went to an old man and pleaded with him to take his wife. The wife would then lead the old man away (often they could scarcely walk) and return with him after they had coupled. Some of Lewis and Clark's men pretended to be old men, and were accepted as such, in order to join in the ceremony. The purpose of this dance, Clark believed, was to cause the

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39 L&C, 5 May 1806.

40 Mitchell 1839, II: 86-7, 265-6.

41 L&C, 12 October 1804.

42 L&C, 15 October 1804.

43 L&C, 22 November and 21 December 1804.

buffaloes to come near to the village so that they might be more easily killed. Clark could not understand how this apparently random promiscuity could bring the animals closer to the village. He did not realise that these Indians believed that sexual intercourse was a means of transferring spiritual power from old men to young women and from them to the young men. White men, as well as old men, were powerful 'medisan' so they were welcome to take part in the Buffalo dance.[44]

The result of that winter spent near an Indian village was that by the spring the explorers were generally healthy except that a number of the men had contracted a venereal disease which Clark though was very common among the Indians.[45] In August 1805 Lewis and Clark met the Shoshones whose chief was the brother (or possibly the cousin) of the French interpreter's wife. The nation consisted of about a hundred warriors and perhaps as many women and children. They lived in a wretched state of poverty but were nevertheless cheerful, even joyous. The men owned their wives and daughters as though they were chattels and treated them with little respect, forcing them to perform all the drudgery of life.[46] They had little regard for the chastity of their women and a husband would readily barter his wife for a night or two to another man. They regarded clandestine affairs, however, as disgraceful to the husband. Lewis therefore instructed his men to hire their women openly and honestly to avoid ill feeling. It seems he would have preferred to have kept his men away from the Indian women altogether but he thought that impossible because the recent months of abstinence had made his young men 'very polite to those tawney damsels'.[47]

Lewis was anxious to discover whether these people suffered from venereal disease and enquired through his interpreter and his wife. It seemed that the Shoshones were infected with both gonorrhoea and syphilis and had no means of treatment. Presumably more Indians were infected by the explorers' visit.[48]

The expedition's encampment at Fort Clatsop near the Pacific for its second winter, 1805-6, once again provided opportunities for extensive sexual relations between the explorers and Indian women. Something that looked to Clark like organised prostitution developed. An old woman, wife to a chief of the Chinooks, brought six girls to the explorers' camp and traded their favours for such small presents as she thought appropriate.[49] Lewis in one passage makes the point specifically. The Indians on the coast, he wrote, 'will even prostitute their wives and daughters for a fishinghook or a stran of beads'.[50] But the reality may have been in subtle ways more complicated. On Christmas eve of 1805, an Indian friendly to Clark came with his brother and two women and laid before him and Lewis two mats and two parcels of edible roots. The explorers refused to accept these offerings as they could not afford the price - two files. So then the Indians offered the women. Though no payment seems to have been demanded, Lewis and Clark declined this offer too. This rejection, Clark records, 'displeased the whole party verry much

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44 L&C, 5 January 1805, Ronda 1984: 131-2.
45 L&C, 31(30) March 1805.
46 L&C, 19 August 1805.
47 Ibid.
48 Ibid.
49 L&C, 21 November 1805 and 15 March 1806.
50 L&C, 6 January 1806.

- the female part appeared to be highly disgusted at our refusing to axcept of their favours etc.'[51]

So there may have been some ambiguity in these sexual relations, some doubt as to whether they should be described as commercial, ritualistic, hospitable or amicable. But whatever their nature they were certainly morbid. Some of the diseases, or at least their symptoms, seem to have cured themselves fairly quickly but some of Lewis and Clark's men contracted syphilis as was shown by the use of mercury as a treatment.[52]

In Australia sexual relations between Aborigines and explorers were far more limited. On Mitchell's first expedition, in 1832, two convicts were alone in the bush with their dray and bullocks bringing up fresh supplies. One night both men were slaughtered as they slept. At the time Mitchell thought the motive for the killing was robbery. Later he came to think that these men had failed to make, perhaps through ignorance, the proper response to the granting of sexual favours by Aboriginal women. Whether that was so or not, Mitchell thought sex spelled trouble and always forbade it.[53]

It was not always easy to do this because many Aboriginal women, like many Indians, appeared to the explorers to be promiscuous. But once again, as in America, appearances could be deceptive. The offer of sex might well have been an attempt to placate the unpredictable and dangerous invaders. Soon after the murder of Mitchell's men, the Aborigines stopped Mitchell's wagons by laying down their spears across the track they were following. An Aboriginal man then approached each white man bringing with him two women, all divested of clothing and baggage. Most of the Aborigines had one plump woman, the other being thinner and much younger. The Aborigine bowed first to one and then the other, offering them to the white men with a wave of the hand which was as fully intelligible, Mitchell thought, as the gestures of a French dancing master.[54]

This sort of thing happened now and then but Mitchell's discipline prevented any orgies. On one occasion an Aboriginal boy or young man who had worked on cattle stations and knew some English, brought a number of Aboriginal women into the explorers' camp in the middle of the night in return for payment of some sort. As the convicts had virtually no possessions they must have traded government stores or supplies, which was another reason for Mitchell to try and prevent such practices and he seems to have been successful.[55]

There was just one episode when sex led straight to tragedy. On his second expedition, in 1835, Mitchell was camped for a few days about three quarters of a mile from the river Darling. One afternoon, when Mitchell was in the camp, he heard some shots from the river where a few of his men were watering the bullocks. His published account of the shooting thus depended on what his men told him. Their story was that several Aborigines had been shot, two or three of them probably killed, after some of them, although unprovoked, had attacked the watering party.[56]

The truth was almost certainly far otherwise. Nine years later another exploring party was in this same place and several Aborigines reported that they had witnessed this shooting and that it accompanied the rape of a woman by one of the convicts and the

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51 L&C, 24 December 1805 and 21 January 1806.

52 L&C, 2 July 1806.

53 Mitchell 1848: 119-20.

54 Mitchell 1839, I: 132-5. Mitchell 1831-2: 22 February 1832.

55 Mitchell 1848: 119-20.

56 Mitchell 1839, I: 271-5.

murder of her child or (the details vary a little according to the different reports) that it occurred after a quarrel about a convict's refusal to give the woman a kettle promised in return for sexual favours. So, according to these quite credible reports, several lives were lost as a result of inter-racial sex.[57]

But that was not the end of the story. A year later, on his third expedition, Mitchell met this same group of Aborigines a couple of hundred miles away from their home, on the river Murray. Believing they were about to attack him, he set an ambush and in a short military operation he and his men killed seven before they could escape into the bush.[58] Lewis and one of his men killed two Indians who were attempting to steal their guns and horses.[59] but the massacres on the Darling and on the Murray were much more terrible and tragic affairs.

The Americans killed only two Indians but Clark, who killed none, could at least talk in a very bloodthirsty manner. He told the Pawnee Indians to keep away from the camp or he would certainly kill them. He said that they had treated the white men very badly, had robbed them of their goods; that they should keep away from the river 'or we Should kill every one of them etc. etc.' The Pawnee were not to be outdone. Seven of them halted at the top of a hill 'and blackguarded us, told us to come across and they would kill us all etc of which we took no notice.'[60]

Clark also had an eye for squalor. Of a village in Washington he wrote, 'The village of these people is the dirtiest and stinkingest place I ever saw in any shape whatever, and the inhabitants partake of the carrestick of the village,' But Lewis had an eye for something else. Of this same village he observed rather the Indian art, 'these people are very fond of sculpture in wood of which they exhibit a variety of specemines about their houses.'[61]

Lewis was also alive to Indian virtues. The Wallahwollahs in Washington so often returned to the explorers implements which they had carelessly lost that Lewis sang their praises. 'I think', he wrote, 'we can justly affirm to the honor of these people that they are the most hospitable, honest, and sincere people that we have met with in our voyage.'[62]

The Wider View

Neither American wrote very much about any larger view they might have had about the place of their expedition in American history or echoed in any way Bishop Berkeley's idea that 'Westward the course of empire takes its way.' In one rare passage, though, Lewis, at the outset of the voyage, compared their little fleet on the Missouri with those of Christopher Colombus and Captain Cook. The American fleet was 'not quite so rispectable' but he thought he looked on it with as much pleasure as those justly famed adventurers ever beheld theirs.

He reflected that his party was about to penetrate a country at least two thousand miles in width on which the foot of civilised man had never trodden. What would befall them all, he did not know but he had the most confident hope of succeeding in this voyage which had been his ambition for the previous ten years. He was then twenty-nine years old. The

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57 Waterhouse 1984: 32, 38-9. Peake-Jones 1975: 50-1. Finnis 1966: 32-3. Eyre 1845, II: 470-2.

58 Mitchell 1839, II: 101-4. Mitchell 1836: 27 May. *Government Gazette* 1837: 65-72.

59 L&C, 27 July 1806.

60 L&C, 30 August 1806.

61 L&C, 24 March 1806.

62 L&C, 1 May 1806.

moment of departure, he thought, was amongst the happiest of his life. All were in excellent health and spirits and zealously attached to the enterprise. There was not a whisper of discontent to be heard but all acted in unison and with perfect harmony.[63]

This mood of reflection was not often repeated but the spectacle of the great falls of the Missouri shook Lewis out of his customary sharp focus on the mundane here and now. The river was then about 300 yards wide. About a third of it was a smooth, even sheet of water falling over a precipice at least eighty feet in height. The other 200 yards fell a similar distance but here irregular and projecting rocks broke up the water into a white foam which assumed a thousand different sparkling forms every second and which was illuminated by a rainbow when the sun was shining.[64]

It was so beautiful that Lewis felt he could not adequately describe it and wished to give 'to the enlightened world' a just idea of this sublimely great spectacle by borrowing the pen of Thompson (presumably James Thomson, 1700-1748, one of the first Scottish romantic poets) or the pencil of Salvator Rosa, a seventeenth century Italian painter who built an international reputation with landscapes both sublime and grand. By an odd coincidence, Mitchell, too, was so enamoured of Salvator Rosa that in his honour he named a river, a mountain and a lake, Salvator.

One thing lacking in Lewis and Clark is the ability to see the European-Indian relationship as a whole. They give many detailed descriptions of Indian villages, Indian dress, Indian customs and so on but have little to say about more general questions about the future relations between Indians and Europeans. They focus very sharply on the details of what was before them but lack a wide angled lens for the larger view.

Mitchell, though, had a much wider view of the Aboriginal question than did the Americans and he expressed it much more frequently and fully. Perhaps, though, it would be better to say he had much wider *views* because in a double sense he was deeply ambivalent. He was ambivalent about the nature of Aborigines and he was ambivalent, in the second place, about the future relations between Europeans and Aborigines.

He never seemed to be able to make up his mind about what the Aborigines were really like. Often he expressed the seventeenth or eighteenth century view of the noble savage, the man living in the wilderness uncorrupted by the diseases or the vices of a civilised but decadent society.[65]

There was much that Mitchell admired about the Aborigines: their magnificent physique, their endurance, their abilities to hunt and fish, their astounding successes in tracking through the bush. He liked their independent attitude of mind (except when it interfered with his employment of them). He often praised their ingenuity in making baskets, drinking vessels, nets, spears and other artefacts. When he invented a ship's propeller he claimed to have based it on the principle of the boomerang. He enjoyed learning about their legends and the meaning they gave to the stars.[66]

An unusual funerary practice, by which the bereaved son or brother sat every night in a specially built hut beside the corpse of the deceased until it was quite decomposed, indicated to Mitchell a respect for the dead unsurpassed in all the annals of humanity.[67] He formed close friendships with two of the Aboriginal guides and interpreters on whom he relied on

63 L&C, 7 April 1805.

64 L&C, 13 June 1805.

65 Mitchell 1839, I: 170-1. Mitchell 1848: 64-6.

66 Mitchell 1828-30: 17 June 1828.

67 Mitchell 1839, II: 70-1. Mitchell 1836: 10 May.

his expeditions. In all these respects his admiration was unbounded. But on the other hand, like Thomas Hobbes, Mitchell also believed that without civilisation, letters and education, the life of man was 'solitary, poor, nasty, brutish and short'. Mitchell expressed this more pessimistic view when Aborigines were trying to steal the expedition's equipment or harass his men; when they threatened to attack the expedition or when they killed isolated individuals.[68]

In these circumstances Mitchell's language sometimes suggested the Aborigines were really sub-human savages because they were utter strangers to any sentiment of sympathy or mercy. All too often, as well, they showed no sense of gratitude. Mitchell now and then rewarded Aborigines who had guided or informed him with the present of a tomahawk. This was highly valued but sometimes the recipients promptly used the axes to make spears and waddies to kill those who had provided them. Such ingratitude, Mitchell often felt, was typical of Australian man in the Eden of his existence. He convinced himself that no kindness or generosity had the slightest effect in altering or restraining the savage desire of these wild men to kill the white strangers when they first appeared.[69]

Mitchell was entirely free of any racial theory. He never suggested that civilisation depended on race. Civilisation depended rather on education. He thought of himself as a civilised man and of educated British people as forming a civilised society. Convicts, speaking generally, were ill-educated and were therefore much less civilised than he was.

Totally uncivilised people were like animals. The closer the savage tribes of mankind approached the condition of animals, the more they tended to resemble each other. The uniformity of their manners and customs was a natural consequence of their uncultivated mental faculties. So Mitchell like to point to similarities between Aboriginal practices and those of, what he termed, other 'rude and primitive specimens of our race'.[70]

His published journals are thus scattered with erudite references to the *Old Testament*, Homer, Herodotus, Tacitus and to a number of modern authors pointing out similarities between Aboriginal mores and those of 'rude people' in the orient or the ancient world.[71]

Mitchell was quite convinced that Aborigines could become civilised, just as it was possible for European peasants to become civilised, through education. He took the Aboriginal girl Ballandella into his home to demonstrate this and was delighted when she was soon able to read as well as any white child of her own age.[72]

But Mitchell's easy equation of civilisation with education almost entirely begged the question. By 'education' Mitchell meant a civilised education, one similar to that he had received himself. Had he thought about it, he must have realised that Aborigines, too, were educated but not in a manner he would have considered civilised. Aborigines could read the earth more fluently than many of his men could read a book. As he well knew, they could compose poetry and make corroborees worthy of Covent Garden. How could they do such things if one generation had not educated the next? Sometimes Mitchell realised that he could not fairly equate black and white with savage and civilised because in his manifold difficulties in flood and field, the intelligence and skill of the black men often made the 'white fellows' look rather stupid.[73]

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68 Ibid., 4 June and 14 September. Mitchell 1839, I: 203-4, 245-8, 303-8; II: 270.

69 Ibid., 289-90.

70 Ibid., 348.

71 Ibid., 347.

72 Ibid., 352.

73 Ibid, 162.

It was another problem he never really resolved.

Mitchell was also ambivalent about the future of relations between Aborigines and Europeans. His opinions here were impaired by a serious error he made about the facts. He estimated the number of Aborigines in the regions he had explored, roughly two thirds of eastern Australia, to be considerably fewer than six thousand. The real figure must have been five or ten times as great.[74]

In several places on his journeys Mitchell had seen wild cattle. If their numbers became greater, he thought the Aboriginal population, because of this new food supply, might increase very rapidly. If not civilised, these more numerous Aborigines might become formidable and implacable enemies of white settlers.[75] As it was, there were serious conflicts on the frontier. On his fourth expedition in 1845-46, Mitchell had seen, on leaving the outer fringes of European settlement, the way in which Aboriginal attacks had forced outlying stations to be abandoned.[76]

But another outcome he thought more probable. Mitchell was an early environmentalist. He recognised that cattle drove out kangaroos. He often saw and deplored the way cattle trampled beautiful water holes into barren patches of mud which could then provide water for neither man nor beast.[77] In addition, stockmen killed kangaroos for their skins but no mercy was shown to an Aborigine who, deprived of his customary food, helped himself and his family to a bullock or a sheep. That was theft by immoral savages.

The inevitable result, Mitchell feared, would be the virtual extinction of Aboriginal people unless measures were taken for their protection. At the very least, he believed, it would be an act merely of justice, not generosity, to prevent white men from killing kangaroos and emus which were essential for Aborigines just as sheep and cattle were for Europeans.[78]

Mitchell grieved over the passing of the Aborigines yet he was horrified if they struck back and recaptured their hunting grounds from the white invaders and he recognised quite clearly that his explorations were actively assisting the spread of white settlement.[79] Several intellectual dilemmas baffled him. This was a moral dilemma he never came anywhere near solving.

Lewis and Clark practically ignored such larger issues although they had quite specific political aims in their dealing with the various Indians nations they encountered. The United States by the Louisiana purchase had recently acquired from Napoleon a vast territory, roughly all the land between the Mississippi and the Rockies, and Lewis and Clark attempted to persuade the Indians inhabiting it to accept the sovereignty of the United States government, or, as they put it, to recognise the authority of the Great White Father in Washington. They also tried to stop the endemic warfare between the Indian nations and to ensure that the lucrative fur trade was carried on by Americans rather than the English or French.

The first formal conference with the Indians to announce these policies was held on the Missouri on 3 August 1804. A mainsail was erected into a temporary awning to shelter the diplomats and the soldiers made a formal dress parade to impress them. Lewis made a long

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74 Ibid., 351-2.

75 Ibid.

76 Mitchell 1848: 20-2, 25, 32, 34, 46.

77 Ibid., 14, 69-70.

78 Mitchell 1839, II: 351-2.

79 Ibid., 159, 171.

speech. The Indians chiefs all made speeches and were given presents, medals according to their rank, a canister of gun powder, a bottle of whisky and some clothing. Everyone seemed to be in agreement but little that was tangible resulted from this or the many subsequent conferences.[80]

On the return journey, for example, while still in the Rockies, Lewis and Clark collected the chiefs of five or six nations together and spent half a day with a piece of coal and a mat drawing a map showing the relative position of the United States and detailing its nature and power, its desire to preserve harmony among its red brethren and its intention of establishing trading posts for their relief and support. The negotiations went on and on. The officers spoke in English to one of their men. He translated it into French to the party's French interpreter. He translated to his wife in the Minnetaree language. She put it into Shoshonee and the young Shoshone finally interpreted it into the local language, Chopunnish. It is no wonder that the explorers' political hopes were little realised.[81]

Their political program, Lewis and Clark believed, was quite compatible with Indian welfare. The coming of 'civilisation' and extended trade with the United States, they were convinced, would be to everyone's benefit.[82] Lewis once prepared a good meal of boiled corn and vegetables for the half starved Shoshones. He thought the 'poor devils' were very grateful and their chief wished his nation could live in a country which could provide such food. Lewis told him that before long the white men would enable his nation to live in the country below the mountains where they might cultivate corn, beans and squashes.[83]

But these were vague hopes however much they signified good intentions. The only record we have that either man seriously contemplated future relations between Europeans and Indians is a twenty-eight page essay which Lewis wrote in 1806 or 1807 entitled an 'Essay on an Indian Policy'.[84] It discusses the fur trade which, Lewis believed, would flourish in the future when American free competition replaced the old Spanish system of state controlled monopolistic licences. Lewis's mental horizon was very narrow. Unlike Mitchell, who saw further, if only through a glass darkly, the Americans had no inkling that European civilisation meant for the indigenous people, to use a phrase of Levi-Strauss, 'a monstrous and incomprehensible cataclysm'. Neither man seems to have had the slightest notion of the extent, over the next two or three generations, to which Indians would be deprived of their lands.

As one cynical and xenophobic observer put it:

> Across the plains where once their roamed
> The Indian and the scout,
> The Swede with alcoholic breath
> Puts rows of cabbage out.

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80 Cf Ronda 1984: 18-9.

81 L&C, 11 May 1806.

82 L&C, 20 August 1805 and 26 July 1806.

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84 Coues [1965]: 1215-43.

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ENCOUNTERING THE WHITEMAN IN JAMES BAY CREE NARRATIVE HISTORY AND MYTHOLOGY

Colin Scott

(published in French as 'L rencontre avec les Blancs d'apres les récits historiques et mythiques des Cris de la Baie James', *Recherches amérindiennes au Québec*, vol. XXII, Nos 2-3, 1992, pp. 47-62)

Introduction

This paper discusses eastern Cree perspectives on contact with Europeans, as glimpsed through narratives both historical and mythical in genre.[1] Some are explicitly about first contacts and early relations with the French (*upishtikuyaauch*) and the English (*waamishtikushiiyuuch*)[2] at James Bay. Others not specifically situated in historical terms, address more abstractly the problem of Cree relations with a category of strangers, outsiders, and enemies known as *pwaatich*. Taken together, these narratives highlight ways in which indigenous constructs of group identity and intergroup relations apply to Europeans, constructs that have been remarkably persistent through a three century contact history, and that have contemporary manifestations in the rhetoric of aboriginal rights and conflicts over use of the environment.

The Cree elders who in the late 1970s and early 80s related the narratives hereunder had spent most of their adult lives as hunters, in a 'traditional' fur trade setting. They were, at the same time, actively engaged in reflecting upon and attempting to influence the circumstances of their existence in a modern economy and state. The first decade of conflict with the Government of Quebec over damage to their lands and waters for hydroelectric development had just passed. Hence, while the narrative settings themselves are situated in mythical and throughout historical time, it would be a misapprehension to limit interpretation to the function of these narratives in a remote or 'traditional' past. Myth and

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1 I wish to acknowledge the important contributions of two Cree elders, now deceased, Geordie Georgekish and Jacob Georgekish of Wemindji, James Bay, Quebec. Theirs are the narrative renditions that comprise the core of this article.

I also wish to thank Sylvie Vincent, and two anonymous readers for *Recherches Amérindiennes au Québec*, whose excellent commentary I have tried to take account of in the published version of the paper.

2 *Waamishtikushiiyuu*, at a relatively general level in the taxonomy of ethnic categories, is used by Wemindji Cree speakers to designate any 'Whiteman', in opposition to *iiyuu* ('Indian'), for example. At a more differentiated level, *waamishtikushiiyuu* has the particular designation 'Englishman', in opposition, for example, to other ethnic variants of Whiteman: *upishtikuyaau* ('Frenchman');*kaachiinashtuudinaat* ('German'); etc. Similarly, the category *iiyuu* can mean 'Cree', 'Indian', 'human being', or 'living being' as one moves from more differentiated to more inclusive taxonomic levels.

history, intimately connected in all culture, derive their vitality from the sociopolitical preoccupations of the present.

The interpretation of the narratives in indigenous and modern contexts requires exploration of the ways in which a logic of reciprocity generates categories of humanity. In Cree discourse, notions of reciprocity apply to a broad matrix of domestic, inter-societal, and ecological exchanges, while human social categories have reference to a spectrum of cognitive/evaluative positions - ranging from kin through stranger to cannibal - determined largely through assessments of the state of reciprocity relating Cree selves to others.

Before turning to the Cree narratives, I refer to some general themes in aboriginal political discourse in Canada which, as we shall see later, echo the symbolic schema of the narratives. Related instances of the contemporary rhetoric of Cree and other Algonkian speakers are returned to in the conclusions.

Reciprocity and Aboriginal Rights

The thematic of sustained reciprocity between Cree and Whitemen connects myth and oral history to present political struggles with the state. This thematic is not particular to the Cree. Aboriginal speakers in public fora continually assert that the whiteman would not have survived and prospered without the knowledge and assistance of First Nations in trade, in military alliance, in treaties of peace and friendship, and in land transfers to the Europeans. Aboriginal leaders challenge state authorities to honour this founding relationship in contemporary practice.

The moral claims of the aboriginal party depend on the differences in material power that separate them from their European colonisers, as analyses of 'symbolic competition'[3] and 'moral opposition'.[4] Inequality implies failure to share, leaving the exploited in the morally superior position. Aboriginal speakers refer to this asymmetry when they challenge their non-aboriginal counterparts to become authentically human, by conducting their relations with First Nations in a spirit of generosity and respect. To the extent that Whites share, their moral position improves, along with the political economic position of their aboriginal partners. The phenomenon of so-called 'liberal guilt' in mainstream culture suggests that, at least in the context of popular ideologies which favour public welfare, disparage racism, and are sympathetic to decolonisation, these arguments enjoy some transcultural suasive power.

Symbolic competition and moral opposition have in fact become extremely uncomfortable for state authorities. On the opening morning of the first of four nationally-televised First Ministers' Conferences (FMC's) on Aboriginal Constitutional Matters held during the 1980s, a Native elder offered a prayer to the Creator, in an aboriginal language.[5] On the second day, when Prime Minister Pierre Elliot Trudeau attempted to open on a more secular note by going straight to business, he was interrupted by a request from the National Chief of the Assembly of First Nations to again open with an elder's prayer. Trudeau rather testily replied, 'Will you pray every morning in public?' When the aboriginal side persisted, Trudeau commented, 'Then everyone should pray to his own God', and as a Native elder prayed aloud, Trudeau at equal volume intoned the Lord's Prayer. The Prime Minister sought to curtail the moral authority of the aboriginal position, but his actions seemed a callous refusal to acknowledge the spiritual oppression historically suffered by aboriginals. Sensitive to a public perception of affront to aboriginal participants, it was

3 Schwimmer 1972.

4 Paine 1985.

5 FMC's were held in 1983, 1984, 1985 and 1987.

Trudeau who backed down. On subsequent mornings of the four Conferences, it became customary to open discussions with an aboriginal elder's prayer.

Indeed, the scope for sacred performance tended to increase as the conferences went on.[6] Several tokens of moral and sacred authority were entered into exchange by aboriginal actors - prayer offerings, the passing of the pipe to First Ministers, and gifts to Prime Ministers Trudeau and Mulroney of an eagle feather, a whaler's cap, a Métis sash. The ceremonial display of 'two-row wampum' treaty belts reminded Canadians of the material and political concessions rendered in the past by First Nations to Europeans, through treaties that committed both parties to commerce and alliance without political and territorial interference.[7] As media event, the FMC's were vehicles for inviting the Canadian public at large to recognise the long-term exchange, and to participate in its contemporary fulfilment and renewal.

The giving of sacred tokens and the ceremonial reminder of nation-to-nation treaties play two functions simultaneously. On the one hand, they differentiate aboriginal nations from others, a prerequisite for any political claim on powers conventionally claimed by the state. On the other hand, the idiom of gift-giving and exchange provides a model for sustained, albeit restructured, intergroup relations with European nations. Gifts proferred and accepted have certain moral consequences for subsequent transactions. To invoke a Maussian metaphor, aboriginal speakers/givers would generalise a standard of positive reciprocity to the status of 'total social phenomenon' in their dealings with the state.

These strategies are meaningful to non-aboriginals, I would argue, because it is a universal feature of human social life that to recognise the 'other' as like 'us' (as human, as member of society, as family) is at some level to admit judgments of balance or fairness in our exchanges with the other. Exchange presupposes both a distinction between partners, and a certain moral community uniting them. While exchange presents manifold opportunities for manipulation, treachery, or coercion on the basis of group distinctions, these negative terms are themselves meaningful only in relation to the moral unity also presupposed by exchange.

Positive Reciprocity in Narrative about Whitemen

In eastern Cree, as in other Algonkian traditions, narrative is classified into two broad genres: 'myth' (*aatiyuuhkaan*), in which narrated events transcend secular time - a predominantly figurative mode; and 'news/history/tidings' (*tipaachimuun*), a descriptive mode in which reported events are understood literally to have occurred in the experience of living people or their ancestors.[8] Narratives dealing with the Whiteman are given in both genres.

The narratives presented in this section and the next are selected from a collection recorded with several Wemindji elders between 1979 and 1982.[9] Narrators were informed that I was especially interested in stories that had to do with life on the land, with animals,

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6 One observation might be that symbolic concessions to the aboriginal party were on the increase, as aboriginal leaders were prevented by several First Ministers from achieving their central demand - the entrenchment of an inherent right of self-government in the Constitution.

7 As depicted by the two rows on the wampum belt, the ship of the European and the canoe of the Native partner would enjoy parallel but autonomous passage on the river of life, a reciprocity of respect for the sovereignty of the other.

8 Hallowell 1964; Preston 1975a; Savard 1979.

9 Scott 1982a.

or with *waamishtukushiiyuu* (the 'Whiteman'). Aside from this extremely general solicitation, narrators chose for themselves which stories to present.[10]

The first myth presented here involves the Cree-Montagnais hero/transformer, *Chakaapaash*. The narrator included this episode as the last in a cycle of seven *Chakaapaash* episodes:

> *Chakaapaash Encounters Whitemen*[11]
>
> As *Chakaapaash* was out walking along the coast, he saw a ship floating in the ocean. So he went over to see the ship, and when he got on board he was given Whiteman's food by the people who were on the ship. It was something which he had never eaten before. So he took some home to his sister. The people in the ship had told him to give them something to eat.
>
> So he went home and when he got there, he gave the food from the ship to his sister. She showed how grateful she was for what he brought back for her, and the people were able to hear her all the way out on the ship when she thanked them for the food.
>
> 'They want some food so I'll take it back to them,' he said to her. So he took meat to them. He took one whole leg of a red squirrel to them. When he got there, he brought aboard the leg of squirrel. When he put it down, its weight was so great that the vessel began to list sharply. That ends the story about the ship.
>
> Geordie Georgekish
> Wemindji, 1979

It is said that ideal behaviour is to recognise what someone needs and to provide it without expectation of return, although one may let one's need be known in case it has not been noticed. Rarely, except in the case of an already intimate and secure partnership, would one ask directly for something; and then preferably through an intermediary, minimising embarrassment to both parties should the answer be 'no'. Perhaps the Whitemen were weak on etiquette in asking *Chakaapaash* to bring them food, but the hero takes them a leg of red squirrel, a gift that while seeming absurdly small proves to vastly outweigh the generosity of the Whitemen.

To fully appreciate both the ambivalence and the hyperbole of the situation, it helps to know that the squirrel is considered among the least important of game, normally reserved for small boys. As such, it is opposed to the black bear, the most important of animals, killed by youths only after being properly introduced by an experienced adult. The opposition is explicitly underlined in this synopsis of another mythical episode:

> The squirrel wanted to be a bear, which was rather bold of him, being so small. He was answered with the argument that considering all the squirrels in the world, there would hardly be a place for them if they were bears. The white rims around the squirrel's eyes are from all the weeping he did because he couldn't be a bear.

From one vantage point, then, *Chakaapaash*'s gift of 'unimportant' food puts at risk reciprocity with the Whiteman. But as those familiar with the *Chakaapaash* cycle of myths know, squirrels are the hero's favourite game, the animal with which a hunter has a special

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10 Free translations into English were transcribed by Cree assistants shortly following each interview, these we reviewed together, and any ambiguities in the translations were referred to the narrators for clarification. The expert assistance of Abel Visitor, Daniel Natawapineskum, Francis Visitor, Robert Visitor, and Eva Louttit is gratefully acknowledged.

11 For ease of reference, brief descriptive titles are provided; these were not part of the narrators' presentations.

sacred relationship, and from that point of view a respectable gift. *Chakaapaash* commands the trickster's ability to make small of large, and large of small. The Whiteman's ship tilts precariously under the weight of the gift.

Myth bases the original relation of the Cree hero to Whitemen in an exchange of food, the most sacred basis possible for securing the original relationship of reciprocity. Historical narrative (*tipaachimuun*), on the other hand, represents reciprocal exchange in the form of secular trade goods. The first version, provided by the same narrator as the *Chakaapaash* encounter, focuses on an original exchange of clothing. In a second version from a different narrator, the gift of a firearm is also involved.

The First Whitemen (Version One)

This is an old story that goes all the way back to the time before the Whiteman first came to this land. There was a certain man living at that time who could conjure (*kuusaapitam*) using the shaking tent (conjuring lodge) and he had the ability of being able to know what would happen in the future, with the help of a *mistaapaau* (spirit helper).

[Narrator assumes the voice of the *mistaapaau*, who is seeing into the future for the man who could conjure]: 'I see someone out in the ocean. He is standing in the water. He looks like a huge person in the form of a white spruce (*minhiikwaapaaiiyuu*)(.' The strange person was just standing there. After a while, the *mistaapaau* spoke to the man again: 'Remember what I saw in the ocean? I told you it was a huge person in the form of a white spruce. It is not a person. It is called a ship (*chiimaan*).' So he looked around, and it was still just standing there. He spoke to the man once again: 'He might find you, but don't be afraid of him. Don't be afraid of him. He might find you. You can go to the ship. You can go to the ship.'

Then the people saw the ship. The man wanted to paddle over to the ship, but none of the men wanted to go with him. Only his wife would paddle to the ship with him. Soon he was on his way, and shortly he arrived. Their jackets were made of fur from animals that he had trapped. So the people on the ship gave them some other clothes to wear. 'Take your clothes off', they were told, and they understood what they were told. 'Put these clothes on,' they were told. [narrator jokes: 'I guess they took their clothes off where nobody could see them. There must have been a small room where they could undress']. So the woman, whose pants were made of muskrat fur, removed her pants. And they went home wearing the clothes that the people from the ship had given them.

As for the other people who hadn't wanted to go to the ship, they paddled over, and they were also given some clothes to wear by the people in the ship. And that's when the first Whitemen came to the Indian people, in a place called *Paakumshumwaashtik* ('River Spills Out'; Old Factory or Viewx Comptoir on official maps).[12]

They lived on an island known as *Upishtikuyaaukamuhk* (Frenchman's Island, in the bay at Old Factory). They began building houses there. The news of the first Whitemen's meeting with the Indian people spread in the world. As the news was heard more and more Whitemen came to the Indian's land. They started living on the Indian's land. Here in a place called *Maatuskaau* (Moar Bay), it is said that an old

12 The village site at Old Factory was abandoned in 1958 in favour of the present-day site at Wemindji. Wemindji community members feel a strong historical identification with Old Factory.

Englishman lived. The place belonged to the Indian people. Of the Whitemen that had come to the Indian's land, I guess he was the oldest. So he got the name *Chishaawaamishtukushiiyuu* (Elder Englishman; *chishaa-*, meaning 'old', also connotes 'wise' and 'great'; *waamishtukushiiyuu* translates 'Englishman'). His (Indian) wife also came from the place called *Maatuskaau*. It is also said that he had a son-in-law who was Indian.

There was another Englishman who lived in Eastmain. He was the first Whiteman who ever came to that place. He sold rifles and shotguns. He sold them to the Indian people. And he gave them to the Indian people. People came from the north to Eastmain to pick up firearm supplies such as powder for their shotguns. One type of shotgun was known as the 'seal-tailed' shotgun (*kaa-achikwaayuuch*). Another was called the 'duck-billed' shotgun (*shiishiipukutuuch*) [narrator comments: 'I have seen the duck-billed shotgun']. A third type of shotgun was known as the 'fat-thighed' shotgun (*kaa-michipuumiiyaach*). Those are the types of shotguns that the Whiteman gave and sold.

Concerning some people from the north who went to pick up ammunition in Eastmain, when they returned (from trapping), they just walked by (place reference unclear) and headed straight to Frenchman's Island. That's where the Frenchmen lived here at Old Factory. The Frenchman runs toward them, and when he reaches them, he unfastens their dog sleds and takes all the fur that they had wanted to sell him. But they get nothing at all from him.

Now Elder Englishman who lived at *Matuskaau*, when he heard about this, wanted to see for himself what he had heard. He wanted to see what the Frenchman did to the Indian people. 'Well, if I had the chance to return to where I came from, I could show the Frenchman something he wouldn't like, for what he had done to the people. So I guess I'll go home,' said Elder Englishman.

He asked his son-in-law to go with him. He was told how to behave when they got to the town: 'Always be careful how you behave when you get to that place, toward the people that you're going to see there.' He was the type of boy who used to say things just to get everyone else to laugh at his jokes. When they had finished saying what they wanted to tell him, he told the people the name of the place that they were going. 'I guess I'll have my chance to fool around with the women there,' he said, laughing.

Soon, he and his father-in-law were on their way to that place. That's where the big fight started, the fight between the Englishmen and the Frenchmen. The Company (*Kaampaanii*, referring to the Hudson's Bay Company(, as it turned out, won the fight. That's when the Company first came to the Indian's land [Narrator's aside: 'But I just wonder what year it was when all this took place']. This was something that the old people did in the past. It was from long ago that the Indians first lived in this country, before the first Frenchmen, who found the Indians, came to this place. Then the Frenchmen and the Company fought. The Company won the fight. Right now, the Company still stands for the Indian people.

Geordie Georgekish
Wemindji, 1979

The First Whitemen (Version Two)

Before the first Englishman arrived here, and even before the first Frenchman arrived, only the Indian (*liyuu*) was here. The first Indian people who lived here had their home at Old Factory. There was a person who had a 'shaking tent'. The person (a *mistaapaau*, spirit helper) who was talking to him told him: 'There is a white spruce

standing in the water'. He didn't understand what the *mistaapaau* was saying to him. Everytime he looked into it (the 'shaking tent'), the person who was talking to him always said the same thing. What he was really talking about was a ship. This person was telling him to expect a large ship which would arrive anytime now.

Later, out in the Bay, he saw something like a white spruce standing straight up into the air. He saw the flags of the ship in the distance. It was a large ship. It belonged to Frenchmen, not Englishmen. They watched as the ship sailed closer and closer. When they saw that the ship had stopped, one of the men said: 'Let's go over and check on it.' The others were frightened, so he asked his wife to go with him. 'They probably won't do anything to us,' he said. But the old man (his father-in-law) took hold of his daughter and told her not to go. The man told his father-in-law: 'Let her go, let her come with me. Those people probably won't do anything to us.'

All their clothing was of different kinds of fur from animals. The man paddled over to the ship with his wife, while the other people watched. When they arrived, the people on the deck threw a rope down so they could secure their canoe. They invited them to come on board. Although they didn't understand their language, they understood what they meant. The fur that they were wearing generally came from animals like the beaver and otter. Also, the footwear they had was made of hide. When they got onto the ship, all of the fur they were wearing was exchanged for the strangers' clothing. After they had put on the clothing, they looked really fine. The man was first to try on the new clothing; then the woman did the same thing.
After they had their new clothing on, the man was shown a shotgun. After he had received the gun, they threw something up into the air, and the man shot at it. They showed him the different parts of the gun, including where to load it. He received the shot gun as a gift. They gave him the shotgun because they were delighted that he had come aboard to check on the ship.

The woman looked really fine, too, (in new clothes). They (the Whitemen) took all the fur that they had been wearing; everything, including the moccasins. When they had received everything from the people on the ship, they headed back to their home. The old man who had tried to keep his daughter back was very surprised when he saw her. He told the other men to paddle over to the ship, saying that they might also be given some clothing to wear. So they paddled out to the ship - probably the women went with them, too. When they arrived, the people on the ship treated them as they had the first ones.

It is said that the French were the first group to see the Indians. They stayed with the people for a long time. I don't remember what happened after that. I wasn't born yet, and my father wasn't born yet, either. The French were the first ones to come to the Indians people. Then after a while, the Company (Hudson's Bay Co.) came to the people.

When these people from the ship stayed with the Indian people, the only food they relied upon was fish. They gathered hundreds, and put them in barrels, then buried these barrels under the snow. From time to time they took some out to eat.

Finally the time came when they had to leave for home. After the French left it was the Englishman's turn to meet the Indians. But the Company never had any intention of leaving the Indians. From time to time large ships came in to bring goods to the people [narrator's aside: 'I remember seeing them - they were the ones

with a number of sails, one on top of the other - *skutaau chiimaa* ('fire ship')].[13] The newcomers started building some houses to form *istaaun* (from the English 'town'; the post). Eastmain was one of the first ones built around here. Old Factory didn't even exist at that time. But people often came down to there from inland, even before it was a post. Most of the people at that time headed to Eastmain, when they came down.

When people brought their fur to sell, they took it to the post at Waskaganish and they sold it there. This is where all the fur was collected to be taken out. When people wanted to charge something, they usually went to Waskaganish, because at that time, the manager at Eastmain wasn't very experienced. The people got most of the things they wanted from that particular post.

That's the end of the story.

Jacob Georgekish
Wemindji, 1981

These narratives are concerned with an important issue also addressed by the *Chakaapaash* myth: what sort of person was the Whiteman, friendly or dangerous, and what sort of relations with him were possible? The central character of the narratives has foreknowledge of an approaching stranger through his spirit helper or *mistaapaau*, who speaks to him through the medium of the conjuring lodge. The initial percept of the ship is ambiguous, but further reconnaissance enables the *mistaapaau* to report to the man that the white spruce 'person' is really something called a 'ship', and that it might find him. Although, on the advice of his *mistaapaau*, the man feels that it is safe to approach the ship, more conservative opinions are expressed enjoining him not to do so. Ambivalence toward the unknown strangers is expressed in social structural terms. In the second version, the man's father-in-law attempts to prevent his daughter from going with her husband (the younger man would normally reside with his parents-in-law for an extended period following marriage, and the father-in-law possibly represents an elder authority of the group).

The positive reciprocity affirmed through the remainder of the narrative is indicated in three principal ways. The first is economic. Secondly, potential and actual instances of marital and sexual reciprocity are alluded to. We learn that the first Elder Englishman marries an Indian woman from Maatuskaau (Moar Bay just north of Old Factory). Their daughter marries an Indian, so that in the patrilineal terms of Cree marriage exchange, marital reciprocity with the Englishman's wife's group, with whom he resides, might be deemed to have been fulfilled. Still, there is asymmetry. European men always arrived without women.[14] The son-in-law's visit with his father-in-law to the latter's home represents an extremely rare circumstance, under traditional fur trade conditions, where eastern Cree men might even have come in contact with European women. The son-in-law jokes about how he will fool around with the women there, while being admonished to be careful how he jokes with the Whiteman.

A third element of reciprocity is military assistance. Cree who have received hunting arms and ammunition from the English at Eastmain take their furs to the French post at Old Factory. Given that trade relations with the French predated those with the English (according to Cree oral tradition, but not according to historians), perhaps an issue of

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13 The narrator, in his nineties when this story was told, remembered a time before sail power was replaced by steam.

14 Concern over this assymetry of course reflects a Cree male bias. Although women were among the elders who recorded narratives for my research, narratives about Whites were offered only by men.

loyalty to the French is involved. But the French take the furs, giving nothing in exchange. The old Englishman's journey home results in a punitive expedition against the French. The Cree history refers, in all likelihood, to the expeditionary force that was sent to James Bay under James Knight in 1692, who wintered at Old Factory before expelling the French from James Bay.[15] The expulsion is interpreted as protection of the interests of Cree allies by the English Hudson's Bay Company.

There is much in historical narrative representations, then, that would seem to favour the hegemony of the Company. The English are seen as generous and legitimate partners in trade, more interested than their colonial and commercial rivals in the Indians' welfare. Loyalty to the Company is presented in a positive light, an important factor where material means of enforcing Company authority were always limited.

At the same time, one should not underestimate the extent to which Cree hunters influenced the form and terms of exchange. Periods of competition between rival trading companies were associated with significant concessions to Cree demands for ritualised gift-giving, a trading context in which the authority of Cree 'trading captains' depended on their ability to secure European largesse for their followers.[16]

The obvious question arises, to what extent did Cree perceive material asymmetries in exchange with the Company? While the power of Whiteman technology was evident, capital accumulation from the trade was a phenomenon mostly invisible to Indian trappers, since the surplus value of furs accumulated only in Britain or southern Canada. Local post infrastructure was relatively modest, and it is doubtful that many hunters envied the lives of Hudson's Bay Company personnel.

Salisbury suggests that the respective values obtained by the Cree and the Europeans were incommensurable.[17] European goods enhanced hunters' labour efficiency and security on the land, so there were clear advantages to the Cree of involving themselves in the trade, issues of material asymmetry aside. What Cree oral tradition presents us with, however, is a sustained intellectual effort to interpret and influence precisely the state of balance in the exchange, through metaphors that juxtapose 'incommensurables'. And often enough, the metaphors invoked are ones of alliance and positive reciprocity.

Negative Reciprocity in Narrative about *Pwaatich*

But there are also metaphors which condemn. Less savoury images of the Whiteman are associated with a rogue called *pwaat* (*pwaatich, pl.*). *Pwaatich* are a category of humans (or pseudo-humans) who lurk on the margins and transgress against authentic human community. In mythical narratives, *pwaatich* are strangers/outlaws/enemies not explicitly identified with Whitemen. At this level, the *pwaat* category may be a general designation for anti-social behaviour, and its application to the members of any particular ethnic category a matter of contingent history.

Why is the Whiteman as positive reciprocator explicitly identified in myth, when as negative reciprocator he is associated rather more mysteriously (at least from the outsider's standpoint) with *pwaatich*? There are culturally appropriate reasons for this circumlocation, which enables speakers to avoid referring directly to the Whiteman in unflattering terms. For many Cree elders, to openly display disrespect for any person would be viewed as ill-

15 This event is discussed in the context of the French-English struggle for James Bay in Francis and Morantz (1983).

16 Morantz 1977.

17 Salisbury 1976.

considered, foolish behaviour.[18] This attitude relates to aspects of colonial experience with Whites, as well as a cultural disposition, given 'percept ambiguity',[19] to be cautious in dealings with others, especially in potentially conflictual situations Simply to name a person, under certain circumstances, is considered disrespectful - the black bear or certain powerful humans, for instance - are said to know when their name is uttered, and to resent it. And disrespect shown even to weaker persons can backfire when the cooperation of that person may some day be needed.

During the early stages of my fieldwork I did not recognise that the *pwaat* myths presented hereunder might have special relevance to Europeans, even though I had indicated to informants a specific interest in narrative concerning Whites. Descriptive commentaries and anecdotal history, however, led to recognition of close symbolic connections between historical Whitemen and mythological *pwaatich.*

For many eastern Cree, the association of historical *pwaatich* with Whitemen seems to be primary. At Wemindji, *pwaatich* are described as white- and hairy- faced.[20] Good-natured teasing of Whites in social situations sometimes takes the form of calling them *pwaat*[21])) may take them if they are too noisy in the bush, or otherwise misbehave. A story is told at Chisasibi of a young girl who became separated from the group during a school outing into the forest with the Roman Catholic nuns and was sexually abused by *pwaachikii.*[22] Anecdotal history at Wemindji refers to incidents of Cree women molested in bush camps by White *pwaatich* while their men were away hunting.

At Whapmagoostui, Trudel (1986-87) reports that, according to an informant, 'ces Pwat sont des Blancs, les premiers a etre venus dans la rétion, et ils kidnappaient des femmes indiennes.'[23] Adelson found during her fieldwork at the same community that *pwaatich* are identified with White strangers who travelled in groups of several men to a canoe (Naomi Adelson, personal communication).

But the *pwaat* category may not apply exclusively to Whites. At Chisasibi, Trudel[24] finds that 'ces meme Pwat sont plutot des Indiens du versant ouest de la Baie James, soit de Moose',[25] and, citing Aubin and Lee,[26] he notes that 'le terme signifie enemi' en proto-algonquien, et 'Sioux' chex les Cris de l'Ouest'. The oral tradition of eastern Cree, Attikemak, and Montagnais at different times and places represents Iroquois, Inuit, White,

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18 I recall an occasion in some friends' home being teased by Cree children, who attributed to me some unflattering qualities associated with *pwaatich.* I was surprised to hear them reprimanded rather sharply by their parents, who advised them not to speak to 'the Whiteman' in that way.

19 Black 1977.

20 Not coincidentally, perhaps, the term *waamishtikushiiyuu* (Whiteman), contains reference to beardedness (*-mishtiku-*)?

21 At Wemindji it was suggested to me by an interpreter that *pwaachikii* is a Cree phonological rendering of 'Portuguese'. This connection was also mentioned to physician and medical anthropology researcher Richard Scott at Chisasibi in 1991, with the speculation that the term might have originated with some early contact with Portuguese. He found at Chisasibi, as I did at Wemindji, that *pwaachikii* were spoken of as being White.

22 Richard Scott, personal communication.

23 Trudel 1986-87.

24 Ibid: 93-94.

25 This finding differs from that of Richard Scott (see footnote 21).

26 Aubin and Lee 1968.

and Micmac enemies according to very similar narrative motifs, Trudel finds. This finding is valid, I think, and due largely to the fact that the particularities of historical experience with any ethnic 'other' are evaluated according to the same standard of reciprocity, whether negative or positive. Conflict and 'xenophobia' are just one possibility, however; the other is alliance and incorporation into legitimate exchange.[27]

Pwaatich are often blamed for theft of fish from nets, animals from traps, and other property, although they are seldom actually caught in the act, and in fact are rarely seen.[28] The intrusion of airlifted White male trappers on Cree hunting lands in the 1920s and 30s, which contributed to game depletion and famine prior to the establishment of beaver preserves and registered Cree traplines, probably deepened the association of *pwaatich* with White strangers of mysterious provenance. Today, thefts from hunters' cabins and caches by tourists and southern workers help to perpetuate these negative perceptions.

The possibility of encounters with *pwaatich* in the bush continues to provoke great interest and concern, as I witnessed on a spring hunting trip along the Wemindji coastline in 1981 when an adolescent member of the group reported a glimpse of a solitary stranger at the forest's edge. The incident later prompted an anecdote by another hunter in the group about some Cree from Moose Factory who actually caught *pwaatich* in the act of stealing fish from their nets; a relatively innocuous variety, as it turned out - a pair of tourists from the south, father and son, who had grown weary of fishing for their dinner.

Mythical accounts of *pwaatich*, I think, reflect social structural concerns that became particularly acute in the context of historical exchanges with Europeans. In the following mythical account, a young woman is kidnapped:

A Woman is Abducted by Pwaatich

This story is about a man who lived with his mother and younger sister. The man and his sister were both full-grown. The three of them lived together. He went out with his sister to check their fishnet. As they worked at their fishnet, *pwaatich* came paddling toward them. There were a lot of them, using a single canoe. The man's sister was wearing a hat covered with beadwork, and when the *pwaatich* reached them, they were fascinated by it. They took the hat from her head and returned to their own canoe.

'Why are you taking my hat?' she asked them. 'We won't return it to you,' they answered; 'you come and take it from us.' The girl reached over to take her hat back, and the *pwaatich* pulled her into the canoe. When they had pulled her in, they pushed the man's canoe away from their own. They began paddling off, and the man was unable to overtake them. Soon they were gone, with his sister. These *pwaatich* were all men.

When the man told his mother what had happened, she started to weep. From then on, his mother was always weeping, and it troubled him. She was always weeping

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27 In Wemindji narrative, Whitemen and Inuit are presented in both ways, depending on historical circumstance. As recently as the last century, raiding occurred between Cree and Inuit groups. Wemindji stories of these conflicts, and the peace that was made, are recorded in Scott (1982a).

28 *Pwaatich* are characterised as elusive persons, and encounters with them are often very fleeting. Richard Scott (personal communication) was told by a Cree woman at Chisasibi in 1991 of an encounter that her father, who had been hospitalised in the south, once had with a patient in the next bed, who turned out to have been a government surveyor in the northern bush some decades past. The room-mate explained that they had instructions to avoid contact with Indians, information that the Cree man associated with the furtiveness of *pwaachikii*.

over what had happened to her daughter; always thinking about her daughter, wondering if she would ever have the chance to see her again.

'Don't cry, mother,' he told her. 'I'll try to find a way to get my sister back.' Now he was on his way to look for his sister. As he went along, he came every now and then upon the abandoned camps where the *pwaatich* had stayed. Soon it was winter, and he continued his search for them. 'You stay here, while I go out to look for my sister,' he had told his mother. He was on his way, and kept to the trail of the *pwaatich.*

As he went on, he came upon a lodge. He saw his sister come out, with a baby in her arms. 'Do you like the baby?' he asked her. 'No, I am not very fond of him', his sister replied. So he told her what to do with the baby: 'Put the baby in hot water, and then call out, 'Oh! I have scalded my child!' What are the *pwaatich* doing now?' he asked her. 'They're all inside sleeping,' his sister replied. So he instructed her, 'When I walk towards the lodge, I want you to come out. When you come out, bring your snowshoes with you, and when you have gone quite a way, put your snowshoes on and just follow the trail. By following the trail, you will try to get back to our mother.'

So the girl did as she had been told. 'I'm washing clothes right now' she said, 'right now they're all asleep.' The man watched his sister as she started off along the trail, and he began walking toward the lodge. Somehow the *pwaatich* had realised that their brother-in-law (*wiishtaawaau*) had arrived. They all called out, 'Aa-aa-aa! Our brother-in-law has arrived!' The girl had scalded her child in the water upon leaving the lodge to set out on her way - everything as her brother had told her.

'Aa-aa-aa! Our brother-in-law has arrived!' The *pwaatich* invited their brother-in-law to come into the *maakwaamapinaanch* ('main section' of the tipi). The man had a *mistaapaau*, and his *mistaapaau* told him not to go to the main section, but to sit near the entrance. 'I don't usually sit in the main section when I visit someone's home,' you will say,' his *mistaapaau* told him. It is actually the *mistaapaau* who was instructing him. 'They're going to give you a pipe to smoke - an old man will pass you the pipe to smoke. Don't light the pipe right away. At certain moments, hold the pipe toward the entrance. I'm going to remove the contents of the pipe. You'll pretend that you're just smoking. I'll take what's in the pipe, and replace it,' said the *mistaapaau.*

'Our brother-in-law will smoke.' But he didn't smoke immediately. He just pointed the pipe toward the entrance. His *mistaapaau* took the contents of the pipe. The *pwaatich* had actually put something in the pipe that would kill the man. 'Well, I think I'll take a smoke on the pipe ...'; he knew that the *mistaapaau* had removed what was in the pipe; '... I think I'll take a smoke on the pipe.' So the *mistaapaau* had filled the pipe. His *mistaapaau* watched what he did; nothing at all happened to him. 'After you have smoked, I want you to continue talking, and as you talk, keep pointing (toward the entrance) with your pipe. Then I will refill the pipe. First, you'll pass the pipe to the old man, then the others will smoke, too. You will tell them to be quick in smoking the pipe. Tell them that the contents of the pipe won't last long', said his helper, the *mistaapaau.*

So they all proceeded to smoke. The old man was the first one to smoke, but nothing happened to him after he had smoked. 'Hurry, what's inside the pipe won't last very long!' he told them. 'I want all of you to smoke some.' Suddenly, the old man fell over backwards, and his feet started thrashing about. Presently he lay there dead. The same thing happened to some others. There were others still in the lodge.

He 'brained' one of them as he tried to run out through the entrance. He did the same to another. Finally, he killed all the *pwaatich.*

When he had finished getting rid of the *pwaatich,* he thought: 'I'd better start for home. I came a long distance. I'll be home late.' The *pwaatich* had been helpless against him. Having killed all of them, he left them there. They had merely smoked the pipe. He saw the path that his younger sister had taken. He caught up with her just before he reached their home [Narrator's comment: 'And he sure got there quickly!']. 'Mother,' he said, 'I have brought my younger sister home.' 'Oh, how wonderful, my son!' she said. Then she saw her daughter enter. She was delighted to see her again. And there they lived with her. That's the end of the story.

Jacob Georgekish
Wemindji, 1981

The story opens with a household that includes a son and a daughter who are full-grown and therefore of marriageable age, though significantly neither is yet married. The moment is appropriate for a marriage exchange. This ordinary situation contrasts with the group of *pwaatich* who, we are told, are all men. They steal the sister's handiwork, then the sister herself, doing violence to her wishes, and ignoring the usual period of hunting for the bride's parents. Her later treatment of the baby born of this illegitimate union, at her brother's suggestion, signifies the rejection of the sister's 'marriage' to the *pwaatich,* despite the attempt by the latter to hail her brother as their 'brother-in-law'. On the advice of his spirit helper, the brother smokes the pipe with the *pwaatich* - normally an act of alliance and friendship - but in this case, his spirit helper poisons the pipe. Thus he is able to overcome and kill the *pwaatich,* and reunite his family.

In a second *pwaat* myth, the villains behave even more atrociously, stooping to cannibalism, the very antithesis of human sociality. This time the victim, *Kituunaa,* is male:

Kituuna is Abducted by Pwaatich

Kituuna was once taken by some *pwaatich.* There were a lot of them, a lot of *pwaatich* at that time. This is an *aatiyuuhkaan.* 'From that point, I lived with the *pwaatich,*' he said. 'I lived with the *pwaatich.* I was treated very badly by these *pwaatich.* Moreover, it was very cold at that time. It was no longer possible for me to live indoors, due to my treatment. I was no longer allowed to stay inside. But I felt a little different whenever a caribou was killed. I used to keep myself warm with the hide of the caribou [narrator interjects: 'He probably looked at his penis (*unaapaawin*) as well' - in this way, as *Kituunaa* lost weight, he could ascertain what vitality remained]. Whenever I looked at my penis, I could see that it was alright.'

Food was getting scarce. He had lived with the *pwaatich* for a long time now. Then the *pwaatich* had an idea: 'Why don't we make a stew out of *Kituunaa,* since we have nothing to eat?' they said. 'Oh, but was I unhappy when I was laid down on the *ishpishtaakan* (butchering-sheet). "How miserable I am," I thought.'

' "Alright, start cutting some wood, to cook *Kituunaa,*" they said, after I had been laid down. Was I ever unhappy to hear what they were saying! So the women started cutting the wood. Then I thought, 'I wish that they would say: "We have spotted some ruffed grouse (*pispischuuch*)." ' Before long, the women said: 'We saw some ruffed grouse, and there are a lot of them.' Again, I was thinking: 'I wish they would say: "Let's get *Kituunaa* to kill some food one last time".' Soon, they said: 'Let's get *Kituunaa* to kill some food one last time.'

I commenced shooting the ruffed grouse. Soon I had hit a lot of them. I went shooting the farther ones. Before long, I was out of sight as I continued shooting.

As soon as I was out of sight, I ran off [narrator comments: 'He was naked - he was wearing nothing at all. I guess he didn't get cold easily']. Soon I was very far. Then I looked back along my patch. I saw two *pwaatich* coming after me. I dealt them blows as they ran past, and I knocked them both down forward [narrator interjects: "These were the ones who had wanted to kill him]. So I set them with their asses facing the direction from which they had come. I spread their asses with some sticks. Then I started running again.

Then I came upon the tracks of two otters. I went after those otters. I killed them and I skinned them. Then I pulled the pelts on over my feet as leggings. I started running again. I looked back along my path, and I saw two more *pwaatich* running after me. When they saw what I had done to the other two *pwaatich*, they said: 'Oh!, *Kituunaa* will kill us all.' Then they turned back to their own home. I started to run again. I came upon a path. I knew where my older sister (*nims*) lived.'

One of the children used to say: '*Kituunaa* is coming.' Then the people would say: 'How could he be coming? He was abducted by the *pwaatich*.' Everything that the child said would usually come true. Then one day, as the child went outside from their dwelling, he saw *Kituunaa* coming down the path. He was naked. '*Kituunaa* is coming,' the child said. 'How could he be coming? He was taken away by the *pwaatich*,' they replied. Then they all ran outside, and they saw him coming down the path. They were delighted to see him coming. All were very happy about his arrival.

They declared that they would go after the *pwaatich*. A *maamakusuuyaan* would be used [narrator explains, 'A *maamakusuuyaan* is a type of bear skin which is removed from the bear without cutting it down the breast. A man usually wears this over his body in an upright position']. 'We are short one person,' they said. 'Why don't we have *Kituunaa* come with us?' said the child.

[Narration resumed in *Kituunaa's* voice:] 'My, was I angry when I heard the child say that! That's where I had just come from, where I had been treated badly. I went with them. When we sighted the *pwaatich's* dwelling, we decided not to approach it just yet. So we spent the night there. Next morning, the bear skin was fitted over me. Then I was instructed to go to the entrance of the *pwaatich's* dwelling. Next I was told to make some strange sounds. So I did as I was told. I made strange sounds. '*Maamakusuuyaan, maamakusuuyaan*,' I said. 'I've had a chance to put it on. Now come and look at it.' The *pwaatich* ran out the entrance. They took a good look at me. Some just barely made it back into their dwelling, where they fainted and died. Some of them didn't even manage to get back inside before fainting and dying! [Narrator comments: 'These were the ones that laid him on the butchering sheet']. The women were also killed. Then they took the bear skin off me.

Once again I lived with my people.'

Jacob Georgekish
Wemindji, 1981

Kituunaa is kidnapped and enslaved, forced to hunt for the *pwaatich*, divested of his clothing, and forced out of the lodge to sleep. In the normal course of things, a young man would go to hunt for his wife's people, but *Kituunaa*'s lot is far less happy. Although there are women in this group of *pwaatich*, marriage for Kituunaa is out of the question. When times are hard, it occurs to the *pwaatich* to butcher and boil the hero. Again, superior spiritual power rescues the true human being. His will is strong, and his wish that grouse should appear - so that his captors may send him to hunt for them one last time - comes to pass. He escapes, desecrating the corpses of his enemies in the process.

Kituunaa's group stages a punitive raid on the *pwaatich*. The surprise attack at dawn involves bear magic of such intensity that the *pwaatich* are struck dead at the mere spectacle. The *pwaatich* women are put to death with the men, treatment which is routine for cannibal women in other narrative mythology.[29] In historical raids against the Inuit, women from defeated camps were sometimes made wives of the winners, women to whom lines of descent are traced by some contemporary Cree. But the categorical refusal in myth to incorporate *pwaatich* women into *Kituunaa*'s group suggests that having resorted to cannibalism, they are unfit.

In the foregoing narratives, it is tempting to identify a parallel between the all-male group of *pwaatich* who kidnapped the sister with the almost exclusively male composition of European traders, who frequently married Cree, but who were perhaps not perceived as full reciprocators. In the first myth, the emphasis is on exploitation of the sexual and reproductive power of a woman abducted from true human community; in the second, exploitation of the productive power of an abducted man, who is starved while hunting for the *pwaatich*. In narrative history concerning food shortage crises in this century.[30] and last,[31] the failure of White traders to fulfil their responsibilities as partners in exchange results in the starvation and death of Cree who trapped for them.[32]

Pwaatich hold an intermediate position between the ideal of positively reciprocating humanity, and the cannibal *atuush*, the starkest antithesis of human sociality.[33] The thoroughly dehumanised *atuush* figure presents the exploitative distortion of production and reproduction in its most powerful and condensed symbolic form. The *atuush*, like *pwaatich*, lurks exploitatively at the margins of society, practising a more extreme and horrific inversion of ordinary morality relentlessly tracking and killing humans, whom he regards as his 'moose', for food.

The distinction among Cree between appropriate forms of reciprocity with human persons and with food animal persons is extensively explored in metaphors that compare human sexuality with, while separating it from, the hunting of animals.[34] Both forms are said to involve generosity and love. But the form of love expressed in hunting is that animals are given to the hunter as food, indicating positive relations with animals, their species masters, and other spirit benefactors. The form of love expressed in sexuality is the complementarity of men and women in the reproduction of humanity. To consume persons of one's own kind is an abomination.

The *atuush*, confounding these primordial metaphors, feeds on his own offspring and sexual partners. In one mythical episode, an elder *atuush* plots the murder of his son to

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29 Scott 1982a.

30 Scott 1989a.

31 Preston 1975b.

32 Interpretations of economic history of Cree hunters, in relation to some of the themes contained in the above narratives, are discussed in greater detail in Scott (1982b, 1989a).

33 Over the decades, an abundant literature has addressed the Algonkian cannibal motif from several perspectives: as a culture-specific form of 'psychosis', as a culturally conventional means of controlling witches or other deviants, as a metaphor for social structure, and as an emic reflection of etic subsistence deprivation. Preston (1980) provides the most penetrating review and critique of these interpretations. The transfiguration of physical deprivation or psychological stress into attributions of cannibalism, he finds, are 'Algonkian society's attempt to come to terms with radically antisocial behaviour' (ibid: 111).

34 Preston 1975a, 1978; Scott 1989b.

satisfy his hunger.[35] A second episode caricatures the confusion of the same cannibal household in failing to separate food production from human reproduction:

Maamiitaahaau Consumes His Own Sperm

I'll tell you an *atuush* myth. I'll tell you the myth about *Maamiitaahaau*, the *atuush*.

He told his son, 'My son! Would you go over there [indicating a place to hunt people]?' So his son left, started to walk away. And as for me [at this point, the narrator assumes *Mamaiitaahaau*'s voice], I just lay there.

Soon it was night time, and my son still hadn't returned. Then I heard him coming. He brought a woman back with him, carrying her on his shoulder. He wouldn't even allow me to copulate with her. She lay there beside him. After he drank some coffee, he started 'working' on her, and I started to feel aroused as he took off her clothes. 'I think I'll have my turn too,' I told my son ... 'my son, would you stop copulating with her for a while? I'd like to have her.'

'Well, hurry up!' he told me. Somehow he didn't like what I had said to him. So I copulated with the woman and after I was finished with her, I told him to take the woman back. I just lay down again, because I was hungry.

Then he threw something at me. It was *wispiiyuu* [her reproductive parts, including uterus and vagina], that he had taken out of the woman. So I held it over the fire to roast it. Then I ate it. As I was chewing on it, I tasted something odd. My vision started to blur and as I looked around, everything that I looked at seemed to turn red. Then I spit out what I was chewing.

My son remarked, 'I wonder how that must have tasted, the way he spit it out!' I just laughed at him. I accidentally ate my own sperm.

The following morning, we went to the place where my son had got the woman. 'She must have had a little home,' I thought. So we went there. 'This is the place,' he said. We also saw a place where they had chopped some wood. We followed the trail as we drew near her home. We came to a large abandoned lodge frame. We could tell that there had been a lot of people living there! We continued on walking. The people had left this place the night previous. They had followed the borders of the lakes.

As we walked, for some reason I did not feel well. Then suddenly I fainted. I fell to the ground and lay there. The snow had already drifted in on one side of me, by the time I woke up, and my son was gone. 'He might have run into trouble,' I thought. As I walked along the lake, I saw something on the ice, and went over to check it out. It was my son. The snow had already drifted in on one side of him. I wondered what I was going to do with him. I dragged him to a place where it was less windy. I made a fire when I got him there. He started sweating as I tried to warm him up. Then he started to stir, as I continued to warm him.

'My son, don't bother tracking them because I think they've got the better of you.' So we headed in another direction.

Geordie Georgekish
Wemindji 1980

Maamiitaahaau quarrels with his son, who fails to accord him the normal privilege that an elder should enjoy in regard to 'game' brought in by a junior. The inversion is further highlighted as *Maamiitaahaau* is thrown the uncooked reproductive organs of the woman for his meal. Conventionally, the cooked head of an animal is presented to honour a male Cree

35 The features of *atuush* behaviour are more fully illustrated in myths recorded in Scott (1982a). Only one myth is reproduced here.

elder. *Maamiitaahaau* stupidly consumes his own reproductive substance. Shortly thereafter, he and his son nearly perish, due to the superior spiritual power of the woman's people. The *attush* is the *reductio ad absurdum* of exploitative premises - human society consuming and destroying itself from within.

Preston[36] has noted the resemblance of the Algonquian cannibal to the 'wildman' of European mythology. A similar resemblance exists between Cree representations of *pwaatich* and European representations of 'savages'. Both, while potentially redeemable, are dangerously uncivilised, and may easily cross the threshold into cannibalism. But there are important formal and functional differences that distinguish *pwaatich* from 'savages' in the encounter of European and indigenous New World cultures. To Europeans, 'savage' Indians, like wild animals and indeed 'nature' at large, needed dominating and domesticating. As Michael Taussig[37] (1986) has described, European allegations of Amerindian cannibalism, coupled with fear and hatred of the jungle, fuelled overwhelming atrocities against Indians in the Amazonian rubber trade. The colonial 'mirroring of otherness' reflected the barbarity of the colonists' own social relations.

But for Cree, the forest, animals and other aspects of 'nature' are already securely involved in relations of reciprocity with indigenous hunters/stewards.[38] These relations may be undermined, through disrespect for animals of various kinds, including over exploitation or waste. But they may also be undermined through failures of reciprocity within the human group. It is a central proposition in Cree narrative and ritual that the refusal of humans to share leads to a refusal by animals and other non-human entities in the wider environment to confer their gifts on humanity. Deviant humanity, not the rest of nature, needs rehabilitation, through the restoration of positive reciprocity. And rehabilitation is always possible, as the mythology informs us. Even *Maameetaahaau*, in a third episode, shows compassion toward two young girls, whom he hides and assists in their escape from his ravaging son.

Conclusion

The Whiteman represents vast contradictions for indigenous ideologies of reciprocity. From the beginning, he was obviously materially powerful, and many of his gifts were useful. The attempt to commit him to premises of reciprocity was worthwhile, indeed imperative; eventually, neither physical aggression nor withdrawal from the relationship would be possible for the Cree. On the one hand, oral tradition on 'first encounters', mythical and historical, makes no mention of exploitation or self-serving maximisation in the original relationship. On the other hand, grievances over the unequal benefits received by Whites during post-contact history are not ignored, and have their own mythical representation.

Both positive and negative narrative images of the Whiteman tell us a great deal about the terms of exchange acceptable to Cree hunters. As a legitimate and respected partner in exchange, the Whiteman is located aboard ship, or his presence limited to trading posts. But narratives of the exploitative Whiteman find him in the bush, as *pwaat*, directly intruding on Cree domestic relations. There is functional complementarity in these formally contradictory views of the Whiteman. Positive images provide a model for 'keeping up' a necessary relationship, one which is represented as originally more balanced than it eventually became; while negative evaluations insulate Cree domestic relations from the

36 Preston 1980.

37 Taussig 1986.

38 Feit 1973, 1986; Preston 1975a; Tanner 1978; Scott 1989b.

exploitative premises that emerged in trade with Europeans and that continue with more recent intrusions on Cree land for hydro-electric and other industrial development. The duality of image defends a cultural boundary, while insisting rhetorically on conditions for valid inter-ethnic (and ecological) reciprocity.

Few Whites during the traditional fur trade had the opportunity, the humility, or the cultural knowledge to perceive facets of their own identity in the outlaws of subarctic myth. Today, mass media communications bring these images to our attention as never before. During the public controversy over the first phase of hydro-electric development at James Bay, the journalist Boyce Richardson[39] was informed of the resemblance between the Whiteman and the blundering monster in Cree myth who destroyed the earth in a flood, until the monster itself was given refuge on a raft with a human being, and the animals who would repopulate the world.

More recently, as the Innu of northern Labrador and Quebec opposed military and other intrusion of their homeland, Chief Daniel Ashini described the rapacious appetites and activities of Euro-Canadians as those of *Atshen*, the Innu equivalent of the Cree *atuush*:

> I sometimes think that the industrial society is an immense 'Atshen', a greedy, power-hungry monster that feeds of the flesh and souls of aboriginal peoples all over the world. As in the Innu myths, the Atshen does not share, but only takes to satisfy his own appetite and shows no remorse for the suffering he causes.[40]

In ecological terms, anxiety over pollution among Innu of the Lower North Shore of the St. Lawrence is associated with fears about the possible return of *Atshen*, normally held in check by the animal Master of the caribou. Historically the appearance of the Algonquian cannibal has been associated with game scarcity and famine, difficulties which in the Innu case are presented by the game sent by the Master of the Caribou. Pollution, as a lack of human respect toward animals, could once again cause the master of the caribou to allow Atshen to attack humans (Sylvie Vincent, personal communication).[41]

These modern transformations of the Algonkian cannibal also reached the pages of *The Globe and Mail*, 'Canada's National Newspaper,' in a recent commentary by a leading Anishinabe author:[42]

> They ['weendigoes', as cannibals are called among more westerly Algonkian cultures] stalked villages and camps, waiting for, and only for, the improvident, the slothful, the gluttonous, the promiscuous, the injudicious, the insatiable, the selfish, the avaricious and the wasteful. ...
>
> But no matter how many victims a single weendigo devoured raw, he could never satisfy his hunger. The more he ate, the larger he grew, and the larger he grew, the greater his hunger ...
>
> It was assumed, and indeed it appeared as if, the weendigo and his brothers and sisters had passed into the Great Beyond, like many North American Indian beliefs and practices and traditions.
>
> Actually, the weendigoes did not die out; they have only been assimilated and reincarnated as corporations, conglomerates and multinationals ...

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39 Richardson 1975:183.

40 Ashini 1990.

41 The Innu, Vincent nots, attribute pollution in the form of littering as much to their own young people, who are said to be losing their culture and becoming 'like Whites', as to Whites themselves.

42 Johnston 1991. I am grateful to Harvey Feit and Sylvie Vincent for bringing these instances to my attention.

> The new, reincarnated weendigoes are little different from their forebears. They are more omnivorous than their ancestors, however, and the modern breed wears elegant clothes and comports itself with an air of culture and dignified respectability ...

What do these metaphors, with their implicit prescription for resumption of reciprocity between aboriginal and non-aboriginal societies, and with nature, accomplish in practical terms? Very little, one might argue, given the ease of denying abuses of the past; or if abuses are admitted, that we today should make restitution for what has been 'the inevitable path of progress'. The modest gains of aboriginal politicians in securing greater control of resources, or a greater measure of economic justice, could as easily be attributed to more general social welfare and human rights concerns of the state as to any sense of obligation toward aboriginal societies as partners in a protracted historical exchange. To think in terms of reciprocity, in this view, may actually be counterproductive, because it disguises the true conditions of subjugation, or diverts attention from more realistic processes for addressing social problems.

The indigenous critique of exploitative newcomers reflects, nonetheless, aboriginal people's conviction that their survival is threatened by the premise of competitive consumption in modern social life, a premise according to which 'sharing' is reduced to the status of utopian altruism. It is a critique that validates indigenous cultural values and identities, while appealing to a nascent consciousness among non-aboriginals of the connections between human inequality, environmental degradation, and the industrial imperative of economic growth.

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TREATIES WITH ABORIGINAL MINORITIES

Michael Craufurd-Lewis

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Introduction

Developing a title for this paper presented a number of problems. It was found difficult to combine succinctness with semantic accuracy: the author did not wish to translate the title into a minor paragraph. A number of alternatives were scouted and that which is here presented was the final selection. However, scrutiny will reveal a number of shortcomings, the first of which becomes apparent in the first word.

Both the Oxford English Dictionary and Webster's Dictionary emphasise the inter-state - or inter-nation - ingredient in a 'Treaty' and, indeed, it was that essential that caused the United States of America to cease the practice of formulating 'Treaties' with Native Americans in 1871. At that time it was considered that the word over-dignified the aboriginal party. The Oxford English Dictionary, however, offers a minor definition which is more appropriate to the intention of this paper: 3.a. *a settlement arrived at by treating or negotiation: an agreement, covenant, compact, contract.* But even this definition has a failing: a contract is, perforce, a covenant between two individuals - albeit corporate individuals - and, because aboriginal bands are not considered by the Canadian courts as corporate individuals, the enforcement potentials of contracts cannot apply to Canadian aboriginal treaties. This paper will, however, abide by the O.E.D.'s 3.a definition as quoted above, but without the legal implications of the word 'contract'. Thus, even the so-called 'Niagara purchases' of 1764 and 1781, through which the Western bank of the Niagara River and a considerable depth of littoral was purchased from the Chippewas and Mississaugas for 300 suits of clothing, may be included.

The next problem area is the term 'aboriginal minorities'. It refers, of course, to a current position. In the recent past, the term 'Fourth World' was coined to define those aboriginal peoples who have been so swamped by the tide of colonisation as to become minorities in what they consider to be their own land. The term enjoyed a brief journalistic hey-day and then became politically hackneyed. As the second and third worlds become indistinctly separate, numerate definitions become inadequate. However, in using 'aboriginal minorities', two caveats present themselves: first, in the early stages of colonisation and when the first so-called 'Treaties' were formulated, aboriginal people were in a majority status; it was their disorganisation which rendered them prey to small groups of better organised interlopers. At the start of the colonisation process, aboriginal minority status was charismatic rather than quantitive. It is impossible - for lack of any form of census - to define the date at which the colonisers, the settlers, assumed a population majority status, but it can be safely estimated as considerably after the commencement of the colonial process.

The second caveat is best presented in the form of two questions: 'Is there a statute of limitations on the act of colonisation?' and 'When does a colonising race become indigenous or even aboriginal?'. Because there is no established or definitive formula, those questions must be left unanswered. For instance, the people of the Sino-Yayoi culture

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moved up from the south of Kyushu and through the isles of Japan and displaced the Ainus and the people of the Jomon culture at about the start of the Christian era. There are still a small number of people in the north of Hokkaido who consider themselves Ainus and it must be asked whether they constitute a politically defined aboriginal minority - or have the Japanese, after two thousand years, become aboriginal? By the same token, albeit very much later in time, the Bantu moved south from Bulawayo and dispossessed - largely by extermination - the less bellicose Bushmen (San) and Hottentots (Khoikhoin) who were dominant in the Cape when the first Dutch traders attempted colonisation in 1652. Who, then, can claim aboriginal rights in the far south of Africa?

Beyond those two examples and the four most blatant groups, there are many other aboriginal minorities across the globe - the tribes of the South American rain-forests, the Saki of the Malayan Peninsular, the Dyaks of Sumatra and, in probability or cultural folk-lore, many others. However, this paper cannot include them, either because history has, thus far, produced no evidence of any form of aboriginal treaty having been concluded or because of the lack of vociferous complaint voiced by aborigines has not led the colonising powers to the necessity of negotiation of 'rights' in any serious manner. There are also the Saami of Finland, Norway and Sweden; the Kurds of Iraq, Iran and Turkey and the aboriginal minorities of Siberian Russia, but, because the claims and aspirations of the Saami and the Kurds seek solutions which transgress existing national boundaries, and, because the Yakut and other Siberian minorities have, at least until recently, been cowed, the accommodations which they pursue must come outside the scope of this paper.

Outstanding, therefore, are the four-blatants' referred to above: the four non-Caucasian groups which have been submerged, in terms of population, by the colonising fervour of Caucasian - largely Anglo-Saxon - races. These four are the Maoris of New Zealand, the Aborigines of Australia, the Amerindians of the United States and the Amerindians and Inuit of Canada. Treaties - or the lack of treaties - are important to these people's political activism.

It is hoped that the looseness of the title is thus vindicated.

The Genesis of Aboriginal Treaties

The aboriginal treaty is the child - but not the only child - of colonisation, and colonisation is the child of land-hunger. Thus, the aboriginal treaty is a grandchild of land-hunger. That analogy, though perhaps banal, is apt because there are a number of siblings, deriving from the same genesis, which have to be taken into account.

There is extermination such as was practised by the Bantu and, almost synchronously, by the Anglo-Irish settlers of Tasmania. Beyond brutal and deliberate genocide, there is another involuntary, but no less virulent, form of extermination, that of imported disease. Many aboriginal communities have been virtually exterminated by respiratory and sexually transmitted diseases and by alcoholic excess. Indeed, in 1856, it was feared that the Maori of New Zealand would be among their number: Dr Isaac Featherston, the Superintendent of Wellington, wrote in that year:

> Our plain duty as good compassionate colonists is to smooth down their dying pillow. Then, history will have nothing to reproach us with.[1]

A second sibling is disregard. In the conduct of such an approach, aboriginal people are scarcely seen by the colonisers; if seen, they are not acknowledged. In 1787, Australia was established as a penal colony and such officials as ventured there were more of the nature of warders of assorted felons or assumed felons than benevolent wardens of an unsophisticated

1 MacDonald 1990:5.

(in European eyes) race of Aboriginal people. It was no part of their brief to enter into any form of land-claim treaty and it seems unlikely that it ever crossed their minds to do so. The attitude persisted after the demise of the penal settlement, so much so that until 1971 the Commonwealth constitution provided that Aborigines were not to be counted in the official population of Australia[2]

A third progeny of the genesis under consideration is assimilation, a route sought in many colonial regimes. It is a convenient and economic aspiration that those aboriginal people who are to be imposed upon by an alien culture should evolve as clones of the agrarian peasantry upon which the leaders of the colonisers depended in their home countries. In order to prosper, the would-be colonial master must create a class over whom to exercise mastery: who could be more appropriate than the aboriginal people of the country which they propose to colonise? As far as British colonisers were concerned, the system had successful historic precedent: it had worked for the Normans, it had worked in Ireland and it had worked, to a noticeable degree, in India. It did not have, by any standards, the same measure of success where the aboriginal people were culturally nomadic. Efforts to induce the nomads of the American continent to till the soil and wash the dishes were so unsuccessful as to breed the necessity of the importation of semi-agrarian aboriginal people from Africa and else-where - hence the iniquities of the slave trade and the subsequent practice of indentured labour. Of course, integration implicitly involved social levels outside the peasant/servant class but that was considered a price worth paying for the acquisition of an economic labour-force.

The sibling enslavement has been, for a century or so, deceased; but it was nurtured, albeit unsuccessfully, by the Spanish and the French in both the Caribbean and on the southern mainland of the North American continent. It was also introduced by the British in the early stages of Jamaican colonisation. Its inefficiency, rather than its inhumanity, caused it to be abandoned in favour of imported slavery.

The fifth - and, for this paper, final - product of the genesis under scrutiny is that which may be entitled moral and cultural degradation. The concept of deliberately pursuing this route is so distasteful that it is only overtly ascribed to the villains of history - Hitler, Caligula and Mao Tse Dung, in his 'Cultural Revolution' phase, rank among them - but it is a tragic fact that degradation is frequently found in association with assimilation. Where religion, lifestyle, tradition and language are attacked by an alien and dominant culture, deculturation is the precursor of a moral vacuum which can only be filled by depths of degradation up to and including self-destruction by one means or another. When, phoenix-like, political activism arises from that shabby state, it is a sign that the nadir has passed and reculturation is a possibility. However, before that time, the need for political acknowledgement is absent. The saga of Nunavut is illustrative of the progression.

Thus aboriginal treaties may be counted as the most liberal of the five potentials which spring from colonisation and, like it or not, colonisation - which inevitably leads to the involuntary loss of aboriginal sovereignty - is an inescapable historic fact. The ultimate, in treaty terms, would be the restitution of full aboriginal sovereignty and national integrity, as achieved in the decolonisation phases of the 1960s, but there are powerful forces which prevent that ultimate attainment where aboriginal people are in a minority status. The object of treaties should have been the preclusion of the four remaining siblings. It was not always so.

The Legal Rationalisation of the Colonial Process

2 Brennan 1991:40.

All treaties embody a redistribution of rights - either property rights or political rights or, frequently, both. Aboriginal treaties were no exception. For example, when Peter Minuit purchased Manhattan Island in 1625 from the Brooklyn tribe of Indians for goods to the approximate value of 60 gilders, he transferred his property rights in those goods to the Indians and they, in turn, transferred all their rights in Manhattan Island to the New Netherlands, as represented by Peter Minuit. In Minuit's opinion those rights, once he had acquired them, were legal rights. Before he acquired them and while they remained vested in the Brooklyn Indians, he may have considered them rights under Indian law, natural rights, moral rights, usufructory rights, *bona fide* legal rights or the rights inherent in might. Whichever interpretation was in his mind, there was no Romano-European legal definition of the Indian rights extant, so the package was wrapped up with the formula 'all rights, real or imagined'. The fact remains, however, that Peter Minuit considered that the Indians had some form of right which they were empowered to negotiate and which they conveyed to him in exchange for goods.

In considering aboriginal treaties further, therefore, it becomes necessary to assess the legal nature of the negotiable assets which were vested with aboriginal people. It must be stressed that the rights which will be considered are limited to those defined by the legal codes of the colonisers: they do not include any amalgam of natural right, moral right or any right assumed by way of aboriginal religious or cultural lore.[3] In order to make the assessment, it is necessary to revert to the quasi-legal, quasi-Christian tenets of early international law. Malcolm Shaw lays the foundation:

> The collapse of the Byzantine Empire, centred on Constantinople, before the Turkish army in 1453, drove many Greek scholars to seek sanctuary in Italy and enliven Europe's cultural life. The introduction of printing during the fifteenth century provided the means of disseminating knowledge ... Europe's developing self-confidence manifested itself in a sustained drive overseas for wealth and luxury items. By the end of the fifteenth century the Arabs had been ousted from the Iberian peninsular and the Americas had been discovered.[4]

This expansionary stage introduced a need for some international understanding, the establishment of some self-defensive code of practice, among Europe's would-be colonial powers. However, there was no secular legislative body capable of verbalising and codifying the concise terms of any such understanding: so it devolved on the jurists of the only pan-European organisation - the Holy Catholic Church of Rome - to translate precedent and necessity into a quasi-Christian set of rules. It must be remembered that the Church was, through the actions and influences of a series of innovative Popes, a European power which, in terms of political significance, far exceeded most of its European counterparts, with the power to act on its own account. Nonetheless, in relation to the codification of some sort of international language relating to colonisation standards it did not do so; it allowed various national ecclesiastics to pontificate, with the result that the rules - or, as they were dignified, the laws - were framed by a coterie of European interested parties for the benefit of themselves, their monarchs and their consciences. The pontificant who set the scene was a Spanish theologian of the University of Salamanca by the name of Franciscus de Victoria (1480-1548) who, in a series of lectures - *relectia* - expounded an extraordinary set of dicta, which were so integral to the process of colonisation that they and their

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3 We shall witness Earl Grey's dilemma over this dichotomy of law and morals when considering the *Treaty of Waitangi*.

4 Shaw 1991:19.

successors must be afforded considerable space. A translation of his first *relectio*, delivered in 1532, some four decades after Columbus's American landfall, includes the following:

> 2. Second conclusion: Granted that the Emperor were lord of the world, still that would not entitle him to seize the provinces of the Indian Aborigines and erect new lords there and put down former ones or take taxes. The proof is herein, namely, that even those who attribute lordship over the world to the Emperor do not claim that he is lord in ownership, but only in jurisdiction, and this latter right does not go so far as to warrant him converting provinces to his own use or in giving towns or even estates away at his pleasure.[5]

The lecture continued at some length in this liberal vein stressing, surprisingly enough, that even the fact that aboriginal people continued to reject Christianity - though they must listen to reasonable argument - was insufficient to warrant extinguishment of title to their lands.

However, in the Third Section, the tone changes as the 'natural' rights of the Spanish 'traders' are considered. At that point the lecture enters into an area where any curtailment of the interloper's 'natural' rights by the benighted heathens, might well bring about a situation leading to almost unlimited expropriation of title. First, 'the Spaniards have a natural right to travel into the lands in question and to sojourn there, ...' and 'by natural law running water and the sea are common to all ...' Hence it follows that aboriginal people would be doing mischief to the Spaniards, if they were to keep them from their territories. And 'mischief' of that magnitude was a punishable offense.

> Second, inasmuch as things that belong to nobody are acquired by the first occupant ... it follows that if there be in the earth gold or in the sea pearls or in the river anything else ... they will vest in the first occupant.[6]

Once again, if aboriginal people disputed that, they contravened the Spaniards' God-given rights. Then follow a series of paragraphs which bear on religious causes. First it is pointed out that the principal purpose of the Church in authorising, and indeed encouraging, any territorial penetration is that of 'the salvation of souls', and that, therefore:

> If any of the converts to Christianity be subjected to force or fear by their princes in order to make them return to idolatry, this would justify the Spaniards, should other methods fail, in making war and compelling the barbarians by force to stop such misconduct, and in employing the rights of war against such as continue obstinate, and consequently at times in deposing rulers as in other just wars.[7]

There then follows a total of eighteen religion-justified circumstances - such as the stamping out of 'vile practices' and the 'justice' of war when fought alongside aboriginal allies - under which expropriation of property was well merited.

Victoria's *Relectiones* became the basis of international law as it relates to aboriginal rights. That basis was expanded and amended by contemporary and future self-styled pundits but the skeleton, as constructed by Victoria, was the fundamental on which all colonising powers founded their practices over many centuries.

One of Victoria's contemporary churchmen opted to declare an even more vicious line of conduct by publishing, as embryonic international law, that it was both right and necessary to:

> divide the Indians of the cities and the fields among honourable, just and prudent Spaniards, especially among those who helped to bring the Indians under Spanish

5 Victoria 1917:134.

6 Ibid.:152/3.

7 Ibid.:158.

> rule, so that these may train the Indians in virtuous customs, and teach them the Christian religion. ... In return for this the Spaniards may employ the labour of the Indians in performing those tasks necessary for civilised life.[8]

Hugo Grotius, who is sometimes considered the father of international law outside the influence of the Roman Catholic Church, put a lay interpretation on Franciscus de Victoria's *Relectia* at the start of the seventeenth century, but did not change the basic nature of his tenets in any remarkable way[9]

A century and half later, in 1758, a Swiss jurist, Emmerich de Vattel (1714-1767), added a very potent contribution which still has cogency and pertinence to the world in general. His argument, which establishes the *terra nullius* contention, can be best followed by quotation from the original as translated by Charles G. Fenwick:

> The earth belongs to all mankind; and being destined by the Creator to be their common dwelling-place and source of subsistence, all men have a natural right to inhabit it.[10]
>
> The whole earth is destined to furnish sustenance for its inhabitants; but it cannot do this unless it is cultivated.[11]

Those who still pursue an idle mode of life - (living on their flocks and the fruits of the chase) - occupy more land than they would have need of under a system of honest labour, and they should not complain if other more industrious Nations, too confined at home, should come and occupy part of their lands.[12]

> It is questioned: can (a Nation) thus appropriate, by the mere act of taking possession, lands which it does not really occupy, and are more extensive than it can inhabit or cultivate. ... Hence the Law of Nations will only recognize the *ownership and sovereignty* of a Nation over unoccupied lands when the Nation is in actual occupation of them, when it forms a settlement upon them, or makes some actual use of them.[13]
>
> There is another celebrated question which has arisen principally in connection with the discovery of the New World. It is asked whether a Nation may lawfully occupy any part of a vast territory in which are found to be only wandering tribes whose small numbers cannot populate the whole country. We have already pointed out, in speaking of the obligation to cultivate the earth, that these tribes cannot take to themselves more land than they have need of or can inhabit and cultivate. Their uncertain occupancy of these vast areas can not be held as a real and lawful taking of possession; and when the Nations of Europe, which are too confined at home, come upon lands which the savages have no special need of and are making no present and continuous use of, they may lawfully take possession of them and establish colonies in them.[14]

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8 Quoted in Morrison 1985:20.

9 Grotius 1964.

10 Vattel 1916:84.

11 Ibid.:37.

12 Ibid.:36, line 10.

13 Ibid.:85, line 1.

14 Ibid.:85, line 16.

> When a Nation takes possession of a distant country and establishes a colony there, that territory, though separated from the mother country, forms a natural part of the State, as much as its older possessions.[15]

These dicta have been absorbed into the body of international law to such an extent that the interdependence of 'occupancy' and 'sovereignty' has been in the recent past - and is, indeed, to-day - a central consideration in Canadian northern policy.

Thus, in the early part of the sixteenth century, on the American continent, expropriation of the aboriginal people's land and other property was proceeding in accordance with established international law but, slowly, conscience - liberality - was entering the equation in a marked degree. In 1670, Charles II caused to be sent to his trans-Atlantic governors, the following:

> Forasmuch as most of Our colonies do border on the Indians, and peace is not to be expected without the due observance and preservation of justice to them, you are in Our name to command all Governors that they at no time give any just provocation to any of the said Indians that are at peace with us, ... do by all ways seek fairly to oblige them and ... employ some persons, to learn the language of them, and ... carefully protect and defend them from adversaries ... more especially take care that none of our own subjects, nor any of their servants do in any way harm them. And that if any shall dare offer any violence to them in persons, goods or possessions, the said Governors do severely punish the said injuries, agreeably to right and justice. And you are to consider how the Indians and slaves may be best instructed and invited to the Christian religion, it being both for the honour of the Crown and the Protestant religion itself, that all persons within our territories, though never so remote, should be taught the knowledge of God and made acquainted with the mysteries of salvation.[16]

It might well be argued that Charles II, perennially short of funds in his exchequer, wished to keep the number of military engaged in colonial defence to a minimum. Obviously, a few missionaries preaching to contented congregations were administratively more economical than a hundred times their number, in soldiery, blundering about in uncharted forests.

Be that as it may, nearly a century later, in 1763, King George III in council, having concluded the Treaty of Paris by which the French ceded to him very nearly all their trans-Atlantic territory, issued a Royal Proclamation which had a profound effect on the then contemporary - and on all future - aboriginal treaty negotiations. The intention was to rationalise the vast territories over which the British Crown held sway. In order to appreciate the legal agility with which that end was accomplished, it is necessary to take into consideration the whole document and not confine attention to that paragraph which is so frequently cited by aboriginal activists.

First, the instrument set up *Four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada.* Second, it gave bounty:

To every person having the Rank of a Field Officer	5,000 acres
To every Captain	3,000 acres
To every Subaltern or Staff Officer	2,000 acres
To every Non-Commissioned Officer	200 acres

15 Ibid.: 86, line 3.

16 Journals of the Legislative Assembly of Canada. Appendix EEE [8 Victoria, 20th March 1845] Montreal, Rollo Campbell 1845, quoted in Miller 1978.

To every Private Man 50 acres[17]

Although naval belligerents were proportionally rewarded, this generosity, in view of the size of the conquest, was trivial: but the acres had to come from somewhere. It was clear that George III considered that the whole land - the sum of the acreages of the four Governments, referred to above, and the astonishing tracts which his predecessor, James, had vested in the Hudson's Bay Company and the majority of the 'thirteen colonies' - was his to dispose of as he wished.

Beyond these grants of land, the Proclamation contains the paragraph which has exercised legal minds since its publication. It reads:

> And whereas it is just and reasonable, and essential to our interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom we are concerned, and who live under our protection, should not be molested or disturbed in Possession of such parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, *are reserved to them, as their Hunting Grounds* ... We do therefore ... declare that no Governor ... do presume ... to grant Warrants of Survey, or pass Patents for any Lands ... whatever which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them ... And we do strictly forbid ... all our loving subjects from making any Purchases or Settlements whatever.[18]

That paragraph, which places restraints even on 'Governors', has been, and still is[19] to a large degree, the lynch-pin of aboriginal claims to sovereignty and self-determination but it is, as pointed out earlier, a mistake to read it out of context with the next four sections. In order to make that point, they will be quoted.

> And, We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve *under Our Sovereignty, Protection and Dominion,* for the use of the said Indians, *all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company,* and also all the Land and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid:
>
> And We do hereby strictly forbid on Pain of our Displeasure, all our loving subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, *without Our special Leave and Licence for that purpose being first obtained*
>
> And We do further strictly enjoin and require all Persons whatever who have either willfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.
>
> And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians; in order, therefore to prevent such Irregularities in the future, and to

17 Shortt and Doughly 1918:164.

18 Shortt and Doughly 1918. Volume 1:166, emphasis added.

19 The 1993-1995 Royal Commission on Aboriginal People in Canada feature the Royal Proclamation of 1763 heavily in their Reports. As well, Mr. Justice Mcfarlane of the Supreme Court of British Columbia, in his judgement on the *Delgamuukw* case, refers to it. See *Western Weekly Reports*, 1993, 5WWR:108.

> the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advise of our Privy Council *strictly enjoin and require that no private Person do presume to make any Purchase from the said Indians ... but that, if at any Time any of the Said Indians should be inclined to dispose of the said lands, the same shall be Purchased only for Us, in Our Name ....*[20]

That, then, was a definitive statement of the legal land-property rights of all aboriginal peoples and particularly those of the North American continent. It elucidated the principal asset which aboriginal people could bring to the negotiating table. As such it deserves summarising.

First, it reserved to the Indians *their hunting grounds,* thus establishing their tenure as usufructory. It certainly conferred a property, but a property of considerably lesser value than that which would be applied to absolute title. In doing so, it preserved the *terra nullius* status of the continent and laid it open to settlers who were prepared to occupy through cultivation.

Second, it limited the right of alienation. While the asset was negotiable, it was only negotiable to one principal, the Crown. Thus, if circumstances made negotiation essential - hunger, for instance - a monopsony or the ultimate in buyer's markets was established.

Third, it made quite clear that any rights were given only under the *Sovereignty, Protection and Dominion* of the Crown. Thus was established the allodial rights of a basic ownership vested in the colonial power.

Fourth, it removed from the territory in which even usufructory right was acknowledged, the areas covered by the new-found 'Governments' of Quebec, North Florida and South Florida and also the 'Territory granted to the Hudson's Bay Company'. Thus, officially, were excluded the south-eastern freeboard of what is now the United States of America, the southerly part of the modern Province of Quebec and the majority of the modern provinces of Ontario, Manitoba, Saskatchewan and Alberta together with an unspecified part of the Northwest Territories.

The liberality of the intention of the 'Royal Proclamation of 1763' can, therefore, be open to doubt.

Since 1763, and within the four countries in which the principal interest of this paper lies, various instruments of government, either proposed or enacted, have flirted with the concept of aboriginal land rights but never has there been a legal definition which superseded that which was acknowledged in the Royal Proclamation.[21]

Outside the confines of those four countries, international organisations, such as the League of Nations and the United Nations, have been very largely successful in fostering the ideal of 'self-determination' and thus accomplishing decolonisation in one-time colonies where aboriginal people were in a population majority status: but each in turn has been constitutionally incapable of interference in internal affairs of member states. Thus, aboriginal minorities have been unable to benefit by other than moral international support.

A final point, in relation to treaties, must be made before leaving the general in favour of the specific. There must be two parties to any agreement which can be dignified with that name.

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20 Ibid.:167, emphasis added.

21 The passage of the Australian Native Title Act in December of 1993 might be considered an exception to this generality.

It is in the nature of the nomad that the social unit is small - perhaps confined to the extended family - and, therefore, the colonising power, if it wishes to expropriate territory with any form of conscience-soothing legality must create, albeit artificially, a hierarchical structure among those with whom it wishes to negotiate. Nevertheless, even an artificial pyramid has to be based on some minor degree of political consciousness among those designated for exploitation. In Australia that modicum was missing but in New Zealand and America there was enough to foster the tribal chief system.

> One of the first acts of the English in colonial Virginia was the 'coronation', with cloak and crown, of Powhattan, leader of the confederacy that was nearest, most necessary and most threatening to the English.[22]

In the remainder of this paper, the course of Treaty[23] development will be pursued in four countries: Australia, New Zealand, the United States of America and Canada. Because the volume of material written on the treaties, or lack of treaties, in each of these countries is encyclopaedic, this paper will, in order to fulfil its comparative function, present little more than a resume in each case, but it is hoped that resume will emphasise the similarities and dissimilarities inherent in each sequence.

Australia

In Australia, the lack of treaties is as inter-racially penetrating as is their existence in the other three countries. In fact it could be considered to be more so. The continent's early colonial status as a penal settlement introduced settlers who had sparse time for consideration of the legal niceties of Aboriginal rights. As far as the established European code was concerned, Australia was *terra nullius* and the visible human specie was considered little more than part of the original, and sometimes dangerous, fauna of a newly discovered land-mass.

George III, who in 1763 had issued a Royal Proclamation conferring usufructory rights on North American Indians, confined his (1787) instructions to Captain Arthur Phillips, the first Governor of the New South Wales colony, to something very much more basic:

> ... all Our subjects [should] live in amity and kindness [with the Aborigines] and none should wantonly destroy them or give them any unnecessary interruption in the exercise of their several occupations.[24]

Thus, it was considered that the pre-settlement indigenous humans had no territorial or political rights and, while some very small percentage of them were later employed on the emergent cattle-stations, they were not included in the official population figures until 1971. Subsequently, the liberalisation of world opinion and particularly that of the Australasian continent - had revised that doctrine and it is now becoming generally conceded that the Australian Aborigines have some rights above and beyond those rights which are common to all Australian citizens. The exact nature of those rights is, of course, still in contention but the fact that they are considered to exist, in some far from fully defined form or another, puts the Aborigines in a somewhat stronger position than the aboriginal people of New Zealand and North America, because those Australian Aboriginal rights, whatever they might be, have never been ceded, although they may have been extinguished by edict.

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22 Jones 1990:185.

23 The same distinction of the word 'treaty' will be used, that is to say, the sub-definition 3a in the *Oxford English Dictionary* as quoted in the introduction to this paper, but without the enforcement potentials implied in the word 'contract.'

24 Suter 1982:3.

For some time, this strength has been realised by Aboriginal activists such as Kevin Gilbert and Michael Mansell. In 1982, the National Aboriginal Conference (NAC), which was government sponsored and subsequently disbanded, had been adamant in maintaining that distinct Aboriginal nationhood and sovereignty were the non-negotiable foundation of any treaty or agreement. What the NAC sought at that time was:

> International sovereignty, perhaps introduced through a period of trusteeship; OR
> The creation of an additional state within the [British ?] Commonwealth governed by Aboriginal and Torres Strait Islander peopld with current constitutional structures; OR
> The creation of self-governing regions within the [Australian ?] Commonwealth comprised of self-governing communities involving powers of local self-government.[25]

It seems that the inclusion of the third of these three options to a large extent evaded the non-negotiability of sovereignty and it was probably included as a back-stop to keep negotiations open in the likely event of the government's spontaneous refusal to enter into any discussion involving the diminution of its own sovereign position.

In 1986, the position of the extremists hardened.

> Things were further complicated by the National Coalition of Aboriginal Organisations (established in May 1986) having circulated a draft treaty written by Kevin Gilbert, which was to 'be executed between us, the Sovereign People of This Our Land, Australia, and the Non-Aboriginal Peoples who invaded and colonised our lands'.[26]

Though this approach was unrealistic for its time, it was a straw in the wind. Robert Hawke, who assumed the position of Prime Minister in March 1983 and held it for four terms, took an ambivalent stance on Aboriginal rights. While he was prepared to concede that Aborigines had some justification in making reasonable claims, he consistently watered down the concentration of concession on offer. Perhaps one of the most revealing public statements he made on the subject of Aboriginal affairs was issued at the National Press Club on 22nd January 1988, the bi-centenary year.

> Nor is the [Aboriginal] cause advanced by attempts to draw up an indictment of criminality against the entire Australian nation. The Australian people should never be asked to accept that their entire history as a modern state was predicated on the notion of collective and irredeemable guilt.[27]

Over the years of his Premiership, Hawke made several statements which advocated the negotiation of a 'treaty' - there were a number of semantic objections to the use of that word - and, at one time, appeared to be prepared to spell out Native rights in the non-binding preamble to the Aboriginal and Torres Strait Islander Commission legislation. However, he always ultimately bowed to the Opposition's 'One Australia' policy of equal rights for all Australian citizens. The definitive preamble was omitted in the final Bill. It has to be admitted that it is difficult for a popularly elected politician to favour, on a nation-wide - or even State-wide - basis, 1.5% of the electorate, to the potential disadvantage of the remaining 98.5%.[28]

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25 Ibid.:62.

26 Brennan 1991:76.

27 Quoted in Brennan 1991:80.

28 These figures suppose the accuracy of the approximation of 250,000 Aboriginal people among a total population of 18 million. There are problems in obtaining an accurate census in out-back areas.

The Australian Aborigines, who earnestly want a treaty, preferably an internationally recognised, or, at worst, a constitutionally recognised, instrument of State, appear to have appreciated the vacillating nature of the legislature and turned their attention to the judiciary. That organ of State could not, of course, provide them with a treaty but it was reasonable to hope that it might provide them with a negotiable property - that is, some form of legal rights - upon which a future treaty might be built. In that latter aspiration they appear to have been marginally successful.

The test-case arose from a dispute on a peripheral island. In 1606, a Portuguese sea captain named Luis Vaes de Torres 'discovered' a group of Islands which lay between what is now Papua New Guinea and Australia. These islands acquired the name of 'The Torres Strait Islands'. They which were rich in coral and pearlshell, two fashionable commodities in the mid-Victorian hey-day, and were annexed to the Crown in 1879, probably at the instigation of the coral and pearlshell traders, by the Governor of Queensland.

As a result of exploitation, the natural resource diminished, pearlshell became less fashionable and the short-lived boom in the islands faded. In consequence a large part, perhaps as much as 50%, of the population migrated to the mainland. In 1981 the population was 6,131.

> In 1982 a group of Torres Strait Islanders ... initiated proceedings in the High Court of Australia, claiming that the annexation had not extinguished their rights which would mean that their continued rights were recognised by the Australian Municipal system of law.
>
> In April 1985 the Queensland Parliament passed the Queensland Coast Island Declaratory Act ... 'to allay doubts that may exist concerning certain islands forming part of Queensland'. The Act declared that 'upon the islands being annexed ... the islands were vested in the Crown in right of Queensland, freed from all other rights, interests and claims of any kind whatsoever. ... No compensation was or is payable to any person in respect of any right, interest or claim alleged to have existed prior to the annexation of the Islands. ... The passage of this Bill will, it is hoped, remove the necessity for limitless research work being undertaken in relation to the position of the relevant Torres Strait Islands prior to annexation and will prevent interminable argument in the Courts on matters of history.'
>
> The Queensland Coast Islands Declaratory Act was challenged in the High Court of Australia by Mr Eddie Mabo ... It was found to be contrary to the Racial Discriminatory Act, which had been enacted by the Commonwealth Parliament on 31st Oct. 1975.[29]

The interplay between the Aboriginal rights issue and the *Racial Discriminatory Act* (1975) was central to the ultimate judgement of the High Court of Australia. On the substance of that judgement, a leading, pan-Australian, firm of solicitors - Blake Dawson Waldron - published, in March 1993, a succinct and informative '*Newsletter*', which will form some of the basis of the following few paragraphs.

The meat of the judgement is contained in the following:

> ... the common law of this country recognises a form of native title which, in the cases where it has not been extinguished, reflects the entitlement of the indigenous inhabitants, in accordance with their laws or customs, to their traditional lands and that, subject to the effect of some particular Crown Leases, the land entitlement of the Murray Islanders ... is preserved, as native title, under the law of Queensland. ...

29 Brennan 1991:29-30.

native title, where it exists, is a form of permissive occupancy at the will of the Crown.

Where political power has not been exercised to expand the Crown's radical ownership in disregard of native title, there is no reason to deny the law's protection to the descendants of indigenous citizens who can establish entitlement to appropriate rights and interests that survived the Crown's acquisition of sovereignty. While sovereignty carries the power to create and extinguish private rights ... the exercise of a power to extinguish native title must reveal a plain intention to do so whether the action is taken by the legislature or the executive.

Per Toohey J - The idea that land which is in regular occupation may be *'terra nullius'* is unacceptable in law as well as in fact.[30]

Having obliterated the *terra nullius* justification for colonisation and established a form of title to be known as 'Native title' - which was not precisely defined - the judgement then set about curtailing the value of that title.

the Crown extinguishes native title when it exercises sovereign power inconsistent with the rights associated with native title. The exercise of that power to extinguish native title must reveal a 'clear and plain intention' to do so, either by the legislature or the executive. ... Extinguishment can also occur by the grant of rights to third parties. An example is the grant of freehold land. Where this has happened, the native title is extinguished completely. (subject to the Racial Discrimination Act).

By a majority of 4:3, the High Court held that valid extinguishment of native title by legislation or inconsistent grant does not give rise to a claim for compensation. ... Once native title has been extinguished or lost [by extermination or migration, for example] it cannot be revived.

The high Court stressed that a State can extinguish native title by a valid exercise of sovereign power at will, and that the merits of such an exercise cannot be reviewed by the courts of that state.

However ... a State must not infringe federal law.[31]

The judgement further limited the title value by placing the *onus probandi* on the shoulders of the Aboriginal rights claimant. He or she must prove, first, that no legislative or executive action since 1788 had extinguished Native title and, second, that it was direct ancestors - and those of the people on whose behalf he or she makes claim - who were the specific tribe which occupied the particular tract of land on which he or she is claiming rights. Those two prerequisites make it very difficult for Aboriginal activists to substantiate their right to title, except, perhaps in the Torres Strait Islands, the Kimberleys, in Arnhem Land and the Gibson Desert.

However, where Native title might well have been established before 1975, it seems that the process of subsequent extinguishment is rendered more questionable by the *Racial Discrimination Act (1975).* That item of federal legislation had, the judgement maintained, nullified the *Queensland Coast Island Declaratory Act (1985)* and might thus contribute to the reversal of land dispositions since 1975 and to similar dispositions in the future.

Thus, the judiciary has apparently conferred on the Australian Aborigines a form of negotiable asset which could possibly lead to the formulation of a treaty or treaties wherein that asset can be exchanged for compensation and more secure tenure of a diminished area over which they might be able to exercise a degree of self-determination. It is an uncertain and heavily qualified position, but it is a start.

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30 The Government of Australia 1992:401-402.

31 Blake Dawson Waldron 1993:3.

The uncertainty created by the High Court judgement led to rapid legislative reaction: December 1993 witnessed the passage of the *Native Title Act.* The *Act* goes beyond the judgement in that it defines Native Title as equating with freehold and it sets up a special tribunal, the National Native Title Tribunal - to determine whether and where Native Title can be considered to exist. It also establishes a comparatively simple protocol by which a right to negotiate can be claimed, together with a rather more complicated procedure to be followed in avoiding negotiation. Thus, it is possibly hoped that industry wishing to establish a presence on land where there might be a claim to Native Title, might be induced to 'do a deal' rather than follow a time-wasting formula.[32]

The Act confirms the High Court's ruling in reference to the extinguishment of Native Title by legislative or executive decree prior to 1975 and it offers compensation to secure validation of any dispositions made after that date where prior Native Title can be established. It also confirms the ruling that the *onus probandi* rests on the claimant to Native Title to prove that the title had never - since 1788 - been extinguished and that the claimant had ancestral connection with a specific piece of land. In fact it increases that onus by establishing:

> ... the necessity for them [*the claimants to Native Title*] to provide an outline of the type of evidence they propose to produce to the Tribunal to support the claim, such as historical, anthropological and genealogical documents and other evidence.[33]

Thus the Aborigines of Australia have achieved a negotiable property, if only one which will serve their interests in remote regions and islands when the pristine sanctity of those areas is in jeopardy from developers.

New Zealand

The Aboriginal Treaty status of New Zealand is dominated by three factors: the Waitangi Treaty of 1840; the Land Wars of the early 1860s; and the revival of judicial liberality in the latter quarter of the twentieth century. The three phases represent the cyclical manifestation of liberal intent.

The human habitation of the islands of New Zealand is not a matter of longstanding - maybe as little as seven to ten centuries. The evolution of the twinhulled, out-rigger canoe brought about the colonisation of the islands of New Zealand by people who, finding the moa, built a culture based on that wingless bird no earlier than the latter part of the first millennium. Upon extinction of such a vulnerable creature, a form of agrarian society emerged which, by the time of European intrusion, had developed the arts of ritual warfare, canoe-building, architecture and primitive agriculture.

European interest was not manifested until 1642, when the Westland was discovered and visited by the Dutchman Abel Janzoon Hobart but, because he was met by such hostility that several of his men were killed, he withdrew to the West, thinking that it was possible that he had discovered the west coast of a vast southern continent.[34]

One hundred and twenty-seven years later, Captain James Cook circumnavigated the islands and, in his journal, referred to them as New Zealand.[35] He described the people as intelligent, talked of a system of semi-permanent settlements and chieftains[36] and praised

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32 Blake Dawson Waldron 1994:16.

33 Blake Dawson Waldron 1994:23.

34 The word *australis* is, of course, Latin for 'south.'

35 Cook, 1777.

36 Ibid.:68.

the timber resource: 'many of the trees [Kuri trees] are six to eight feet in girth and eighty to one hundred feet in height. Tall enough for the main-mast of a 50-gun ship'. He also described the islands, particularly the Northern island, as fit for colonisation.

During the following century, a few British settlers arrived, made real estate deals with the Maoris and commenced farming. To their number were added escaped convicts from the penal colony in New South Wales, deserters from trading vessels and whalers.[37] To this amalgam of expatriates and comparatively docile Aboriginal people came missionaries professing Christianity according to the Anglican, Methodist and Roman Catholic doctrine and dogmas. By 1839, there were several hundreds[38] of settlers, mostly Anglo-Saxon.

British politics, and particularly British colonial politics, in the late 1830s, were dominated by two humanitarians: Earl Grey, the Prime Minister, and Lord Glenelg, the Colonial Secretary. Earl Grey, however, was an adherent of Lockean liberality, especially as conceived by Dr Arnold, the founding headmaster of Rugby School.

> The principle admired by Earl Grey was based on Locke's philosophy that rights to land derive exclusively from the labour expended upon it. According to Arnold: - '... so much does right of property go along with labour, that civilised nations have never scrupled to take possession of countries inhabited only by tribes of savages - countries that have been hunted over but never subdued or cultivated - ... when our fathers went to America and took possession of the mere hunting-grounds of the Indians - of land on which man had, hitherto, bestowed no labour - they only exercised a right which God has inseparably united with industry and knowledge' The justness of that reasoning, Earl Grey declared, must be generally admitted and, if so, it could hardly be denied that it was applicable in New Zealand and that it was fatal to the rights claimed by the aboriginal inhabitants to the possession of the vast extent of fertile but unoccupied land in that country.[39]

Earl Grey was therefore, perhaps against his better judgement, able to concede that Anglo-Saxon labour held precedence over the more relaxed occasional occupation of the Maoris. Lord Glenelg, however, was of sterner stuff: indeed, before attaining Cabinet rank, he had been a vice-president of the Church Mission Society. When, in 1837, the New Zealand Association proposed systematic colonisation of the islands, Glenelg countered with:

> They are not Savages living by the Chase but Tribes who have apportioned the country between them, having fixed abodes, with an acknowledged Property in the Soil, and with some rude approaches to a regular system of internal Government. It may therefore be assumed as a basis for all Reasoning and all Conduct on this Subject, that Great Britain has no legal or moral right to establish a Colony in New Zealand without the free consent of the Natives. ... The Queen disclaims any pretension to regard their land as vacant Territory open to the first future occupant.[40]

However, there were jurisdictional problems. The natures of the traders and the settlers were unruly but the curbing of that unruliness was difficult to accomplish. It proved impossible to make British subjects answerable under the law of acknowledged spheres of British jurisdiction - Sydney or London, for instance - for crimes perpetrated in allegedly

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37 Kororareka - now Russell - towards the most northerly tip of North Island, was a stopping point/settlement for American, British and French deep-sea whalers in the late 18th and early 19th centuries.

38 Estimates range between 1,000 and 2,000.

39 Hackshaw 1989:104.

40 McHugh 1989:31.

independent New Zealand. The British government had tried to provide legal remedy with three statutes, passed in 1817, 1823 and 1828 but they proved unsuccessful. Those Statutes did, however, clearly make the point that the British government considered New Zealand to be 'not within His Majesty's dominions'.[41] , [42]

The missions, and through them, their converts, foresaw that only colonial status would provide an adequate hedge against the lawlessness which was rife and they therefore instigated a groundswell of Maori opinion which would ultimately culminate in colonial status being imposed at the request of the Maori people and their chiefs.

Two events tended to foster the missionaries' objective: first, the supposed threat of the French vessel *La Favorite* - which was presumed to be attempting annexation of the islands to France in retaliation against the killing of Marion du Fresne and his crew in 1772[43] - resulted in thirteen major North Island chiefs requesting King William IV to become 'a friend and the guardian of these islands'. The second event was the connivance of the captain and crew of the British trading vessel *Elizabeth* to join with a North Island chief in order to raid the possessions of a South Island chief. The raid resulted in torture and slaughter which not only shocked the sensibilities of the New South Wales authorities but, perhaps more importantly, was also seen to be a potential threat to future trade. As a result a Resident - one John Bushy - was appointed to New Zealand in 1832. His Residency was established at Waitangi.

Busby, conscious of - and his own inclinations reflecting - British liberal opinion, aimed at the establishment of a Maori national government, the acceptance of a national flag[44] and a system of extraditon of British 'offenders'. However, the assumed threat of another Frenchman, M. le Baron de Thierry, induced him to assemble thirty-four North Island chiefs in order to sign a Declaration requesting the British Crown 'to be the parent of our infant state ... its protector from all attempts on its independence'. The Crown acknowledged the Declaration and promised - 'consistent with due regard to the just rights of others and to the interests of His Majesty's subjects' - the assumption of paternal protection.[45]

In 1837, a serious out-break of inter-tribal fighting involving some of the local European drifters induced the Church Mission Society, the Wesleyan Missionary Society and over 200 British nationals to demand official Crown intervention. The demand was routed through the New Zealand Association. Lord Glenelg still set his face against the introduction of colonial status without the solicitation of all Maori chieftains but he did agree to the appointment of a 'governor' with limited powers. In 1839, Captain William Hobson accepted the post. It was widely assumed, particularly by the New Zealand Association - by that time, the New Zealand Company - that Hobson's function was first, to negotiate a cession of sovereignty and second, to clear up the matters of land-deals where the parties to those deals were in dispute. While Lord Normanby, who had taken over the Colonial Office from Glenelg, seemed to favour limited intervention, Hobson, himself,

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41 This inclusion in the Acts in considered, by some, to be a recognition that New Zealand was, at that time, an independent sovereign state. That sentiment was reinforced by the British acknowledgment of a Maori Declaration of Independence in 1835.

42 Orange 1990:8.

43 This rumour was fostered by the missionary William Yates and a local chief by the name of Rewa (Orange, 1990:11).

44 White with a red St. George's cross, and in the upper left-hand corner, a blue field with four white stars (Orange, 1990:20).

45 Orange, 1990:21.

seems to have considered his function more active. On arrival, on January 30th 1840, Hobson set about asserting his position of Lieutenant-Governor prior to the prearranged meeting with Maori chiefs, scheduled to open at Waitangi on the 6th February. At the time of his arrival, Hobson was armed with a preliminary draft 'Treaty' which he intended to lay before the Maori leadership.

A final draft of that 'Treaty' - to which Bushy, now holding no official position, contributed - was ready by the afternoon of the 4th and Hobson took it to a missionary by the name of Henry Williams,[46] for translation into the Maori language as reflected in Roman script. Henry Williams was assisted by his son Edward, who was said to be an expert in the Ngapuhi dialect. Henry Williams, faced with a difficult task, took the attitude that:

> 'In this translation it was necessary to avoid all expressions of the English for which there was no expressive term in the Maori, preserving entire the spirit and tenor of the treaty'. This suggests that Williams may have decided to recast the English draft, as translators often do. A comparison of the English and Maori texts tends to confirm this view.[47]

The Waitangi meeting opened on the 5th of February, a day earlier than was originally intended, with some 500 chiefs and attendants inside a tent and a further 200 or so outside. They were read the English text by Hobson and the Maori text by Williams. Discussion was conducted in Maori for few chiefs were adequately conversant with English. Nor were the Chiefs able to read their own language in Roman script; thus, where English participation was required, it was through an interpreter. By the evening of the 6th, after the expression of considerable reserve over the matter of 'sovereignty', the majority of the chiefs - in all, over 500 of them - signed or placed their marks upon the English copy, which was considered to be the definitive version.

In the English version, the chiefs of New Zealand 'cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of *Sovereignty* which ... [they] respectively exercise or possess, or may be supposed to posses ... over their respective territories ...' in exchange for 'the *full exclusive and undisturbed possession* of their lands and estates.' The Crown retained 'the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed ...'.[48]

In the re-translated Maori version, the chiefs of New Zealand - the signatories and, through them, all the non-signatories - 'give absolutely to the Queen of England for ever the complete *governorship* of their land'. In return 'The Queen of England agrees to protect the chiefs and the sub tribes and all the people of New Zealand in *the unqualified exercise of their chieftainship [rangatiratanga*[49]*] over their lands, villages and all their treasures.* But, on the other hand, the chiefs of the Confederation and all the chiefs agreed that they would, on demand, sell land to the Queen at a price agreed by the person owning it and by the person buying it [the latter being] appointed by the Queen as her purchasing agent'. The

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46 Henry Williams and his Church Missionary Society colleagues had been urged by Bishop Broughton of Sydney, the help influence the Maori people to surrender their sovereignty (Orange, 1990:39).

47 Orange 1990:40.

48 Walker 1989:264.

49 Rangatiratanga can be translated as the highest degree of chieftainship. It is the word used to replace 'Kingdom' in the phrase 'For thine is the Kingdom ...' contained in the Lord's Prayer.

crown agreed to protect all the people of New Zealand and give them rights of citizens of England.[50]

Thus the Maori surrendered 'Sovereignty' where they thought they had surrendered 'Governorship' and they retained 'possession' of their property where they thought to have 'chieftainship'. The differences are more than semantic.

In the aftermath of the treaty, the Maoris expressed disenchantment: a chief by the name of Tareha emphatically proclaimed the feeling:

> We - we only - are the chiefs, the rulers, We will not be ruled over. What ! thou a foreigner up and I down. Thou high and I, Tareha the great chief of the Nga Puhi tribes low ! No, no, never, never.[51]

On the other hand, the settlers regarded the treaty with a degree of scorn. In 1843, three years after the finalisation of the instrument, J. Soames, a governor of the New Zealand Company, wrote:

> We have always had very serious doubts whether the Treaty Of Waitangi, made with naked savages by a consul invested with no plenipotentiary powers, without ratification by the Crown, could be treated by lawyers as anything but a praise-worthy devise for amusing and pacifying savages for the moment.[52]

This situation was obviously unstable and the expropriation of land at prices almost dictated by the settlers, although, officially, through the Crown, bred a reaction. This was fuelled by the Constitution of 1852, whereby the arena for 'rights' contention was transferred from London to Auckland and wherein only the Crown right of preemption was restated. Furthermore, in that Constitution electoral rights were linked with property ownership but Maoris were excluded on the ground that they held such title as remained to them jointly and thus could not be individually enfranchised.

In response to what they considered to be an insulting and inequable Constitution, the Maoris elected a king of their own in the person of Te Wherowhero of the Waikato. The British Prime Minister, the Duke of Newcastle, is reported to have greeted the news, somewhat laconically, with 'Fine! Potato or Brian Boru, it matters not, provided they recognize the Queen'. The settlers, however, chose to view the ceremony as a gratuitous insult to their monarch and the situation worsened. By 1858, the *pakeha* - settlers - outnumbered the Maori who, thus became, in reality, an 'Aboriginal Minority.' From that position of increasing population majority, the settlers expressed open resentment of Maori land holdings and were unwilling to accommodate Maori sentiments.

> To Maori the forests and fernlands were a food reserve. They provided berries and birds and had a spiritual significance. To the settlers the sombre 'bush' was but 'undeveloped land' ... In 1859, Governor Gore Browne warned the Foreign Office that: - 'The Europeans covet these lands and are determined to enter in and possess them "rightly if possible, if not, by any means at all" '.[53]

Flashpoint was achieved in 1860, when Wiremu Kingi, the local chief of a Maori enclave at Waitara, physically resisted an attempt by the Governor to take possession of land which the Governor wrongly considered as having been purchased from the Maori. British soldiers and a detachment from a naval corvette attacked Kingi's *pa*[54] and the Land

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50 MacDonald 1990:11.

51 Quoted by Walker 1989:166.

52 Quoted in Williams 1989:73.

53 MacDonald 1990:12.

54 Fortress: Armed encampment.

Wars, which spread to a number of other Maori enclaves, became reality. There could be little doubt of the eventual outcome; the principal significance of the actions was the birth of another form of 'Treaty', one imposed by arms.

Following the Land Wars, the New Zealand Assembly, a legislative body dominated, of course, by the settlers, passed two Acts: first, the *New Zealand Settlement Act*, which allowed the confiscation of Maori lands as a punitive measure against those who had born arms against the Queen. The overt and covert rationales for this measure were obvious: for the overt, the Maori had elected a monarch of their own and subsequently attempted to slaughter, in open rebellion, Her Majesty's soldiers and subjects. The covert rationale was that land-hungry would-be settlers were still flowing into Auckland and they wanted their land-hunger satiated. The second measure was the *Suppression of Rebellion Act*, which provided for country-wide sanctions to suppress an insurrection which had only materialised in isolated areas. For the purposes of these Acts, any tribe which had shown the least recalcitrance had rendered itself subject to punitive action. Some settlers went even further:

> Fredrick Whittaker, an Auckland lawyer and a member of the Assembly was largely responsible for the repressive Acts ... In 1863, he opined that 'Maori lands were "Demesne Lands of the Crown", subject only to the occupation and use of the Maori; that Maori title was not cognizable in a Court of Law and could be overridden by an Act of the Colonial Legislature.[55]

This type of sentiment prevailed for many years at all levels of settler society. In 1877, Chief Justice Prendergast, speaking from the bench on the subject of the Treaty of Waitangi, declared it a 'legal nullity' and, in doing so, consigned it to oblivion for the best part of a century.[56] Over that century there was constant, although underfunded, pressure from the Maoris to reinstate the Treaty.

The return to liberality was not smooth and undulated in accordance with political expediency. Maori enfranchisement produced the side-effect that the Labour governments of the early 1930s were kept in power by the votes of the Ratana - Maori - Members of Parliament. The Maori were therefore able to insist on full access to the benefits of the Welfare State brought in by those governments. In 1962 and 1965, *Native Lands Acts* shared out, under fee simple tenure, Native lands amongst aboriginal individuals and encouraged European-style farming of the small-holdings. In some instances, those holdings were too small to be viable propositions.

Such advantages as there were in the *Native Lands Act* were limited, and sometimes negated, by the passage of the *Maori Affairs Amendment Act (1967)* which authorised compulsory purchase by the State of land-holdings considered 'uneconomic'. The effect of this Act, which was castigated as 'one of the most unjust laws passed by Parliament this Century', was to make more difficult the formation of 'land cooperatives'.[57] Robert Muldoon's National Party, which triumphed in the 1975 elections, preferred confrontation to appeasement at times of Maori millitancy. They renamed 'Waitangi Day', the national public holiday which had been instigated by the previous Labour government, and called it 'New Zealand Day'. The previous government had also established the 'Waitangi Tribunal' under *the Treaty of Waitangi Act (1975)*, which was designed to advise the government on events and legislation which tended to contravene the terms of the Treaty. Under Muldoon's regime:

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55 Orange 1990:167.

56 Kawharu 1989:x

57 MacDonald 1990:15.

> The Tribunal was dubbed a cynical gesture by some, and toothless by others, for it was not given power to adjudicate on past breaches of the treaty, and its recommendations were not binding on the government.[58]

In 1985, David Lange's Labour government enacted the *Treaty of Waitangi Amendment Act* whereby the 1975 Tribunal was disbanded and replaced by a new body empowered to investigate claims going back to 1840, the date of the Treaty. However, its penetration into affairs of State remained subject to the interpretation of its puissance by the government in power.

As in the Australian experience, the liberality of the Courts proved more rewarding to the Maoris than that of popularly elected politicians. In 1983, the Courts found in favour of Eva Rickard, a Maori who claimed title to land which had been alienated for the construction of a war-time aerodrome and was subsequently being sold to the Raglan Gold Club.[59] Aila Taylor, another Maori, took on the government in a legal battle involving the right of authority to build a large synthetic fuel plant with an outfall which would pollute tribal fishing grounds. Judge Edward Taihakurei Durie pronounced that it was contrary to the Treaty of Waitangi and Taylor won her court action. The development was abandoned.

The Appeal Court ruled that the Tainui tribes had an interest in the Waikato coal-mines. This provoked such *Pakeha* resentment that Geoffrey Palmer, who had succeeded David Lange as Prime Minister, was forced to abandon his liberal policy in relation to the Maori and issue a surprisingly petulant statement:

> 'the Courts do not govern' he said 'The Executive governs. On matters relating to the Treaty of Waitangi, the Courts cannot govern'.[60]

The covert rivalry between the judiciary and the legislature/executive would seem to continue into the 1990s. The *New Zealand Bill of Rights (1990)* contains no specific mention of Maoris or aboriginal people. Section 20 *Rights of Minorities* offers protection in matters of religion, language and culture to 'any person belonging to an ethnic, religious, or linguistic minority'.[61] This would seem to portend an assimilationist policy and lump the Maori minority, some 17% of the total population, in with Vietnamese, Polish or any other of the many minorities and thus avoid any 'special relationship' status. On the other hand in *Paku v. The Ministry of Agriculture and Fisheries*, heard in the High Court before Mr. Justice Galen, the Court found in September 1991 in favour of the appelant, taking into cognisance 'The obligation imposed on the Crown by the Treaty of Waitangi ...',[62] which might be construed as ethnicity-dependent.

Of course, there have been a number of initiatives over the years in relation to Maori/Pakeha accommodations, but this paper must confine itself to instruments of State which have 'Treaty' connotations. Nonetheless, one deserves mention. The change of government in October 1990 ushered in a new proposed policy stance - *Ka Awatea* (It is Daybreak) - which:

> ... included a continuing commitment to the Treaty of Waitangi as a 'founding document of New Zealand' that conferred on the Crown the right to pass laws,

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58 MacDonald 1990:16.

59 A precursor to the Oka affair involving the Pine Hill Golf Club, just outside Montreal, Canada?

60 Quoted in MacDonald 1990:5.

61 The Government of New Zealand 1991:1688.

62 The Government of New Zealand 1992:224.

subject only to recognition of Maori needs for self-determination, control over land and resources, and social equality.[63]

If this reading of the burden of the Treaty of Waitangi, a reading which avoids the sovereignty issue, is accepted by Maori and *Pakeha* alike, there could be a period during which partnership might develop. But this paper would espouse optimism with caution. Cultural and social mores are still divergent.

The United States of America

The surface dimension of the Aboriginal issue in the United States, is well defined by Augie Fleras and Jean Elliott:

> Aboriginal issues in the United States in recent years have not occupied centre stage to the same dramatic degree they have in Canada and New Zealand. The aboriginal people are relatively few in number, representing less than 1% of the total population, and are significantly overshadowed by those of African, Hispanic and Asian descent, who together represent more than one in five of all Americans. The more numerous racial and ethnic minorities - especially Afro-Americans, who comprise approximately 12% of the population - have tended to set the civil-rights agenda in the United States. Important as the civil-rights battle is for all Americans, however, it does not adequately encompass the pressing needs of the aboriginal peoples.[64]

It was not always so. For nearly four hundred years, the lives of all or some part of the American aboriginal people were dominated by Treaties and, after 1871, when the internation status of agreements was officially abandoned, by instruments of State which qualify for inclusion as 'Treaties'.

Prior to the onset of European colonisation of the North American continent, aboriginal social organisation was, in general, based upon small units. There were loose federations such as the Iroquois who ranged the eastern forests roughly between the 40th and 50th parallels and the Cherokee who had evolved an embryonic 'nation' framework further to the south, but due to the vast distances to be covered, the minimal population per square mile and the lack of script and scrip with which to record and pay centre-demanded levies, such imperia must have been figurative rather than firm.

> Much more common were groups in which political power, such as it was, was concentrated in the village or band. These villages or bands, often quite large, might join together in occasional or seasonal enterprises such as hunts or ceremonies, but in general, while they shared language, culture and to some extent territory, they were autonomous, lacking in political integration at the tribal level - as that level is commonly perceived.[65]

The quotation from Cornell speaks of villages but it must be remembered that the villagers were basically nomadic and the villages were mobile in that the conical skin-covered tents could be dismantled and re-erected elsewhere. Thus, a group encamped by a stream at any one time, might not be the same as that which occupied the same site a decade earlier or a decade later. This nomadic propensity and the lack of hierarchy made the maintenance of treaties problematic. There is a case on record of a New Netherlander, whose government was meticulous in drawing up deeds of conveyance, making a documented land deal with an aboriginal group of purported land-right owners and a Plymouth

63 Fleras 1992:195.

64 Fleras 1992:128.

65 Cornell 1988:74.

(Massachusetts) trader making a similar deal, in this rare case also documented, with another purported owner of the same stretch of terrain.[66] If firmer treaties or real estate deals were to be concluded, it was obviously necessary to either locate or establish some hierarchical centricity; thus the 'coronation' of Powhattan in Virginia, referred to earlier.

In the early seventeenth century, the eastern freeboard of the North American continent was spattered with European settlements. The French had claimed New France in the St. Lawrence estuary and a further colony at the mouth of the Mississippi River, where they experimented unsuccessfully with enslaving Aboriginal people, as did the English in Jamaica.[67],[68] The English were established, first in 1607 at Jamestown in Virginia, which colony had established a Legislative Assembly by 1619, and then, through the arrival of the Pilgrim Fathers on the *Mayflower*, at Plymouth, Massachusetts in 1620. From this latter settlement sprang New England.

New Netherlands was centred on New Amsterdam on Manhattan Island, and took in parts of what is now New Jersey. New Sweden, which only existed from 1638 to 1655, covered the littoral at the head of Delaware Bay. The Spanish, who were active in Mexico, sought, with the aid of Plains Apache, a northern presence at the expense of the French, but were repulsed by a French/Indian coalition at Illinois.[69]

The representatives and settlers of all these colonising groups were energetic in acquiring land and some form of title to it. The Dutch, and probably the Swedes who were closely associated with the Dutch, were diligent in obtaining documentation recording each conveyance; thus indirectly acknowledging a prior title vested in the vendors. The British attitude was very different.

> Englishmen had no precedents for recognition of Indian right in land, 'Purchases' previously made in Virginia had merely been expedients to keep the natives quiet; no legal rights (civil rights) were then formally recognised and no deeds were written. As late as 1632, the English Crown had emphatically denied that Indians could have any legal rights to land claimed by Christian princes.[70]

This attitude was supported by the contribution to early international law, made by Lord Coke in the *Calvins Case* (1608). He said:

> All infidels are in law perpetual enemies: for between them and the Devil whose subjects they be, and the Christian, there is perpetual hostility.[71], [72]

The English record was not all bad: in a letter dated 1629, the Head Office of the Massachusetts Bay Co. in London wrote to its executive in America:

> Above all, we pray you to be careful that there be none in our precincts permitted to do injury in the least kind to the heathen people: and if any offend in any way, they themselves receive due correction, ... if any of the savages pretend right of

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66 Jennings 1988:14.

67 Both these experiments failed and were replaced by the importation of more amenable labour from Africa.

68 Wade 1988:26.

69 Wade 1988:37.

70 Jennings 1988:14-15.

71 In justice to the British legal system, it should be recorded that Lord Mansfield in *Campbell v. Hall* (1774), termed Coke's dictum 'A strange extrajudicial opinion [that] will make reason, not reason, and law, not law. [it is] wholely groundless and deservedly exploded.'

72 Clark 1987:27.

> inheritance to all or any part of the lands granted in our patent, we pray you endeavour to purchase their title, that we may avoid the least scruple of intrusion.[73]

It is possible that this communication might be considered as typical of a Head Office being out of touch with the realities familiar to the sharp end in the field of operations: it seems to assume deeds of testament and title as well as surveyed land holdings. Nevertheless, it resulted in a proliferation of deeds of sale - not between the Massachusetts Bay Co. and individual American Indians, but between the Company and 'corporate' tribes. A few of these documents still exist. However, it should be remembered that the Indians, for cultural reasons, did not understand the principle of alienation of title to land; to them it was not dissimilar to a deist being expected to sell his interest in God. In any event the deeds, at best, acknowledged no more than usufructory title being vested in the tribes at the time of sale: thus preserving the *terra nullius* status of the continent.

The 1629 stricture appears to have had an inconclusive effect: some forty years later, in 1670, the situation had got so far out of hand that it became necessary for the British parliament to frame legislation which placed the conduct of Indian relations in the hands of the Crown's various colonial Governors. The text of the legislation has been quoted earlier. It sought to pacify through the evangelical approach rather than through the perpetration of injustice.

However, the decline of the Stuarts and the insecurity of the early Hanoverians made the implementation and maintenance of a liberal British colonial policy - *qua* aborigines - ineffective and the 'Thirteen Colonies' grew by incremental usurpation of Indian lands to the east of the Appalachians. The validity of the 'treaties' by which this expansion was accomplished may be moot but it is so lost in the weft and warp of history that it can never be unravelled. Expansion in an alleged 'land of plenty' led to demands for participation from other European states, particularly France, and warfare broke out in 1754. After a number of reversals, the Hanoverians, under King George III, 'got their act together' and ultimately triumphed both in the Indian sub-continent and in North America. By the Treaty of Paris of 1763, France was obliged to surrender the vast majority of her North American holdings and, in rationlisation of a new American Continental empire, George III issued the Royal Proclamation, (see above). Whatever its original intention, that Proclamation had very material influence on the relations between European settlers and Indians in North America.

There was a further outcome to Britain's victory over France. George III, having acquired a larger empire than any previous British Monarch, set about governing and taxing it. That development led to dissatisfaction among the settlers, who had enjoyed a fairly free rein over the last decades, and provoked the American War of Independence which was to a large extent a rebellion against authority. That demand for minimal government and maximum freedom of the individual persisted into the formative years of the United States of America and forecast the early violation, by free and untrammelled citizens, of the various treaties entered into by the government of the United States and a plethora of Indian tribes and nations.

A further contributing factor to the instability of the post-independence Aboriginal Treaties arose from the War of Independence, itself.

> Many officials of the prewar Indian Department remained loyal to the crown, thereby helping to enlist Indian support for the British, and many Indians themselves realised that the revolutionaries were the representatives of those advancing farmers who were

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73 Morrison 1985:15.

> destroying the Indian way of life. ... The Treaty of Paris [of 1778[74]] which ended the revolution, gave the United States her independence and a western boundary on the Mississippi River. .. The Indian tribes by joining the British in the Revolution had forfeited their right to possession of land within the limits of the United States: the new country would be justified in compelling the Indians to retire to Canada or to the unknown areas beyond the Mississippi ... it was emphasised that the 'right of soil' as well as territorial sovereignty now belonged to the United States, and that the Indians could remain only on her sufferance.[75]

The original western boundary of the United States was the Mississippi River. The territory between that western limit, and the eastern boundary of the embryonic thirteen States - roughly along the crest-line of the Appalachians - was known as 'Indian Territory.' First, those tribes living to the east of the Appalachian line were moved, some by treaty and some by way of punishment for their support of the British, into Indian Territory. However, settlers continued flooding into the much publicised 'Land of the Free' and the chief expectation of those new arrivals, after years of privation in the peasant economies of Europe, was land. But the land-stock of the founding States was already largely distributed and new land could only be realised west of the Appalachians. The fact that Indians had been settled there was not allowed to interfere with the satiation of land-hunger. This usurpation frequently led to armed resistance by the invaded: the settlers mobilised to meet what they considered an insurrection and an 'Indian War' broke out. Though the aboriginal people enjoyed notable victories from time to time, they lacked the organisation of the settlers and, inevitably, were the ultimate losers. In order to terminate the 'War', a new treaty was entered into and the Indians were pushed further west.

The pattern repeated itself time after time.

> Some 370 treaties with Indian Tribes were formally ratified or perfected and passed into law before making of treaties with Indians was terminated in 1871. ... It is estimated that 96 of the treaties dealt with the establishment or reaffirmation of peace. ... 230 of the treaties concerned land cessions or related matters; 76 of these called for Indian removal and settlement in the West. ... In 1972, when militant Indian leaders organised the 'Trail of Broken Treaties', nearly 1,000 Indians Converged on Washington D.C..[76]

The ratification process referred to above was also a bone of contention. It was the practice of the American government to consider that a treaty, as far as Aboriginal people were concerned, came into force at the moment it was signed by the Chiefs and the negotiating agents. However, in relation to the adoption of government obligations, there was a lengthy bureaucratic procedure to be followed before ratification. The draft treaty was sent to the President who forwarded it to Congress, where it was debated and, possibly amended. Having received Senate approval, the final draft was dispatched to the President, who ultimately signed the document and sent it back to the field where it was presented to the representatives of the tribe or nation who were the other party. That procedure might take two years and, in the mean time, settlers felt that they were even less bound by an unratified agreement than they were by one on which the President had placed his signature.

As with all elected representative bodies, Congress was reluctant to spend taxpayer's money so that aboriginal benefits were frequently cut during the ratification process.

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74 This Treaty of Paris should not be confused with the Treaty of Paris 1673, which terminated what is still referred to as the 'French and Indian War' (Kelly, 1990:21).

75 Horsman 1988:29.

76 Kvasnika 1988:195.

Underpayment of the original treaty obligations often led to famine. The tight-fisted attitude of Congress is well illustrated in the debate on President Grant's Peace Policy:

> The estimate of the joint congressional committee appointed in 1865 was that it would cost $30,000,000 and would require an army of 10,000 men over two or three years to subdue the plains Indians. Senators and Congressmen might rail at the idea of taxpayers supporting Indians in idleness, but the argument that it was more economical than fighting them finally won the day for the Peace Policy.[77]

The Peace Policy - which envisaged compact Reservations to be cultivated in settler fashion rather than extensive tracts of potential hunting land - also proved a financial disappointment.

> The long-run effects of Grant's Peace policy were minimal. ... Congressmen, who had been led to believe that the treaties negotiated in 1865-1868 would enable White occupation of the West at minimum expense to the taxpayer, were rebelling against the mounting cost of supporting Indians on reservations. By 1872, 31,000 Indians were being totally subsisted by the government, and another 84,000 partially. Senators Benjamin F. Butler and John Sherman called for the end of the treaty system. Early in 1871 Congress ended the practice of negotiating treaties with tribes as though they were independent powers.[78]

Thus, in 1871, the formation of treaties in their inter-nation connotation was abandoned. There were, however, other instruments which could conceivably constitute 'Treaties' although they were rather more openly one-sided.

By 1871, the 'Native Land' allocations were approximately those of to-day's Reservations but there was a considerable difference in most of the comparable acreages. These reductions were brought about by the passage through Congress of two Bills: the *Dawes Severality Act* of 1887 and the *Burke Act* of 1906. Between these two Acts, Reservations were divided into allotments and the non-alienability of those allotments, particularly those allocated to quarter- and half-breeds, was watered down. For instance:

> The Pine Ridge Reservation, established in 1868, consisted of 2,721,597 acres. Allotment, which took place in 1904-1916, divided the reservation into 8,275 individual tracts that accounted for 2,380,195 acres [287.6 acres each, on average]. Another 182,653 acres were classified as surplus and sold to the government, and 146,633 acres remained as tribal land.
>
> ... In the period 1907-1920, 32,150 patents-in-fee were issued under the *Burke Act* and restrictions on the sale of 4,213,000 acres were removed.
>
> ... In 1907, the last piece of legislation dealing with the alienation of Indian lands was passed (34 US Stat 1015). By the provisions of this Act, Indians who were too old, sick, disabled, or 'incompetent' were permitted to sell them and to use the money obtained to better provide for their needs. From 1908-1920 another 720,000 acres of land passed from Indian to white control.[79]

Following the *Burke Act*, there was a trend away from solving the 'Indian Problem' by means of legislation. Congress was able to abrogate its responsibility by increasing the discretionary powers of the Secretary of the interior and the Commissioner of Indian Affairs. This trend, which allowed consecutive Commissioners to pursue policies of assimilation and the imposition of settler-type agriculture, terminated the 'Treaty' phase, as instruments of government were forsaken.

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77 Hagan 1988:53.

78 Hagan 1988:55.

79 Kelly 1988:68.

In illustration of the saga recounted thus far, the enforced peregrinations of the Cherokees deserve brief mention. At the time of original settler contact, they inhabited the littoral of what is now Georgia and South Carolina. Pre-Independence land deals moved them eastward across the Savannah River into the foothills of the Appalachians. In the War of Independence - and, unfortunately for them, in the War of 1820 and in the Civil War (1861-1865) as well - the Cherokees backed the losing side and they paid the consequences. In the years between 1778 and 1837, eighteen major treaties were entered into and between 1838 and 1871, a further two were contrived.[80] As a result of these Treaties, the Cherokees moved out of Georgia, across Alabama, Mississippi and Arkansas, to Oklahoma, where they were led to believe the whole state would be their territory. By 1987 their territory was substantially reduced.

The sequel to Treaty No. 18 is particularly revealing. The Cherokee had integrated with the settlers to such a degree that their notables had taken up the settler's culture to the extent of maintaining substantial plantations, worked by African-American slaves while their style of dress rivalled that of the Southern Gentleman.[81] Further, in 1827, they had assumed a Constitution similar to that of the United States. In fact, the Cherokee were numbered amongst the Five Civilised Tribes. Yet, under the terms of Treaty No. 18 (1835), the tribe were required to cede all their territory in Georgia and move westwards to the new frontier of Oklahoma.[82] The Cherokee elite sued the State of Georgia for violation of sovereignty.

In *Cherokee Nation v. Georgia (5 Peters 1)* in 1835, Chief Justice John Marshall found that the Cherokee were not an independent nation and could not, therefore, bring suit allegedly involving sovereignty in any federal court. He did, nevertheless, in his review of Indian/White relations and in his definition of aboriginal tribes as 'domestic dependent nations', indicate a willingness to entertain a differently worded plea. That differently worded plea was presented in *Worcester v. Georgia (6 Peters 515).* Worcester was a missionary among the Cherokee.) Marshall found in favour of the Native 'domestic dependent nation' in declaring Georgia out of order in demanding the land cession. However, President Jackson declined to enforce the decision of his own Supreme Court and the expulsion was effected. Thus justice was subordinated to the pressure of White-dominated land hunger.

Finally, in this section on aboriginal treaties with the United States of America, a new form of treaty, which manifested itself as the *Alaska Native Claims Settlement Act (1971),* must be mentioned. The Alaskan aboriginal people had never been subject to any treaty, the territory in question was in the far north and was little in demand for settlement, the people involved were largely subsistence-economy dependent and the time was ripe, internationally, for a display of liberality. As a result of these inputs, the State of Alaska was divided into twelve - thirteen, counting one non-territorial unit for expatriate Native people - regions which were constituted on a commercial corporate basis. These regional corporations were endowed with a total of $964 million, 50% of which was to remain with the regional corporations and the remainder to be distributed to an echelon of Village Corporations which were subordinate to the Regional Corporations, with 44 million acres of the total 365 million acres in Alaska, and with almost unlimited wildlife harvesting rights. The shares in these corporations, both regional and village, were allocated to the aboriginal inhabitants and were to be non-negotiable for a period of 20 years, after which

80 Commissioner of Indian Affairs 1975:vii; Starr 1969:137; 167.

81 Prucha 1988:46.

82 Gold had been founded on Cherokee land in 1824 (Prucha, 1988:45).

they could be alienated at the stock-holder's will. Complicated formulae, including pan-regional participation, were evolved for the commercialisation of renewable and non-renewable resources.

This initiative seemed to wish to convert recently nomadic tribesmen into corporate stock-holding citizens. Except amongst a very few, there was no commercial or corporate experience within the Aleut, Indians and Inupiat who constituted the aboriginal population of Alaska, some 12% of the total population, and after an initial euphoria, bewilderment set in. It was realised that land tenure, far from being secure, was, after the passage of 20 years, to be at the mercy of corporate whim; that there was no provision for the up-coming generation; and that the land selection process was fraught with legal impediment.

Mr. Justice Berger of British Columbia was engaged to look into the many apparent injustices of the original settlement and his report[83] provoked action in amendment of the original settlement. The most blatant inconsistencies were eliminated. Though lawsuits and consultant's fees have milked a lot of the original cash-benefits, the *Alaska Native Claim Settlement Act* remains the most liberal, in terms of money, land and self-determination, among the 'Aboriginal Treaties' entered into by the United States of America.

Canada

In 1604, the geographer/explorer Samuel de Champlain, who was to become the true founder of New France, led a body of Micmac Indians and a few Frenchmen southwards from the Gaspe Peninsula and what is now New Brunswick, in order to extend the French sphere of influence to the Atlantic seaboard of what was to become the United States. On the borders of Massachusetts, he was repulsed by hostile Indians and was forced to return to the colder and less fertile regions of the north.[84] The repulse of this minor excursion was to play an important part in the development of aboriginal relations in Canada.

In the vast northern forests to which the French turned their attentions, the needs of the original settlers were very different to those of the land-hungry immigrants to the productive temperate zones. The staple of New France was fur and the labour force best able to harvest that popular commodity was the indigenous population. Thus the necessary settler constituent of the population was confined to a comparatively small number of traders and a few military to impress the natives, plus, of course, missionaries to cater for the souls of the traders, the solders and the Indians.

The Gallic style of intrusion was different from that of the Anglo-Saxons who predominated in Atlantic America and were to predominate in Australia and New Zealand. Francis Parkman, contrary to his more usual, near xenophobic, approach, wrote: 'Spanish civilisation crushed the Indian; English civilisation scorned and neglected him; French civilisation embraced and cherished him'.[85] This opinion is supported to a large degree by the evidence. Instead of adopting an assimilationist policy, whereby the Indians were encouraged to integrate within the colonist's culture, the French stance was that the traders should integrate themselves into the aboriginal culture. Thus, French youths and even children were 'lent' to Native tribes,[86] and intermarriage was encouraged, for as Champlain said at Lachine Rapids: 'then our young men will marry your daughters, and we shall be

83 Berger 1985.

84 Wade 1988:21.

85 Parkman 1897: Volume 1:131.

86 Amongst them, Étienne Brulé, who was to become the first of the so-called 'coureurs de bois', was placed, by Champlain, among the Algonquins in exchange for two Indian youths who were taken to France and returned to their tribes the following year (Wade 1988:23).

one people'.[87] Native languages were learned and widely used by the French. Nonetheless, there was an underlying confidence among French colonists that by right of Champlain's discovery the St. Lawrence estuary, and wheresoever it led, was solely a French sphere of influence.

It was unnecessary to enter into formal treaties whereby land was ceded in exchange for goods in order to support this form of colonisation.[88] The French preferred to enter into alliances based upon friendship and partnership rather than exploitation with tribes such as the Micmacs, the Algonquin, the Huron and the Montagnais. These alliances were frequently of a military nature, so that French muskets supported the hostile excursions of their allies, principally against the war-like and threatening Iroquois. This provocation of the Iroquois led that 'nation' into perpetual enmity with the French and, consequently, into alliance with the English.

During the seventeenth century, French colonisation of Atlantic Canada was largely unmolested.[89] British fur-traders, whose market penetration was enhanced by the formation of the Hudson's Bay Company in 1670, operated principally to the west of Hudson Bay and south of the Great Lakes. While in active competition with their French rivals, they tended to adopt the Gallic approach to integration: probably 50% of Metis surnames are French and, of the remainder, more than half are Scottish. It was not until 1755, when the British established the Indian Department under the leadership of Sir William Johnson, an executive from New York, that a British presence was felt in Canada; and then largely materialising as a response to French hegemony in enlisting aboriginal allies.

During the years of Franco/British warfare which followed 1755, the Indian Department became a paramilitary body and its agents held military rank. Their function was to enlist, at best, support and, at worst, neutrality among Indian tribes.

The Peace of Paris, which terminated those wars on the 10th February, 1763, reflected the magnitude of the British victory.[90] Large tracts on the Coromandel Coast of the Indian sub-continent and in Bengal and in the Decan were ceded to George III's Crown (Article XI). Foremost among the French renunciations were pretensions to Nova Scotia (Acadia) and all of the North American continent east of a line drawn down the middle of the Mississippi River - saving only the islands of St. Pierre and Miquelon and the city of New Orleans (Articles VI & VII). In the Caribbean, Granada and a number of other islands became British, as did Minorca in the Mediterranean, while Guadeloupe, Martinique and Belleisle became French and Cuba was ceded to Spain (Articles VIII; IX; XIX.)

The Royal Proclamation of October 1763 confirmed the imperial incorporation of Canada under the title of the 'Government of Quebec', distributed substantial acreages to the naval and military personnel who had participated in the North American theatre of operations, created a monopsony whereby only the Crown was entitled to acquire lands from Aboriginal people, and that only with their consent, and established Indian usufructory rights to their 'hunting grounds' throughout the continent, except in the areas covered by the new 'Governments' of Quebec, East Florida, West Florida and Granada and

87 Wade 1988:25.

88 In any event, the French were strong adherents of the principle of *terra nullius*, combined with the Right of Discovery which Jaques Cartier had assumed on behalf of the French Crown, in 1835/36.

89 Surtees 1990:84.

90 The British Crown 1763.

the lands placed under the protection of the Hudson's Bay Company by Charles II in 1670.[91]

The extent of those last-mentioned lands is pertinent to the 'Treaty' saga of Canada. Charles II, by the issuance in 1670 of the Charter of Incorporation of the Hudson's Bay Company, passed into the 'Power and Command of the ... Governor and Company'[92] 'all those Seas, Streights (sic), Bays, Rivers, Lakes, Creeks and Sounds, in whatever latitude they shall be, that lie within the entrance of the Streights commonly called Hudson's Streights, together with the Lands, Countries and Confines of the Seas, [etc.], aforesaid, which are not now actually possessed by any of Our Subjects or the Subjects of any Christian Prince or State'.[93] The king also passed into the same custodianship, 'all Havens, Bays, Creeks, Rivers, Lakes and Seas into which they [the Company's factors, servants and Agents] shall find Passage by Water or Land out of the Territories, Limits and Places aforesaid.[94]

That comprehensive conveyance would seem to have no confines and obviously reflects the limitations of the king's - or, for that matter, any other European's - geographical knowledge. It is sometimes assumed that his real intention was to confine the grant to the lands served by the waters flowing into Hudson's Bay, which would cover most of continental Canada east of the Rocky Mountains, except the Mackenzie River drainage area, the Eastern half of what is now Quebec Province, Newfoundland and New Brunswick. It should be pointed out that the liberal interpretation of the Royal Proclamation does not include the Hudson's Bay Company exclusions.

One further factor in the Royal Proclamation merits consideration. Colonial acquisition of territory over which the aboriginal people exercised some form of title, albeit only usufructory title, could only be effected through the Crown and then, only with the consent of the original title holders. This proviso in no way inferred that it could only occur through aboriginal initiative. There was nothing in the Proclamation which prevented any British official, or even a British private individual, from approaching a tribal Chief and saying something of the following sort: 'My king would like some of your hunting grounds. What do you want for it?' In fact, it seems likely that, in the early instances, all negotiations were opened from that starting point, as evidenced by the fact that colonial expansion was strategically deliberate and incremental rather than haphazardly sporadic.

The process of Treaty-making in Canada is conveniently divided into three - or, if future possible treaties are to be included, perhaps four - epochs. The first series, which started the year following the Royal Proclamation with an abortive essay, were more in the nature of straight real estate deals: so much *quid* for so much *quo*. That phase, if the aborted first attempt is excluded, comprised 29 agreements[95] and lasted from 1781 to 1836. The first of the series appropriated a corridor of land along the Niagara River which links Lake Ontario to Lake Erie; the navigation of which demanded a lengthy portage to outflank the Falls. Then followed the establishment of strategic posts and islands along the Canadian littorals of the three most eastern of the Great Lakes (Huron, Erie and Ontario) and the infilling of the Southern Ontario peninsula, and terminated with the Bruce, Grey and

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91 For the wording of the *Royal Proclamation*, see above.

92 King Charles II 1816:16.

93 Ibid.:2.

94 Ibid.:12.

95 Some times the Robinson-Superior, the Robinson-Huron and the Manitoulin Island treaty of 1862 are included in this group. In view of the slightly more elaborate concessions by the Crown, it might be better to count them among the next group of 'Numbered Treaties'.

Wellington Counties Agreement of 1836, under which latter agreement the Crown not only provided each of six specific Chiefs with five shillings, but also undertook to build some houses and to give assistance to Indians in agricultural enterprises to be pursued in the vicinity of settlements located on the Bruce Peninsula.

It is difficult to isolate any progressive pattern, in terms of payment for ceded lands, in these treaties. It would seem that the end result depended on three factors: first, the depth of desire felt by the Crown party; second, the opportunism of the aboriginal vendors; and third, the negotiation skills of the individual principals. For instance, the land on which Toronto now stands was ceded to the Crown first in 1787, but there are no details extant of the exact boundaries nor the form or scale of the compensation. It was not until 1805 - Toronto, then called York, having become the capital of Upper Canada in 1793 - that boundaries were set to the original purchase in exchange for a payment of ten shillings, then about $2, and the right to fish in the Etobicoke River. On the other hand, in 1790, the northern littoral of Lake Erie between Windsor and somewhere just east of St. Thomas, realised £1,200 in goods as well as Reserves at Bois Blanc and Knagg's Creek. The greatest payment recorded is in 1815, when £4,000 was paid for the lands south-east of Georgian Bay and west of Lake Simcoe, which is now largely agricultural, though it was probably forested at the time of negotiation.[96]

A slight pattern does emerge after 1818, when compensation became payable in some instances in the form of annuities rather than lump sums. In 1818, for land to the south of Georgian Bay, an annuity of £1,200 was agreed. That sum was reduced, the following year, to £300 in specie and £300 in goods for an area of approximately equivalent size some distance to the north of Lake Ontario. There appears to have been no going rate, while a lack of communication, or possibly a lack of openness, between the tribes made any coordination of bargaining practice impossible.

The second phase of Canadian Aboriginal treaty-making came after the consolidation, by means of the *British North American Act*, of the colonies of Nova Scotia, New Brunswick, Quebec and Ontario[97] to form the Federation of Canada. In order to obtain British Columbia's accession to the Federation, in 1871, Sir John A. Macdonald had been induced to promise the British Columbia government that he would build a transcontinental railway.[98] That promise, fuelled by the possibility of United States preemption and coast-to-coast imperial dreams, soon became a firm commitment. The project would involve crossing the southern part of the Canadian Shield, the practically uncharted prairies and, of course, the Rockies. Whatever the detailed route, the grand design would necessitate the disturbance of large bodies of Indians.

Bearing in mind the lawlessness and Indian resistance to westward expansion in the United States, and spurred by the Red River Métis Insurrection led by Louis Riel, the Canadian government opted for the wise procedure of establishing order - and at the same time establishing sovereignty - by settling the Indian question before introducing settlers into the vast new horizons. Robert Surtees summarises the development succinctly:

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96 It has been suggested that this particular tract of land had strategic importance as the start of a 'short-cut' route to take furs from the Lake Huron catchment to the northern littoral of Lake Ontario.

97 These latter two Provinces had been a single colony known as Canada. There had been divisions into Upper and Lower Canada and, later, into East Canada and West Canada, but the whole had been governed from Ottawa.

98 Berton 1971:188

> Changes to the Western Indian position took place with frightening alacrity. Between 1871 and 1877, commissioners sent by the federal government concluded seven major land cession treaties with western tribes, thereby securing the bulk of the lands between Lake Superior and the Rocky Mountains. The Canadian Pacific Railway was completed in 1885, settlement had begun over a decade earlier. By 1880 the mainstay of western Indian life - the buffalo - had almost completely disappeared and all segments of the Cree, Assiniboin, Peigan, Sioux, Blood and Blackfoot bands had been forced, through circumstances, to take up residence on he lands provided by the treaties.[99]

The seven treaties to which Surtees refers were the first of a sequence known as the 'Numbered Treaties', of which there were a total of eleven spanning the years from 1871 to 1921. Roughly, they marched just ahead of the railhead and the settlers filled in just behind the railhead. In front of the railhead, too, was an extraordinary body of young adventurers who had been raised in the early 1870s, the North West Mounted Police. That paramilitary law enforcement corps, under the inspired leadership of men like James Farquar MacLeod and Colonel French, became the evidence of territorial sovereignty, while at the same time they shepherded Indians to their Reserves, policed the United States border against gun-runners and rum-runners, saw that settlers observed the Treaties and generally earned the respect of all who lived or ventured out toward the Rockies.

Another group of pioneers who preceded the railhead were the missionaries; they too played a part in the treaty saga.

By the numbered Treaties, Indians ceded really enormous tracts of their 'hunting grounds' in exchange for very minor Reserves and limited facilities. Because of the magnitude of the sessions, verbatim transcription of the content must be included: the extracts from Treaty No. 5 (1873), printed below, are not untypical.

> ... it is the desire of Her Majesty to open up for settlement, immigration, trade and such other purposes as to Her Majesty may seem meet, a tract of land.
>
> The Saulteaux and Swampy Cree Tribe of Indians and all other Indians inhabiting the district hereinafter described and defined, do hereby cede, release, surrender, and yield up to the Government of the Dominion of Canada, ... all their rights, titles, and privileges whatsoever to the lands included within the following limits. ...
>
> Her Majesty hereby agrees and undertakes to lay aside reserves for farming lands, due respect being had to lands at present being cultivated by the said Indians, and other reserves for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada; provided that all such reserves shall not exceed in all 160 acres for each family of five or in that proportion for families larger or smaller. ... but reserving the free navigation of the said lake and river, and free access to the shores and waters thereof for Her Majesty and all her subjects ... and ... provided however, that Her Majesty reserves the right to deal with any settlers within the bounds of any land reserved for any band as she shall deem fit, and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians ... with their consent first had and obtained. .. with a view to show the satisfaction of Her Majesty with the behaviour of her Indians she ... makes a present of 5 dollars for each man, woman and child.

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99 Surtees 1990:91.

And further Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to her Government of the Dominion of Canada may seem advisable, when the Indians of the reserve shall desire it.

Her Majesty agrees with her said Indians that they ... shall have the right to pursue their avocations of hunting and fishing throughout the tract surrendered ... subject to such regulations as may, from time to time be made by her Government ... and saving and excepting such tracts as may, from time to time, be required or taken up for settlement, mining, lumbering, or any other purpose by her said Government of the Dominion of Canada, or any of the subjects thereof duly authorised therefore by the said Government.

Then follow the subsidies granted under the Treaty:

$5 per year per capitum
$500 per year for ammunition, nets, etc.
2 hoes for every family cultivating
1 spade
1 plough for every 10 families
5 harrows for every 20 families
1 scythe
1 pitsaw with appurtanences for each band
1 chest of carpenter's tools for each chief
seed wheat, barley, potatoes, etc.
1 yolk of oxen, 1 bull and 4 cows per band
$25 per year per chief
$15 per year per sub-chief (max. 3)

In the final paragraph, the chiefs contract to keep the peace and surrender any law-breaking Indian to the Queen's justice and punishment.[100]

The questions have to be asked. Why did the Chiefs sign Treaties which were, by to-day's standards, so inequable? Why did they surrender hundreds of thousands of square miles in exchange for a few hundred square miles with dubious tenure, the chance of education which they did not understand, a few dollars cash in hand and some agricultural appurtenances with which they were culturally unfamiliar?

Commentators have provided a range of disparate answers:

1. On the prairies their life-style staple, the buffalo, had been virtually eradicated by Europeans, the Metis and the rifle in their own hands. As a result they were hungry, bewildered and open to any suggestion which brought immediate relief.
2. The pace of events had effectively robbed them of initiative and they were in a spiritual vacuum where the advice of missionaries, who urged a settled, non-nomadic existence, and the Mounties were pervasive. The implied promise that they could continue their subsistence style of life tended to allay too deep concern.
3. In their own culture, they themselves did not own the land they surrendered. It was the property of the Creator and they were merely part of the Creator's design, as were the total flora and fauna, by which the land was filled harmoniously. They were, therefore, 'getting something for nothing' in accepting the baubles offered.
4. The relations with the agents of the Hudson's Bay Company had always been marked by good faith and the treaty ceremony was akin to the annual gatherings sponsored by that trading organism. The manner in which fur prices were set by the Hudson's Bay Company did not encourage the process of bargaining.

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100 Hertslet 1920-1924.

5. They were impressed or frightened by the display of moral and technological superiority displayed by the settlers and their officials, including the North West Mounted Police, and hoped to be able to emulate them in the seclusion of their Reserves.

None of these explanations seems, on its own, adequate but, in various combinations, they are more persuasive.

Whatever the cause, the 'Railway Treaties' - that is to say Numbers 1 to 7 of the 'Numbered Treaties' - were acceptable to both sides. The aboriginal people were contained in more administratively convenient areas and both schooling and - later - health-care became possible. Missionaries also found the concentration principle very much more felicitous. It was therefore decided to extend the system northwards[101] to include the boreal forest lands, as and when they were needed for settlement.

Thus, between 1899 (Treaty No. 8) and 1921 (Treaty No. 11) the system was extended to include all land north of the Great Lakes and the 49th parallel up to (and in the case of parts of Treaty No. 8 and Treaty No. 11) beyond - the 60th parallel.[102] This latter series of Treaties were not as acceptable as their predecessors. The land, not being required for immediate settlement,[103] remained available to the tribes and they were not required to move to the proposed, but not yet delineated, Reserves until they saw fit to do so. This made census and administration very much more problematical and a number of the terms of the Treaties were never fulfilled, a circumstance which was to cause dissension later.

Before considering the next phase of Canadian treaties, the Comprehensive Land Claim Settlements, one further point in connection with the 'Numbered Treaties' should be made. It is comparative. In the United States Treaties the emphasis on the relationships between two sets of peoples - 'the Commissioners plenipotentiary of the United States in Congress' and 'the Headmen and Warriors of all the Cherokees'[104] - and the terms of the Treaties, which often included land cession, were to be decided and effected through those two peoples. In the Canadian versions, the principal focus was on 'a tract of land' and 'the Saulteaux and Swampy Cree tribe of Indians and all other Indians inhabiting the district hereinafter described' were required to do whatever the Treaty demanded. In the United States, the land was subsidiary to the people while in Canada the people were ancillary to the land.

The course of treaty-making was deflected by a Supreme Court split decision in 1973.

> An important court decision was handed down that strengthened the basis for aboriginal claims. *Calder et al. vs. Attorney General of British Columbia (1973)* involved the Nishga people in British Columbia. While technically the case resulted in a split decision, the judgement went a long way toward reinforcing aboriginal title due to occupancy prior to colonisation. This case strengthened the hand of native

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101 Strictly speaking, Treaty No.5, which took in all the north of Manitoba, was not a 'Railway Treaty' but it might have been. A spur line was envisaged to run from Winnipeg up to the Hudson'sBay Co.'s principal trading post at York Factory.

102 Excluded from these latitudinal limitations, should be the whole of British Columbia, where no treaties - other than a few minor real estate deals around Vancouver and Victoria - were entertained.

103 Both these Treaties anticipated a considerable settler demand in the wake of the Yukon goldrush. It was thought that the Mackenzie Valley might become arterial.

104 Treaty concluded in November 1975 (Commissioner of Indian Affairs 1975:8).

groups, and, in August 1973, the government changed its policy toward land claims.[105]

The basic alteration in direction was that, while aboriginal people should remain almost in the status of wards of the State, they should be considered as very much more adult wards and thus entitled to decide for themselves the style of life which they wished to pursue. Further that they should be given a degree of autonomy in the management of their own affairs. The process of change was not, of course, instant: it involved a lot of government proposals and policy statements over a decade and a half. It could, in fact, be said to be incremental. It was made plain that the new style of treaty could apply only to those lands where cession had not already extinguished Aboriginal rights. However, in those parts of Treaty No. 8 territory where the Federal government held prime responsibility - that is to say, those lands which were in the Northwest Territories - and in the area covered by Treaty No. 11 - also in the Northwest Territories - the government was prepared to re-negotiate.

The first of the new series of pacts was the James Bay and Northern Quebec Agreements with the Indians of the southerly section, the Inuit of the northern part and the Naskapi of the northeast.

When the boundaries of Quebec Province had been extended to the Hudson Straits in 1912, a term of agreement had been that the Provincial government should accept responsibility for aboriginal people in the extended territory. However, as there was no demand for expanded settlement area, the Quebec Provincial government saw no urgency and the formation of any form of treaty was left in abeyance.[106] In the mid-1970s, the requirements of Hydro Quebec and the conflicting requirements of the aboriginal people brought about a situation which culminated in litigation and, at one stage, an injunction against the Provincial Government which forbade the continuation of operations pending an equable settlement of differences. That hiatus emphasised the need for consultation and consensus. The end result was an amalgam of old thought and new thought. While a degree of autonomy was allowed in a limited range of local affairs, the lands selected for domicile were placed under federal control while the remainder, the vast majority, were designated either for development or the continuation of subsistence hunting and were left in Provincial care. That lack of secure tenure along with the divided responsibilities rendered the agreements a limited success. Outside Quebec, aboriginal leaders were critical of the acceptance of 'extinguishment' clauses under which aboriginal people ceded their claims in the Agreements.

Following the issuance of the proposals and policy statements referred to above, a single massive settlement was envisaged, by both the Federal and Northwest Territories governments, which would effectively divide the Northwest Territories along the tree-line into two new Territories, to be called Nunavut - for the Inuit-dominated north-east - and Denendeh - for the Indian-dominated south-west. It was proposed that each of these new Territories would have its own Legislative Assembly and that, because in Denendeh there would be no aboriginal population majority - in Nunavut it was about 80% in favour of Inuit - various safeguards would be implemented in order to preserve native control.

Before that grand design could be accomplished internecine dissension occurred among aboriginal groups which led the Inuvialuit of the northwestern corner of the proposed Nunavut to split off and settle unilaterally, while Denendeh divided even further to produce

105 Dickerson 1992:106.

106 It should be observed that Ontario and Manitoba, both of which benefitted by northern expansion in 1912, did cause Treaties to be operative within their extended boundaries.

the Sahtu and Gwitchin tribal claims, settled in 1992 and 1993 respectively, and the Deh Cho, North Slave and South Slave tribal areas which had not been settled by April of 1994.

Because the Denendeh area was so fragmented, the parts which did settle became 'counties' of the Northwest Territories and therefore assumed a lesser degree of autonomy than was originally envisaged. Nunavut alone was able to fulfil the promise of the grand design; on the 25th of May 1993, two Bills were enacted by the Parliament of Canada creating the Territory of Nunavut, to be finally established in 1999. They also legalised the Nunavut Land Claim Agreement which provided Inuit with a wide range of local control, surface rights to some 18% of their territory, subsistence hunting rights to the large majority of the remainder, sub-surface right to about 2% of the territory and the legal ability to monitor development throughout. It also provided 1.17 billion dollars in compensation for the 82% of the Territory which remained Crown land.

This robust Nunavut settlement would seem to provide an aboriginal people with the greatest autonomy and land tenure security to be found in any Treaty in the world, as defined in this paper.

In Canada, there are still areas which are not covered by any form of agreement, including most of British Columbia, the south central part of the Northwest Territories, Labrador and that part of the Atlantic littoral of Quebec Province which lies to the north of the St. Lawrence estuary. But, because it is improbable that any one of these areas will be either large enough to warrant Territorial status or possess an aboriginal population majority, the terms of the Nunavut Treaty are unlikely to be matched. As in the 'Numbered Treaties', the Nunavut settlement is essentially with a 'tract of land' and it is, officially, purely fortuitous that on that tract of land there is a substantial aboriginal racial majority, in terms of population. Thus the constitutional obligation to popular government is unsullied.

The Canadian Constitution, as amended to 1982, contains the assurance that 'existing aboriginal and treaty rights are hereby recognised and confirmed' (Section 35[1]). By the abortive Meech Lake and Charlottetown Accords, efforts were made to expand that clause by the inclusion of a more definite commitment to self-government. It is now argued by the Royal Commission on Aboriginal Peoples that further amplification is not necessary because the word 'existing' includes sundry rights to self-government which were acknowledged by the early fur-trading settlers, both French and British, and which were not specifically extinguished by the British North America Act of 1867. The Liberal government of Jean Chrétien, perhaps without the support of all the Provinces, seems prepared to accept that residual existence and allow self government of areas, such as Reserves, where there is a population majority in favour of any ethnic group, be they Indian, Inuit, Chinese or any other. But this is no innovation: it is part of the democratics of local government.

Conclusion

Three principal constituents would seem to obtrude from these summaries of aboriginal treaty trends in the four countries.

First, the principle of extinguishment by treaty is being maintained. In Australia, treaties have been as one-sided as is conceivable - executive or legislative decrees - but those measures are still considered to have extinguished all Aboriginal rights to the areas to which the decrees applied. It is only in the areas where extinguishment has not been specific that the new-found Native Title will be allowed to make its presence felt. In New Zealand, no rights other than those which survived the Treaty of Waitangi, are on the

agenda for governmental consideration. Further, those post-Waitangi rights which were extinguished in punishment for real or imagined involvement in the Land Wars of the 1860s will prove difficult to reinstate. In the United States, though it is widely accepted that treaty violation was largely instigated by settler action, the extinguishment clauses of the numerous treaties which diminished the possessions of the aboriginal people are not open to renegotiation. True, the administration of the remaining Reservations is being placed largely in the hands of inhabitants but the size of those enclaves is still diminishing rather than expanding. In Canada, all Constitutions, proposed Constitutions and policy documents have led with the statement that 'treaty rights will be recognised and maintained'. This is a two-edged commitment: it intimates that, while the Crown in Right of Canada will observed its obligations, it will also take into account the extinguishments which were essential to all those treaties. Even though it is now being mooted that certain rights survived extinction, those rights are not considered to be land rights.

Second, over the last five hundred years, time has been the yeast of liberalisation. In the United States, which was subject to the earliest land expropriations and which finished its treaty phase as Canada started hers in 1871, the blatancy of the exploitation of aboriginal innocence was marked. Nonetheless, the latest of Treaties, the *Alaska Native Claim Settlement* as amended led for nearly two decades the leader-list of liberal settlements. In Australia, where the principle of *terra nullius* failed to even consider the matter of Aboriginal rights and the indigenous people were considered little more than part of an original fauna, the *Native Title Act*, which recognises an Aboriginal title which survived 'Settlement' in 1788, only came onto the statute book in December of 1993. When that title is used as a negotiable property for the first time, the ensuing 'Treaty' will be an original and, therefore, the first step on a ladder which other Aboriginal nations have started to climb. New Zealand's *Treaty of Waitangi* was, for its time (1840), a high-tide mark for liberality. Lord Glenelg had renounced, on behalf of the people of New Zealand, the status of *terra nullius* and colonisation was, officially, at the request of the Chiefs of the Maori population. It is true that the liberality of the original treaty was not maintained, very largely due to the poor translation of the English text into the Maori language, but recent developments have tended to revive what remains of the Treaty and foster its spirit if not its specific terms. In Canada, the progression from the Niagara Purchases of 1764 and 1781 to the Nunavut settlement in 1993 has been largely, although not entirely, incremental in terms of liberality and, while demographics would seem to preclude further increments, retrogression is unlikely to be pronounced.

Third, it has proved to be the judiciary which acts as champion for Aboriginal rights rather than the elected legislative executive. This is probably due to the fact that the legal mind is not - or, certainly, should not be - influenced by pragmatism and is inclined to pass down judgements which reflect the legal rights and obligations written into the various Treaties. As early as 1835, it was the judiciary of the United States of America, in the person of Chief Justice John Marshall, which in *Worcester v. The State of Georgia* declared that the expulsion of the Cherokees from Georgia was out of order. It was not the judiciary which was to blame for the fact that the popularly-elected President declined to implement the decision. The change of direction of Canadian land claims in 1971 was directly due to a decision, albeit a split decision, passed down by the Supreme Court in *Calder et al. v. The Attorney General of British Columbia.* That decision went some distance towards the establishment of the contention that, where not specifically extinguished, Aboriginal rights might be deemed to have survived colonisation. It was the judiciary of New Zealand that found, in 1992, for the plaintiff in *Paku v. The Ministry of Agriculture and Fisheries*, on the strength of the Crown's obligations incurred under the

Treaty of Waitangi. In the same year the legislature-inspired *New Zealand Bill of Rights* had accorded the Maori no 'Special status'. Finally, in 1992, it was the High Court of Australia that first pronounced the innovative concept of Native title; the legislature had to bestir itself in order to ratify the judiciary's initiative.

It is not essential to the content of this paper to prognosticate the future development of aboriginal treaties, but the opportunity to do so is tempting.

It seems possible that the judiciaries of the various countries will continue to read more and more into both the intention and the letter of past treaties and declarations so that the aboriginal position will be gradually strengthened. For their part, the elected executives of the nations will, through such slogans as togetherness, partnership, mutual commodation and one nationhood, seek to assimilate and integrate the aboriginal minorities within the fabric of the States before the superior courts can impose what the politicians suppose to be irreparable damage. It will be exciting for our children - or our children's children's children - to witness the end of the race.

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RECLAIMING LAND, RECLAIMING GUARDIANSHIP: THE ROLE OF THE TREATY OF WAITANGI AOTEAROA, NEW ZEALAND

Garth Cant,

Toi tu te marae o Tane
Toi tu te marae o Tangaroa
Toi tu te iwi

Aotearoa/New Zealand in Context

The geographical context is a long, narrow and mountainous land, broadside on to the westerly variables, the coldest and most distant part of Polynesia; discovered and settled a thousand years ago by the ancestors of Maori people, discovered again and, over the last 153 years, colonised by the ancestors of pakeha people (Figure 1). The culture and political context is two peoples, unevenly and ambiguously linked by a treaty signed in 1840, struggling to work out new resource and decision making relationships in the 1980s and 1990s.

Tipene O'Regan, historian, negotiator, Chairman of the Ngai Tahu Maori Trust Board and presenter of the television series *Manawhenua,* draws deeply on traditional and academic knowledge to unroll the experience of the Polynesian encounter with this new and distant land.[1] The ancestors arrived from a world of tropical seas and small islands where Tangaroa, the Atua of the oceans and the fishes, was bountiful. They carried with them very intentional cargoes of people, plants and animals; artefacts; technologies in the mind; spiritual wisdom in the legends, the prayers and the genealogies. The ancestors landed adjacent to bays, river mouths, lagoons and estuaries; they explored, named and came to grips with the new environment by unrolling their legends on the new landscape, by exposing their plant and animal materials to the cold and the seasons and by adapting their technologies to new opportunities. The world of Tangaroa provided more familiar bounty; by contrast the world of forests, birds and insects - the extended family of the Atua Tane - provided new bounties and new problems of seasonal food supply. The environmental lessons were gradually learnt and the new world interwoven with tribal and subtribal identity. Long before the arrival of Tasman and Cook, the Maori *iwi* and *hapu*, tribes and subtribes, were established as those who nurtured and were nurtured by the land. They were *tangata whenua,* people of the land; they were the peoples who exercised *kaitiakitanga* or guardianship over its resources and its stories.

These islands were also the last and most distant outliers of European exploration and settlement. Abel Tasman arrived from Batavia in the Netherlands East Indies in 1632 and placed New Zealand on the global map (Figure 2). James Cook and Jean de Surville both

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1 O'Regan 1987, 1989; Orbell 1985.

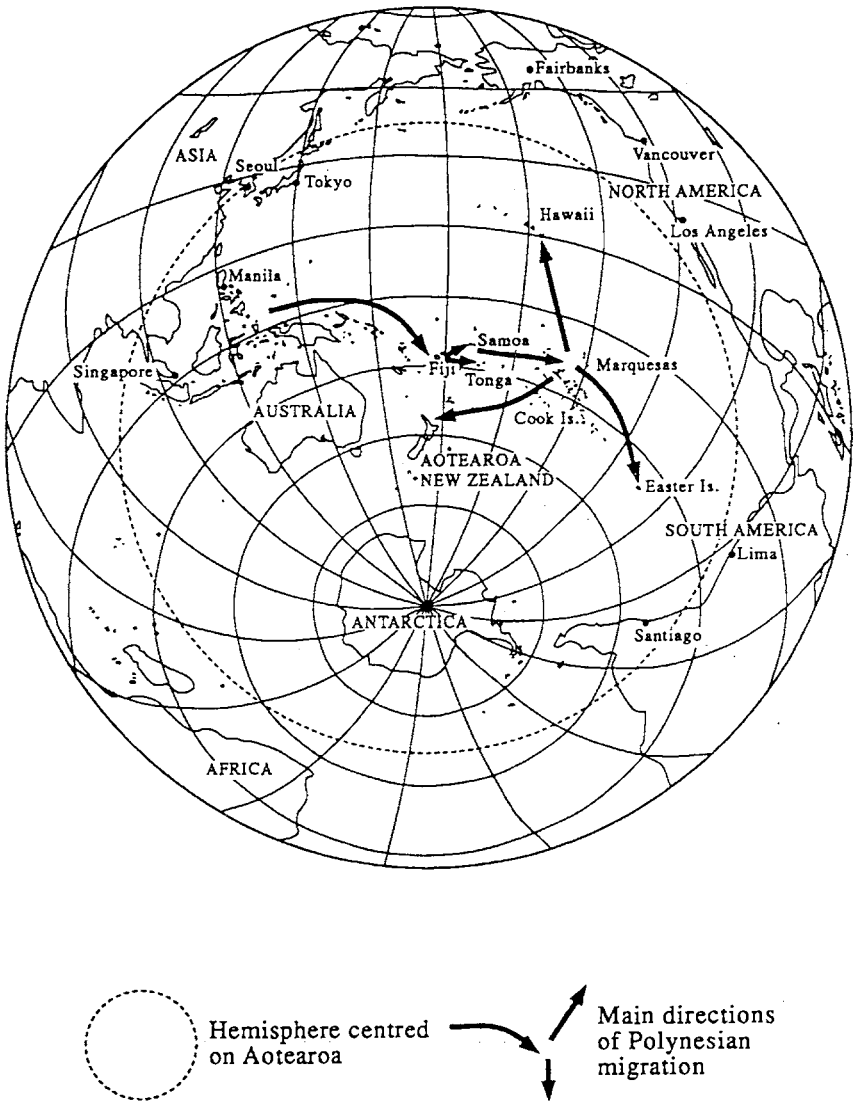

Figure 1. Aotearoa New Zealand in its Polynesian Context

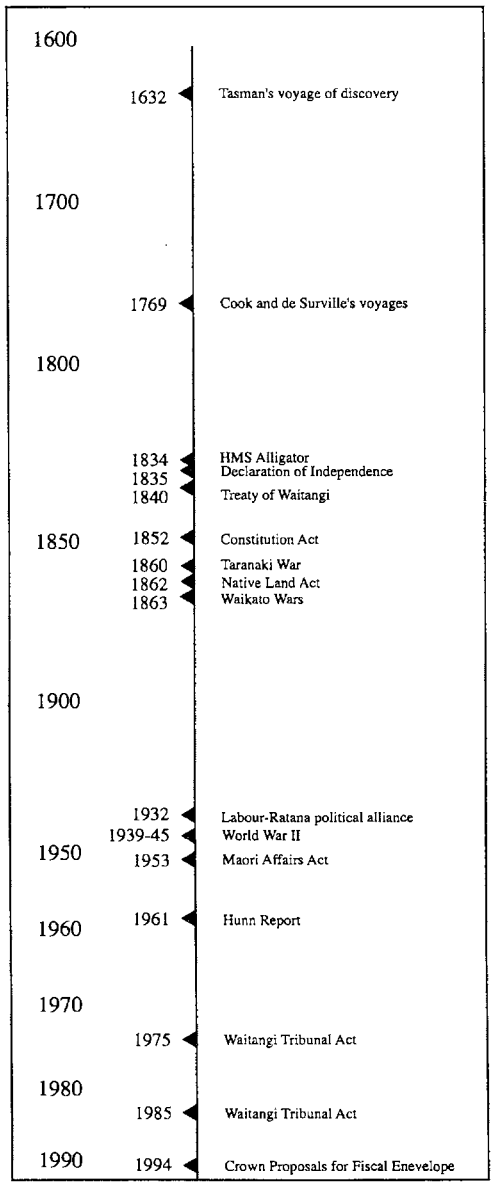

Figure 2. New Zealand: Time Line of Historical Events

came via the Pacific in 1769. By the 1790s timber and flax, seals and whales were being exploited to meet the demands of the global economy. There was a period of mutuality between host and visitors: whaling ships, sealing gangs and traders on the one hand; *iwi* and *hapu* on the other. Tribes in the northern and southern extremities of Aotearoa were willing to exchange technologies, provide shore bases and share in work and recreation in ways which respected and enhanced tribal authority (Figure 3). By the 1830s a number of *hapu* and *iwi* had incorporated commercial production into their existing social organisation: food and raw materials were being produced for Australian and global markets and some *hapu* were operating ships up and down the New Zealand coast and across the Tasman Sea to Sydney.

This latter enterprise triggered a significant symbolic event in 1834 and opens a window into the strength of Maori tribal structures and the colonial aspirations of the British at that date. Ships built in New Zealand carried neither register nor flag and one such, operated from the Hokianga Harbour, was impounded in Sydney. In a carefully considered move to address this situation without making moves to extend British rule to New Zealand, *HMS Alligator,* was sent from Sydney to the Bay of Islands.[2] A meeting of 25 Northern Chiefs was convened in the presence of British and other witnesses, the nature of the problem was discussed and a solution suggested. The Captain of the *Alligator* provided a choice of three flags and the working of a shipping register was explained. After detailed consultation, the Chiefs agreed to the proposal and selected one of the flags which was hoisted and acknowledged by a 21 gun salute fired by the ship's crew. In this way the *rangatiratanga* of the tribes was affirmed and the British recognised New Zealand as a separate country.[3] The symbolism of this event was incorporated into a formal document in Octoger 1835 when 33 northern *rangatira* published a Declaration of Independence - *He Whakaputanga o Te Rangatiratanga o Nu Tirene* .[4]

1840, The Treaty of Waitangi

Between 1834 and 1840 British policy shifted from non-intervention to intervention.[5] The French in particular, but also the Americans and other European powers had an increasing presence in New Zealand waters and ports. Within Britain, the missionary and humanitarian lobbies were pushing hard for a negotiated and formalised British involvement. Even more urgent, planned colonisation was about to begin: by the end of 1839 the New Zealand Company in London and La Companie de Bordeaux et de Nantes had negotiated purchases of land and were recruiting settlers and loading ships.[6] To meet these pressures and to deal with the international legal implications of the very public events of 1834 a negotiated Treaty was essential.[7] Captain William Hobson, R.N. was sent to achieve this.

The English text of the Treaty was drafted by Hobson and James Busby from a brief provided by the Colonial Office. The Maori text was translated by missionaries Henry and Edmund Williams (Appendix 1). The first gathering was at Waitangi where more than 40 chiefs and some three hundred to five hundred other members of *iwi* and *hapu* were present

2 Orange 1987:19-20.
3 Orange 1987:20-21.
4 Orange 1987:20-21.
5 Orange 1987:19-38.
6 Hight and Straubel 1957:58-72.
7 Orange 1988:2.

along with officials, missionaries and European onlookers. The texts were read in full in both languages and the preamble and three articles were explained and debated in Maori. The debate among the Maori continued for five hours in the presence of the Europeans, then continued on into the night after the latter withdrew. By dawn there was a consensus among the *iwi* and *hapu* present that they would sign. Next day some 43 chiefs signed the Treaty on behalf of their tribes.

Copies of the Treaty were made and over the next eight months some forty similar meetings were held and more than five hundred signatures added (Figure 3). At the end of the process copies were taken back to England and published in English in the *London Gazette* in October 1840 so that all the world, not least the French, would be informed.

The Treaty was signed without coercion and as a result of careful discussion and debate in the Maori language. Many members of *iwi* and *hapu* were present at these discussions, and almost all of the chiefs who signed did so after careful consultation. Chiefs from a number of *iwi* and *hapu*, in particular the Arawa, Tuwharetoa and Tuhoe tribes in central North Island, refused to sign. Subsequent problems have, however, stemmed from two other factors and impacted on signatories and non signatories alike: on the one hand there are significant differences in the content of the English and Maori versions; on the other hand the implementation of the Treaty on the Crown side has devolved from London to New Zealand.

The initial outcomes were positive for both parties, more especially the British Crown and the settlers who migrated from the countries of the United Kingdom to the colonial settlements in New Zealand. Planned settlements were initiated in the 1840s and 1850s on opposite sides of Cook Strait and in the South Island (Figure 3) and there were large scale immigration and public works schemes in the 1870s. For a time in the 1840s and 1850s Maori prospered as the productive economy expanded and *hapu* and *iwi* were able to compete vigorously in such commercial activities as grain production, flour milling, land transport, construction and public works.[8] By the end of the 1850s the tide had turned. Legislative power and administrative decisions passed to the New Zealand House of Assembly which was dominated by merchants and settlers. The New Zealand Constitution Act, passed by the British Parliament in 1852, gave the responsibilities of government to an Assembly elected by males who held individual title to property. *Iwi* and *hapu* were thus marginalised in the political process.

Loss of land, loss of memory, loss of *kaitiakitanga*

The broad sweep of events between the 1850s and the 1970s is now being re-presented by a new generation of historians, Maori and Pakeha.[9] Claudia Orange provides a number of particularly helpful overviews with differing levels of detail.[10]

By the 1860s settler pressures and Maori resistance to forced land sales built up to the point where wars broke out, initially in Taranaki, then in Waikato and Bay of Plenty.[11] The overt points of conflict were the desire of Maori Tribes to retain land for subsistence and commercial production and to exercise full tribal authority within those lands, both topics on which the Treaty is very explicit. Government provoked conflict by building roads and massing troops and then proceeded to fight the wars on a cost plus basis:

8 Temm 1990:18-23.

9 Awatere 1984; Belich 1986; Biney, Bassett and Olssen 1990; Oliver and Williams 1981; Rice 1992; Walker 1987.

10 Orange 1987-90.

11 Belich 1986.

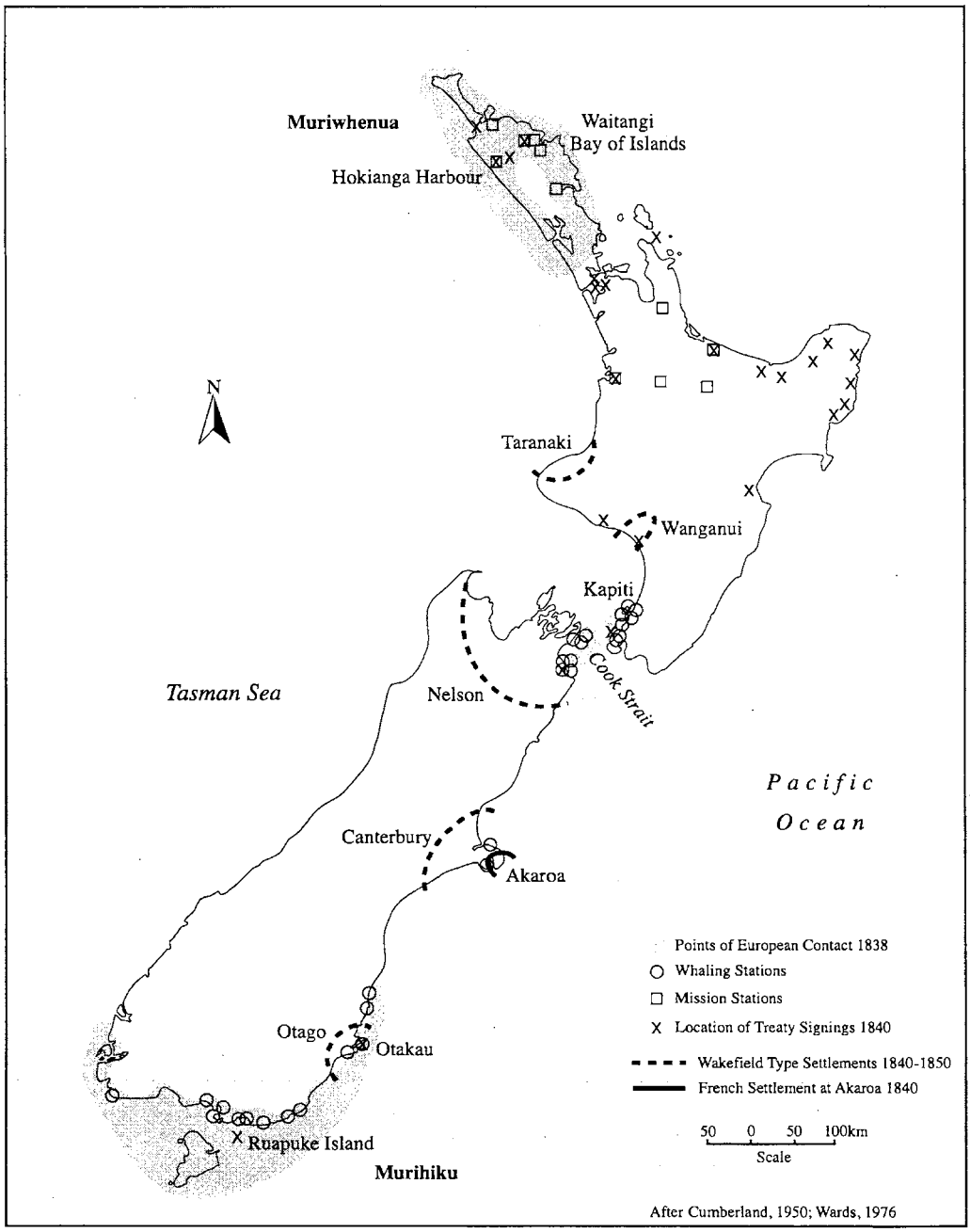

Figure 3. Aotearoa New Zealand: the context of the Treaty of Waitangi.

whatever the scale of tribal resistance, government was able to muster sufficient troops to win each of the wars and at the end of each confiscated lands sufficient to meet their expenses in full. Each step was carefully legitimated by the House of Assembly.[12]

As a result of the wars, some three million acres of land were confiscated and tribal authority was disrupted. What the settler government began by war was continued by legislation. The Native Land Court was set up in 1862 and title progressively shifted from tribes, to designated trustees, to individuals. The *iwi* and *hapu* who were parties to the treaty vanished as legal entitles able to own and control land. In the decades which followed, from the 1860s to the 1960s, some thirty million acres were lost through land sales made possible by the Native Land Court. Douglas Sinclair, writing about loss of land since the Treaty, subtitles his work "the nibble, the bite, the swallow". Wars and confiscations were the nibble; individualisation of title and the operation of the Native Land Court were the bite and the swallow.[13]

Claudia Orange describes the same decades as the years of loss of memory about the Treaty. The House of Assembly in New Zealand failed to incorporate the Treaty or its provisions into domestic law or take it into account in day to day decision making. The Courts followed the same lead. By 1877 Chief Justice Prendergast declared the Treaty to be a simple nullity with no standing in domestic law[14] As a result land and food gathering places were progressively removed from tribal control and government regulations intruded into all aspects of tribal life. Particularly significant was the exclusion of Maori tribes from the use and management of environmental resources. Their *kaitiakitanga* over land, food gathering places and water bodies was significantly diminished. The pakeha world view became dominant and Maori became marginalised in their own land. Loss of memory was, however, a pakeha phenomenon: Maori never forgot the Treaty.[15]

The Waitangi Tribunal Established 1975

The recovery of memory which took place in the 1970s was heralded by two events which took place in 1931 and nurtured by Maori participation in the Armed Services during World War II. In 1932 the Governor General and his wife, Lord and Lady Bledisloe, purchased the Treaty House at Waitangi and presented it as a gift to the nation[16] In the same year the Labour Party and the Ratana Party, the political wing of a Maori religious movement, formed a political alliance with the Treaty of Waitangi as its cornerstone. They were successful in the 1935 election and Labour moved quickly to implement social welfare and employment policies which were beneficial to Maori as well as European. More fundamental Treaty issues were not addressed for four more decades by which time pakeha awareness had changed and the Treaty House at Waitangi had become a focal point for protests and land marches.

The legislation to set up the Treaty of Waitangi Tribunal was passed by the Kirk-Rowling Labour Government in October 1975 after extended Committee hearings (Figure 2). Keith Sorrenson (1967), Paul Temm (1990), Bill Oliver (1991) and Evelyn Stokes (1992) provide interesting windows into the manner in which its operation and style of

12 Orange 1987:166-176.

13 Sinclair 1975:107-128.

14 Orange 1987:186-7.

15 Awatere 1975:56-74; Walker 1990:160-185; Orange 1987:185-225.

16 Cant 1992; Orange,1987:234.

working have evolved.[17] The Tribunal is empowered to hear claims by Maori, individually and collectively, that acts or omissions by the Crown have deprived them of their rights under the Treaty. As initially set up these powers were not retrospective: the Tribunal could investigate actions or policies from 1975 onwards; actions of the Crown between 1840 and the passing of the 1975 Act were outside its terms of reference.

The work of the Tribunal began slowly. It was initially made up of three members of whom only one, Graham Latimer, the nominee of the Minister of Maori Affairs, was Maori (Figure 4a). Its style of working was formal, its rituals were those of the Law Courts and it met in buildings unfamiliar to most claimants. Few claims were lodged in the 1970s and the Tribunal was slow to address significant issues. As Oliver comments, 'it was not expected to hear many claims, to meet often or to cost much'[18]

(a)	**1975**	**Chief Judge**	
	3 members	**Maori Land Court**	
	Nominee of Attorney General		**Nominee of Minister of Maori Affairs**
(b)	**1985**	**Chief Judge**	
	7 members	**Maori Land Court**	
	plus 6 members.	**Four of the seven to be Maori**	
(c)	**1988**	**Chief Judge**	
	16 members	**Maori Land Court**	
	plus 15 members.	**Multiple panels available.**	

Figure 4. Membership of the Treaty of Waitangi Tribunal, 1975-1993.

The claim by Joseph Hawke and other members of Ngati Whatua lodged in October, 1976 provides an example. The claimants had collected shellfish from a traditional area for a gathering to be hosted at Te Ongawhatu Marae and were apprehended and charged under the Fisheries Regulations (1950). The hearing by the Waitangi Tribunal took place on May 30 and June 1, 1977 and the Tribunal reported in March 1978. It declined to make any recommendation on the grounds that the claimants had not been prejudicially affected since the Magistrate's Court had chosen to enter no conviction[19] The larger issues were not

17 Sorrenson 1967; Temm 1990; Oliver 1991; Stokes 1992.

18 Oliver 1991:10.

19 Waitangi Tribunal 1978; Temm 1990:6; Oliver 1991:82-83.

considered by the Tribunal and were subsequently addressed by the High Court in 1986 when Tom Te Weehi appealed against a prosecution for similar actions in North Canterbury[20]

It is not surprising that the work of the Tribunal languished between 1975 and 1981: Maori people had no great confidence in its style of working; most of their concerns were out of bounds since they related to events prior to 1975; issues of importance for claimants were not directly addressed by the Tribunal.

The Tribunal Expands 1985-1988

Changes took place from 1981 onwards. Judge Gillanders Scott retired and Judge Edward Durie, of Rangitane and Ngati Kauwhata lineage, replaced him as Chief Judge of the Maori Land Court and Chairman of the Waitangi Tribunal. Shortly after the Attorney General nominated Paul Temm to join Durie and Latimer. Under Durie's leadership these three worked together to change the style and accessibility of the Tribunal[21] Hearings were now held on tribal marae as well as other public buildings, and when hearings were on a particular marae the protocol of that marae was followed. Claimants and witnesses were allowed to address the Tribunal in either Maori or English and translation was provided at the conclusion of each address. Ways of working used on the marae have now flowed over into hearings in other places: all parties concerned, tribunal, claimants, Crown representatives, other interested parties and members of the public share the same food in the same dining area during meal breaks. New procedures have been developed to ensure that equivalent standards of evidence are maintained in situations where cross examination is culturally inappropriate.

The new procedures were initiated in 1982 when the Tribunal met on Manukorihi Marae at Waitara in Taranaki to hear a claim brought by Te Ati Awa for protection of their fishing reefs and restoration of *kaitiakitanga* in the face of urban industrial pollution (Figures 5 and 6). They were significantly reinforced in 1984 when Ngati Pikiao, the *kaitiaki* of the Kaituna River, and Northern Tainui, *kaitiaki* of the Manukau Harbour adjacent to urban Auckland, brought their claims[22] As the new procedures were put in place confidence in the integrity of the Tribunal rose and the number of claims lodged increased. In the wider political arena protests and pressures for change had escalated further and the Lange-Palmer Labour Government, elected in 1984, passed a further Waitangi Tribunal Act in 1985. This act extended the powers of the tribunal to hear grievances dating back to 1840 and enlarged its membership from three to seven, four of whom would be Maori (Figure 4b). Some claims were resubmitted and a number of more complex claims, including the Ngai Tahu claim were lodged. By 1987 there were more than eighty claims awaiting settlement and Government recognised the need to provide multiple panels and parallel hearings. Since 1988 there have been sixteen tribunal members (Figure 4c). By that date the Tribunal had demonstrated a very effective bicultural style of working and the requirement for a Maori majority was deleted.

The sequence of claims heard between 1975 and 1993 is shown in Figure 5. Oliver groups them into three main clusters: reclaiming the waters; reclaiming the land; reclaiming the language[23] A number of claims incorporate two or three of these

20 Te Weehi v Regional Fisheries Officer 1986. Compare Regina v White and Bob 1964; Sparrow v Regina 1986.

21 Temm 1990:6-12; Sorenson 1987:176; Oliver 1991:10-17.

22 Waitangi Tribunal 1983, 1984, 1985.

23 Oliver 1991.

components and there are, in addition, significant claims which focus on fisheries and minerals. Underneath all the claims is a reassertion of Maori values: *mana* is to be affirmed and *kaitiakitanga* is to be recovered. In the sections which follow I explore selected examples which provide a basis for further comments on the significance and style of working of the Tribunal. The first set of examples are selected from the water related claims grouped together by Oliver. The second is the Ngai Tahu claim with a multiplicity of separate components.

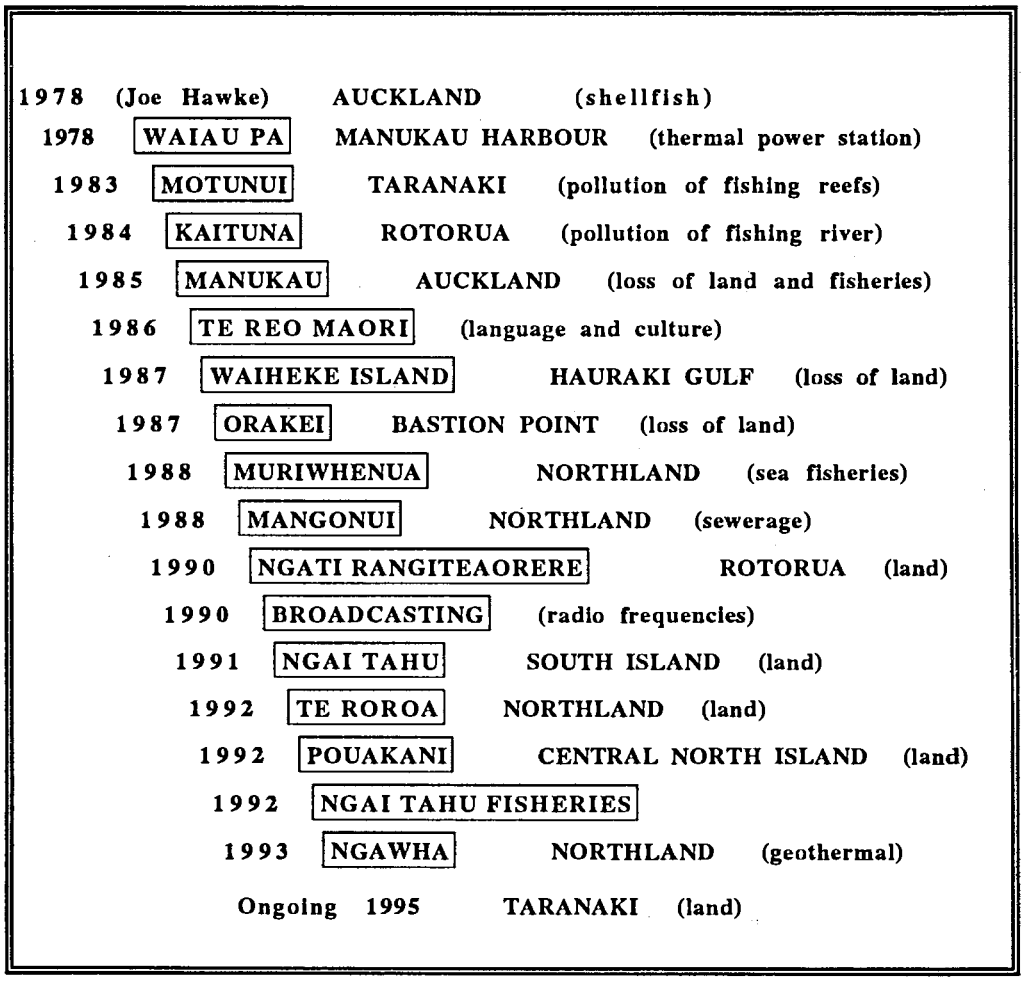

Figure 5. Claims heard by the Waitangi Tribunal 1975-1995.

'Reclaiming the Waters'

(a) Waiau Pa

The Waiau Pa claim which opens the suite of water related claims may seem inconsequential. It did little to raise the profile of the Tribunal or establish its credibility

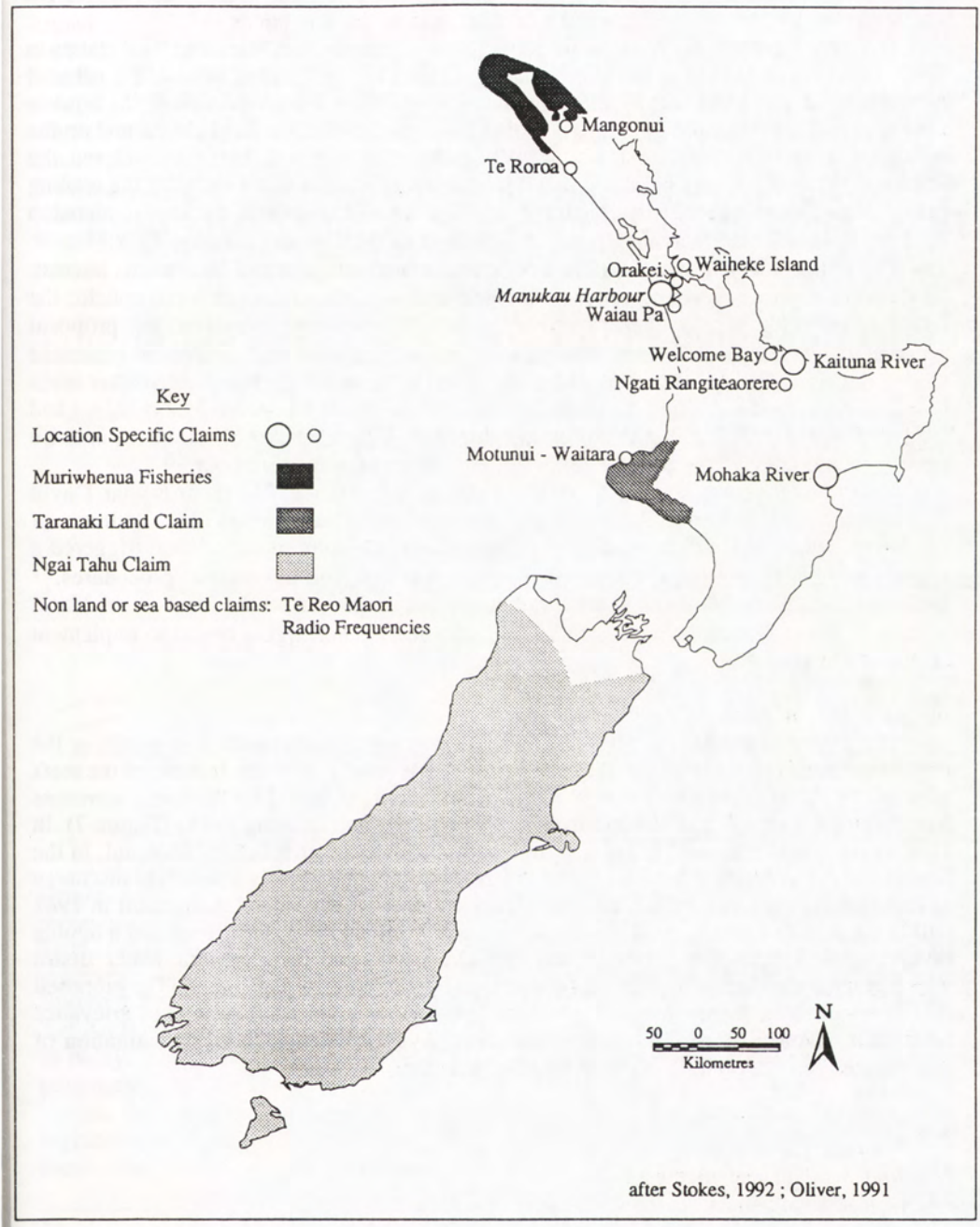

Figure 6. Location of Claims to the Waitangi Tribunal 1975-1993

among Maori people. The claim was triggered by the New Zealand Electricity Department when it initiated proposals to build a Thermal ElectricPower Station near Waiau Pa on the shores of the Manukau Harbour. The Power Station would be close to the Maori settlement and some 560 hectares of tidal mudflat would be used for cooling ponds.

Ted Kirkwood and the Waikato subtribes living adjacent to the Manukau filed claims in 1977. Hearings were held in the Intercontinental Hotel in Auckland in front of the tribunal of three. Evidence presented by the claimants focused on the deterioration of the aquatic environment and the impact which this would have on shellfish, on food chains and on the pelagic fish in the Manukau Harbour. While the evidence was being considered the Regional Water Authority indicated that it would not approve a water right for the cooling ponds. New Zealand Electricity Department, weighing up the options, decided to abandon the proposal before the Waitangi Tribunal published its findings in February, 1978.[24]

The Tribunal Report contained no recommendations and generated little media interest. Its findings however, were significant: the grievances of the claimants were upheld; the fisheries resource would be seriously diminished by cooling ponds if the proposal proceeded.[25] Equally important was the level of political skill and awareness generated among the Northern Tainui people who participated in the hearings. Ranginui Walker notes how Ted Kirkwood identified the ongoing nature of the conflict between Maori values and industrial development and shared his insights with Mrs Nganeko Minhinnick, soon to emerge as 'the voice of the *kaitiaki*', the guardians of the Manukau Harbour.[26]

Walker uncovers a second link of long term importance. He records that David Williams, Lecturer in Law at Auckland University, attended the hearings in the ballroom of the Intercontinental Hotel in Auckland. This incongruent cultural experience triggered a version of how things could be, freed from court rituals and adversarial procedures.[27] Williams formalised his ideas in a memorandum which he sent to the Minister of Maori Affairs.[28] What Williams visioned in 1977, Durie and his colleagues began to implement at Waitara in 1982.

(b) Motunui - Waitara

Aila Taylor of the Ati Awa tribe in Taranaki was not daunted by the low profile or the limited terms of reference of the Tribunal in 1981. His people were the *kaitiaki* of the reefs adjacent to the Waitara River mouth which were heavily polluted by domestic sewerage from Waitara Borough and effluent from a meat packing and freezing works (Figure 7). In 1980 Government proposed to build a large petrochemical plant at nearby Motunui. In the face of Ati Awa objections, the Regional Water Board granted Syngas a permit to discharge effluent into the sea east of Waitara. Aila Taylor and Ati Awa lodged their claim in 1981 within the terms of reference of the 1975 Waitangi Tribunal Act. The Crown had a double involvement: Syngas was partly owned by Government and the Regional Water Board which granted the discharge right was constituted by Government legislation. The proposed outfall would pollute their remaining fishing reefs. Three significant strands of grievance were interwoven: loss of food gathering rights; physical and spiritual contamination of water bodies; exclusion from decision-making processes.

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24 Waitangi Tribunal 1978.

25 Waitangi Trubunal 1978:6-19.

26 Walker 1990:250-51.

27 cf. Berger 1977.

28 Walker 1990:245.

The Tribunal sat at the Manukorihi Marae in 1982 and heard evidence from Ati Awa *kaumatua,* from scientists, planners and other interested parties, including Syngas and environmental groups.[29] Equal attention was given to scientific evidence and traditional knowledge. In their findings the tribunal decided that both texts of the Treaty provided solid support for the claimants: the English version was very specific about fisheries while the Maori version made a very explicit link between *tino rangatiratanga,* the exercise of tribal control, and *taonga* which included food gathering places. The Motunui reefs were places where the *kaitiakitanga* of Ati Awa should berecognised but the processes of legislation and local authority decision making had failed to recognise this. The water pollution which resulted was spiritually and culturally offensive as well as physically hazardous. The planning and decision-making process controlled by Government through the Regional Water Board was largely to blame.

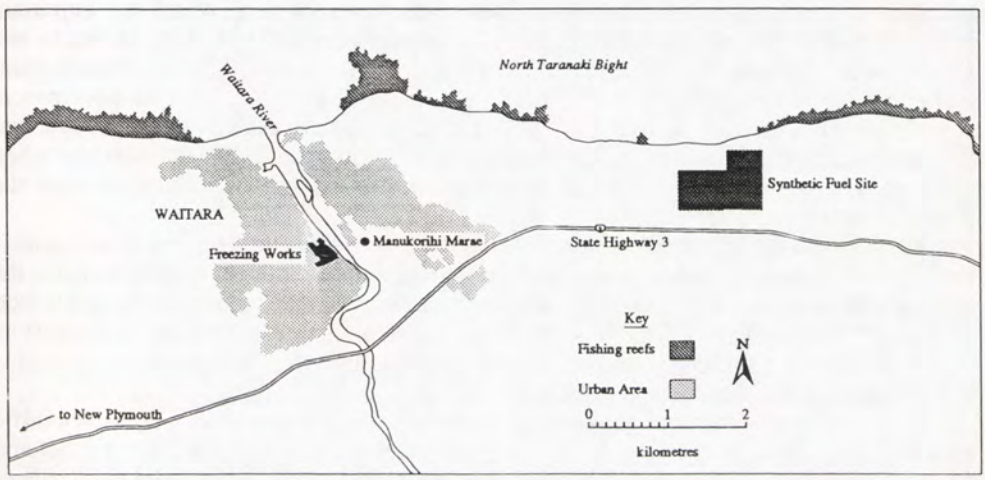

Figure 7. The Motunui-Waitara Claim

The Motunui-Waitara Report is a short but substantial document.[30] The Tribunal firmly took the legal and moral high ground and balanced this with pragmatic recommendations designed to avoid any sort of winners and losers confrontation. In the local context they recommended that the Syngas plant be allowed to proceed without the discharge into the sea. In the short term the effluent could be channelled into the Waitara Borough Scheme, while a long term solution was worked out. Syngas, Waitara Borough and Ati Awa would work together to find an answer and create a better environment for all to enjoy. *Kaitiakitanga* would be restored by involving the local *iwi* in the search for pragmatic local solutions.

At the national level the Report pointed out deficiencies in fisheries and planning legislation and recommended that the appropriate Government Ministers move to address these. The scale and substance of the Motunui report took the Government of the day by

29 Waitangi Tribunal 1983.

30 Waitangi Tribunal 1983.

surprise. The immediate reaction of Prime Minister Muldoon was to reject both the findings and the recommendations and affirm the priority of large scale energy developments over Maori and environmental concerns. Green issues were firmly on the national agenda and media opinion had moved decisively. There was widespread and sustained support for the Tribunal and the environmental and cultural issues addressed in its report. Muldoon recognised that he had misread public opinion and backed down. His Ministers began to implement the recommendations.

(c) Kaituna River

In July 1984 the Waitangi Tribunal made up of Durie, Latimer and Temm was convened at Te Takinga Marae, near Rotorua, to hear a claim brought by Sir Charles Bennett and other *kaumatua* of Ngati Pikiao. They were the guardians of the Kaituna River, its waters and its riverbank resources which provided food, recreation and plants for handicrafts. Again the focus was on water quality: Rotorua City had an effluent disposal problem : sewerage had been flushed into Lake Rotorua to the point where this important national amenity became eutrophic (Figure 8). The engineers in the Ministry of Works and Development decided that the best solution was to bypass the lake, build a treatment plant and pump the effluent from that into the Kaituna River. Offered a $7 to $1 government subsidy on the total cost, Rotorua City was strongly attracted to the Ministry scheme and supported an application to the Regional Water Board. Ngati Pikiao objected when discharge rights were applied for and lodged a claim to the Waitangi Tribunal when the discharge rights were granted.

The Kaituna Claim raised similar issues to the Motunui Claim. Not just water quality, medical hazards and the loss of a significant economic and recreational amenity but also the spiritual contamination which occurs when body wastes are mixed with waters used for food gathering[31] Related to this is the loss of *tino rangatiratanga* as tribal control is usurped by the Regional Water Board and exclusion from *kaitiakitanga* when the guardians are unable to exercise their traditional responsibilities.

In its report the Tribunal gave substantial weight to traditional as well as scientific evidence, spent time unravelling the bureaucratic processes which created the conflict and directed attention to alternative methods of waste disposal which might meet the needs of the city and protect the rights of the Maori claimants. The legal and historical basis for their finding was clearly set out and two main strands of recommendation made. Rotorua District Council should be allowed to investigate a land based solution to the effluent problem whereby the organic residues would be sprayed onto a large area of exotic pine forest. The Minister of Works and Development was asked to review the Water and Soil Conservation Act in order to incorporate Maori spiritual and cultural values into the process of hearing and granting water rights (Appendix 2).

The pragmatic local recommendation produced a winner and winner situation. Ngati Pikiao took up the initiative and pointed the attention of the Rotorua District Council to a number of viable alternatives, all land based[32] The Ministry of Works and Development agreed to redirect its subsidy. By May 1991 the District had an operating scheme which is economically and environmentally superior to the initial proposal.[33]

At the national scale the Government had changed. Geoffrey Palmer, incoming Minister of Works and Development and Attorney General for the new Labour Government,

31 Waitangi Tribunal 1984:7-11.

32 Parliamentary Commissioner for the Environment 1988:53-54.

33 Oliver 1991:96.

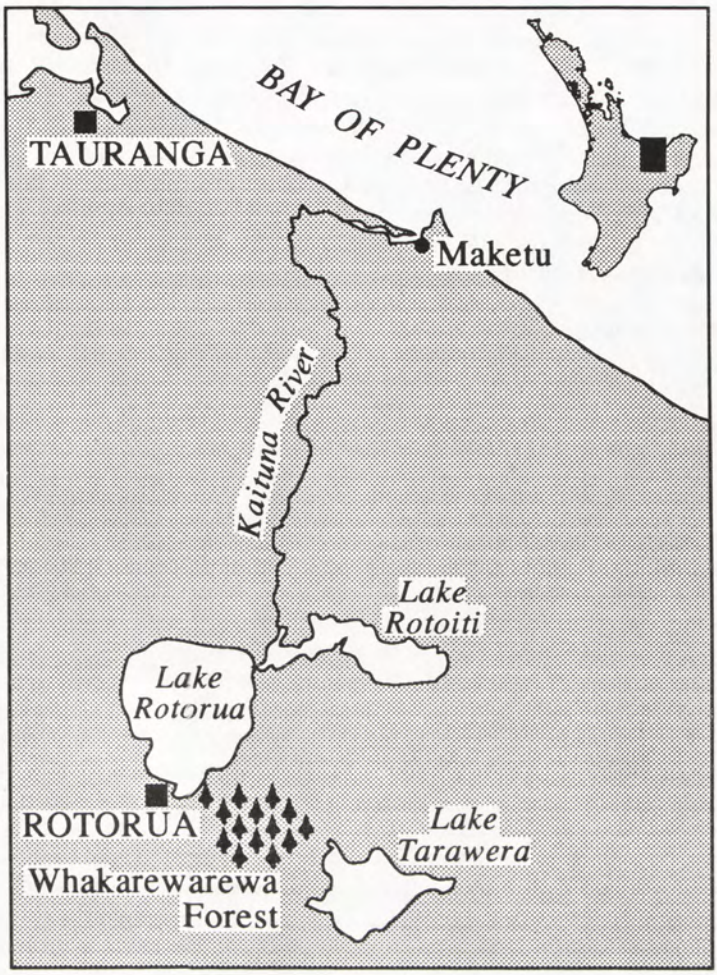

Figure 8: The Kaituna River Claim

took up the challenge posed by the Waitangi Tribunal. An extensive process of Resource Management Law Reform was initiated in 1984. The recommendations of the Tribunal and the personal insights of claimants such as Aila Taylor and Nganeko Minhinnick became a significant part of that process.

The Motunui and Kaituna reports together provide windows into the style of working which the Waitangi Tribunal evolved in the first half of the 1980s. The *mana* of the Tribunal was quietly established and expanded with each successive week of hearing as claimants, Crown, expert witnesses and other interested parties made their inputs. The implications of the Tribunal's mandate and the interplay between the English and Maori texts of the Treaty were progressively explored in the context of particular claims and reported in successive findings.

What the Motunui and Kaituna claims began, the more complex Manukau Claim, lodged by Nganeko Minhinnick and her fellow *kaitiaki* in 1983, continued.[34] The combination of water related claims and the limitation in terms of reference to contemporary actions of Government gave a creative focus to the work of the Tribunal at this early stage. In this situation the relationship between the Treaty and current legislation came under close scrutiny. The Tribunal was low key and pragmatic in the manner in which it addressed specific local problems. By avoiding major confrontations at this level it was able to have a significant impact on medium term issues such as planning and environmental law and raise significant questions as to ways in which *hapu* and *iwi* can participate in local and regional government.

The Ngai Tahu Claim

The Ngai Tahu Claim is significant in its own right and, in addition, provides insights into a style of working which characterises the Waitangi Tribunal in its second decade of operation. The Ngai Tahu Claim is wide-ranging and extensive. It has a strong focus on land and involves grievances dating back to 1844 and voiced to the Crown from 1848 onwards. A common strand running through all the components of the claim is the very intense relationships between Ngai Tahu, their lands and food gathering places, and their role as *kaitiaki* or guardians of land and resources.[35]

Ngai Tahu are the *kaitiaki* for an area which embraces some eighty per cent of the South Island, more than half of the land area of New Zealand. Their claim, lodged in 1986 with the new legislation in position, was heard by a panel of seven members chaired by Deputy Chief Judge Ashley McHugh. The hearings extended over 27 months between August 1987 and October 1989. The typical pattern was for the Tribunal to hear evidence for one week each month with the intervening weeks being made available to all parties for preparation and scrutiny of material presented. The style of hearing followed that evolved under the chairmanship of Chief Judge Edward Durie: when the claimants were presenting detailed evidence hearings were held on *marae* in the various parts of the Ngai Tahu domain or *rohe* (Figure 9). When the Crown and other parties were presenting material the venues selected matched the ethos of the groups involved, for example school or university halls, conference rooms attached to motor hotels or commercial associations and community buildings such as a rugby club hall.[36] The Tribunal also developed a system whereby written commentaries could be lodged and answered as an alternative to cross examination of evidence. This ensured that evidence came under appropriate scrutiny and examination without introducing an adversarial component into the proceedings.[37]

34 Waitangi Tribunal 1985; Walker 1990:250-253; Oliver 1991:23-27.

35 Waitangi Tribunal 1991; O'Regan 1989.

36 Waitangi Tribunal 1991:18-19.

37 Waitangi Tribunal 1991:20-21.

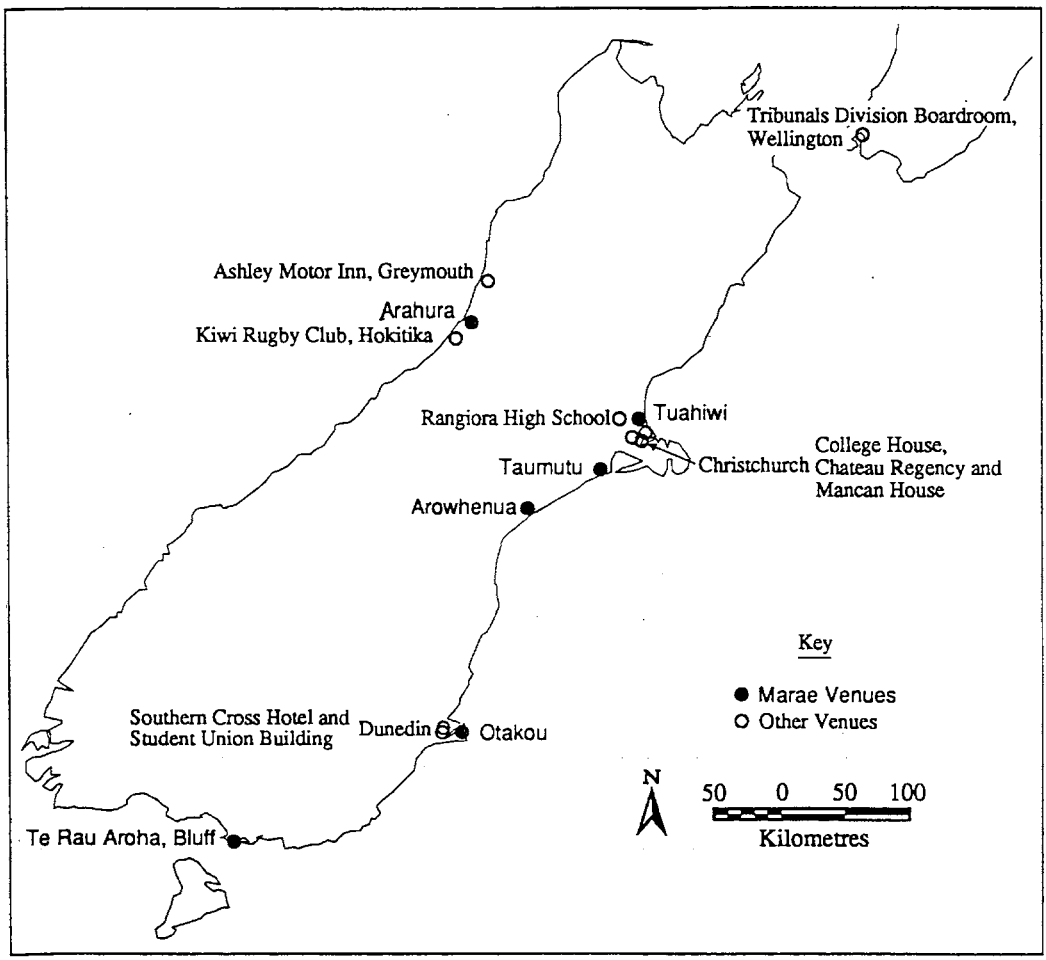

Figure 9. The Ngai Tahu Claim: Venues for Public Hearings 1987-1989

'The Nine Tall Trees'

The claim involved sets of grievances relating to a sequence of eight land purchases made by agents of the Crown between 1844 and 1864 (Figure 10). There were, in addition, a set of grievances relating to the loss of food gathering places, *mahinga kai,* in all eight areas. As the hearings progressed and the Tribunal visited the *marae* shown in Figure 9, local grievances were presented by claimants and received by the Tribunal as additions to the main claim. By October 1989 some 108 ancillary claims had been added. Mr Paul Temm, now Counsel for Ngai Tahu, used strongly visual imagery to embrace and organise all of this diverse material. The nine geographic components were described as the nine tall trees; the 73 separate grievances associated with these trees were identified as the branches while the multiplicity of ancillary claims became the undergrowth. The Tribunal accepted this imagery and used it to good advantage in the months that followed.

A number of grievances were common to eight of the tall trees: there were concerns about the manner in which each purchase was negotiated and there were concerns that the reserves which were eventually designated were too small to provide an adequate economic base for present and future generations and too few to protect the *mahinga kai,* the food gathering places and their resources in rivers, lakes, lagoons, forests and wetlands. This latter concern is repeated when the ninth tall tree is addressed under the heading of *mahinga kai.*

There were some specific concerns associated with particular claims. *Pounamu,* a form of greenstone or jade, found especially in the Arahura River valley on the West Coast, was a *taonga* or treasure of special importance for all Maori. Poutini Ngai Tahu were adamant that they had not sold it along with the land and were aggrieved when inadequate reserves were designated to protect it. Poutini Ngai Tahu were also aggrieved when their reserves, including a 500 acre block of urban land in Greymouth, were taken out of their effective control by Acts of Parliament and converted into perpetual leasehold with fixed rentals and automatic right of renewal.[38]

In three instances there were claims that substantial areas of land had not been covered in any of the purchases. The largest of these, described as 'the hole in the middle' referred to the area of the Kemp Purchase between the foothills and the main divide (Figure 10). This includes land occupied by pastoral sheep runs held on licence from the Crown, a number of large mountain lakes used for hydro-electric power generation, and high mountains which play a significant role in the Aoraki Creation legend. In the southwest the area known to other New Zealanders as Fjordland similarly plays an important role in the Rakaihautu Creation legend. Large parts of both these areas are now included in National Parks. Closer to urban Christchurch there are important areas in and adjacent to Banks Peninsula, which were left out of the Kemp Purchase while the situation of the French at Akaroa was clarified. Some but not all of these latter areas were included in the Port Levy, Port Cooper and Akaroa purchases.

38 Waitangi Tribunal 1991:121-142.

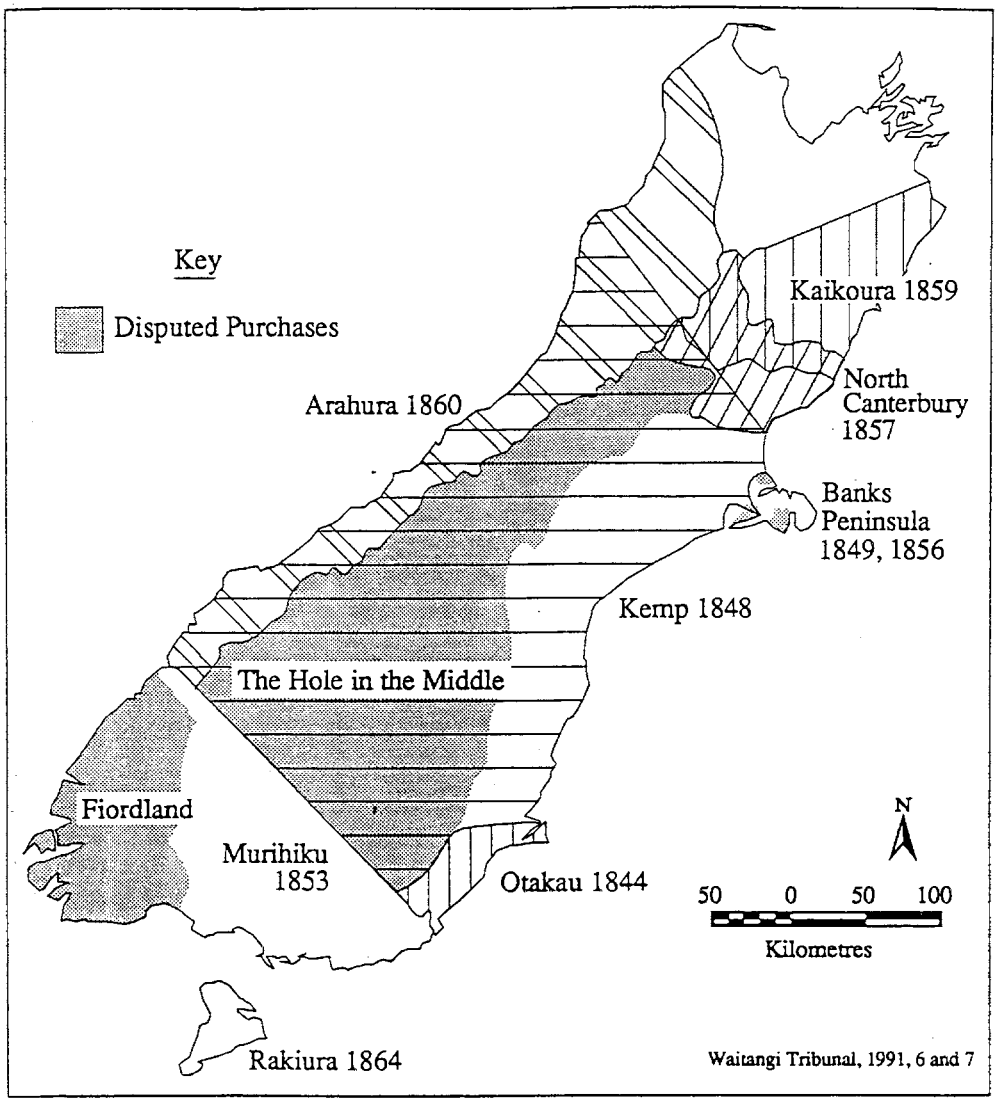

Figure 10. The Nine Tall Trees of the Ngai Tahu Claim: the land purchases and the areas which the Claimants maintained were not included.

The Ngai Tahu Reports

The findings of the Waitangi Tribunal on the Ngai Tahu claim have been separated into three reports. In November, 1988, well into the second year of hearings, the Tribunal was aware that its recommendations on sea fisheries contained in the Muriwhenua Fishing Report, 1988 (Figure 6) were the subject of actions in the High Court and the Court of Appeal.[39] Aware of specific issues of propriety and wider questions of cost and convenience, the Waitangi Tribunal considered suspending its work on sea fisheries and discussed this possibility with the claimants, the Crown and other parties including the Fishing Industry.[40] The consensus then was to continue hearings and include sea fisheries in the main report. By May 1990 circumstances had changed and certain High Court proceedings were adjourned: at that point the Fishing Industry sought permission for additional evidence, prepared for the High Court, to be presented to the Waitangi Tribunal. The other parties agreed and the Ngai Tahu Sea Fisheries hearings were resumed in June and September 1991.[41] In this manner the sea fisheries component became separated from the remainder of the Ngai Tahu Report.

The first of the Ngai Tahu Reports, presented to the Minister of Maori Affairs in February 1991, deals with the 'nine tall trees' and 73 related grievances. It is published in three volumes and runs to 1254 pages. The second report, entitled Ngai Tahu Sea Fisheries Report, was presented in 1992 and is 407 pages long.[42] A third report dealing with the 'undergrowth' was presented in 1995 when investigation of these ancillary claims was completed.[43] After 145 years of grievance the *mana* of Ngai Tahu and the Crown has been affirmed: the evidence has been presented in full and assessed by the Tribunal. The stage is set for Ngai Tahu and the Crown to negotiate a settlement. The process which has been set in motion by the 1991 report provides the opportunity for a new and significant relationship between Ngai Tahu and the Crown and an important window into the present role and style of working of the Waitangi Tribunal.

Style of Working II

In the 1980s, as evidenced by the Motunui and Kaituna Reports discussed above, the Waitangi Tribunal made detailed recommendations to Government. Some of these recommendations addressed immediate local problems and suggested remedies; other recommendations were directed to the wider responsibilities of Government in the legislative, planning and resource management fields. By the time the first Ngai Tahu Report was completed in 1991 the style of working had changed. Tribunal, Crown and claimants had each played their part in moving towards a new way of identifying and implementing remedies.

The Ngai Tahu Report, 1991 is designed to provide a common baseline for face to face negotiations between tribe and government. Recommendations are minimal and are directed to a small proportion of the grievances upheld: some are directed to aspects of the claim where immediate action is needed, for example the ownership of *pounamu;* some are directed to areas where legislation is needed to embrace concerns common to a number of tribes, for example the perpetual leases of Maori Reserve Land; some are directed to the

39 Waitangi Tribunal 1988; Renwick 1990:62-73.

40 Waitangi Tribunal 1991:26.

41 Waitangi Tribunal 1992a:6-8.

42 Waitangi Tribunal 1992a.

43 Waitangi Tribunal 1995.

protection and joint management of important *mahinga kai* resources such as Wairewa (Lake Ellesmere). There are, in addition, recommendations designed to reimburse Ngai Tahu for some of the costs involved in presenting the claim and a recommendation that the Crown grant the sum of $1 million to enable the Ngai Tahu Trust Board to fund its negotiations for a settlement.[44]

The Baseline for Remedies

The larger efforts of the Waitangi Tribunal have been directed to establishing the factual baseline and providing an appropriate moral climate for negotiations on remedies. The factual baseline is provided in the 25 chapter report which summarises the evidence and explores the balance of probabilities for contentious issues such as 'the hole in the middle' (Figure 10). Each of the 73 grievances is carefully assessed: some, such as the Crown's failure to set aside adequate reserves for present and future generations of Ngai Tahu, were conceded by Crown, counsel and researchers during the hearings; of the others some are sustained and some are not sustained. The 'hole in the middle' and the exclusion of Fjordland from the Murihiku purchase of 1853 are not sustained. The non purchase of 28,000 acres of Banks Peninsula and the non purchase of the *pounamu* resources of Poutini Ngai Tahu are sustained.

The most substantial areas where grievances are upheld and where remedies must be negotiated relate to reserves. The Crown purchased more than 34 million acres of land for less than $30,000. In the words of the preface to the report:-

> This claim is not primarily about the inadequacy of price that Ngai Tahu was paid .... Ngai Tahu had certainly a sense of grievance about the paucity of payment they received for their land but then Ngai Tahu have always regarded the purchase price not as a properly assessed market value consideration in the European concept but rather as a deposit; a token, a gratuity. Ngai Tahu understanding and the substance of their expectations was that they agreed to share their resources with the settler. Each would learn from the other. There was an expectation that Ngai Tahu would participate in and enjoy the benefits that would flow from the settlement of their land. As part of that expectation they wished to retain sufficient land to protect their food resources. They expected to be provided with, or to have excluded from the sale, adequate endowments that would enable them to engage in the new developing pastoral and commercial economy.[45]

The reserves set aside did not permit this. On the balance of evidence presented to it, the Tribunal estimates that there were 3,000 Ngai Tahu living in the 1840s in which case they received less than 13 acres each.[46] The Crown had failed to meet its Treaty obligations and Ngai Tahu, the *tangata whenua,* were reduced to subsistence.

> Their *rangatiratanga* denied; their future both tribally and individually bleak; their Treaty rights ignored. All this with the knowledge or connivance of successive governors acting on behalf of the Crown.[47]

The Crown was equally culpable when it came to protecting *mahinga kai* or food gathering places. Its agents failed to understand the working of the Ngai Tahu domestic economy and the importance of rivers, streams, lagoons and wetlands. In spite of repeated protests they failed to set aside sufficient reserves to protect these special *taonga.* As a

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44 Waitangi Tribunal 1991:174.

45 Waitangi Tribunal 1991:xv .

46 Waitangi Tribunal 1991:828.

47 Waitangi Tribunal 1991:830.

result farming, drainage, public works, pollution and the introduction of exotic fish and birds diminished the quality and quantity of food resources. Had Ngai Tahu been granted a place in decision-making, many of these problems could have been prevented. The Tribunal found that the reserves were inadequate to protect *mahinga kai* and provide Ngai Tahu with a base to participate in the larger economy.[48]

The Climate for Negotiations

The ethos and the *wairua* of the Waitangi Tribunal and the cumulative impact of its reports were significant parts of a larger configuration which stressed co-operation and negotiation and a common search for truth rather than adversarial styles of challenge and falsification. The Court of Appeal and a number of government departments responded positively when Treaty issues were placed on their agenda.[49] The Judges of the Court of Appeal examined the texts of the Treaty and all available reports of the Waitangi Tribunal and drew on parallel experience in Canada and the United States of America before setting out their 'Principles of the Treaty of Waitangi'. These stressed partnership, consultation and reasonable co-operation and underscored the need for the Pakeha and Maori Treaty partners 'to act towards each other reasonably and with the utmost good faith'.[50] The Lange Government, in July 1989, formalised its response when it published 'Principles for Crown action on the Treaty of Waitangi' setting out the Crown's obligations to govern and at the same time recognising *rangatiratanga,* equality, co-operation and a responsibility to redress grievances.[51]

As the Ngai Tahu hearings proceeded it became clear that Crown and claimants had each taken up the challenge implicit in the new style of working. Each party recognised and affirmed the integrity of the other: the *mana* of Ngai Tahu was carefully balanced against the honour of the Crown. Ngai Tahu produced a team of counsel and researchers who were strongly bicultural and the Crown actively pursued a policy of presenting all of the evidence which its researchers were able to uncover. None of this precluded concurrent actions in the courts over fishing rights, vigorous Ngai Tahu defence of its northern boundaries in the face of tribal cross claims or testy exchanges between claimants and Crown when there were disagreements on topics such as the definitions of 'fisheries' and *'mahinga kai'.* Overall the *wairua* of the Tribunal and the various *marae* prevailed: the extended family of those who were part of the hearings for 27 months travelled together, lived together and held together. The stage was set for the Tribunal to continue and refine a style of working initiated with the Muriwhenua Fisheries Report (1988). The Tribunal would report on grievances; *iwi* and Crown would negotiate remedies.

The Ngai Tahu Report, as discussed above, provides a framework for detailed, face to face negotiations involving a number of different agencies of government. On the Crown side negotiations are carefully co-ordinated by a Crown Task Force on Waitangi Issues convened by the Minister of Justice and including the Attorney-General and the Ministers of Finance, State Owned Enterprises and Maori Affairs.[52] On the Ngai Tahu side the Ngai Tahu Maori Trust Board negotiates on behalf of Ngai Tahu *iwi* and *hapu.*

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48 Waitangi Tribunal 1991:Chapter 17.

49 New Zealand Court of Appeal 1987; Parliamentary Commissioner for the Environment 1988; Committee on a Maori Perspective for the Department of Social Welfare 1986; Royal Commission on Social Policy 1988.

50 New Zeland Court of Appeal 1987:44; Renwick 1990:56-61.

51 Department of Justice 1989; Renwick 1990:127-133.

52 Renwick 1990:132-3.

With sea fisheries the subject of separate, multi-tribal negotiations, the main focus moved to land and *mahinga kai;* on reservations never made and purchases inadequately paid for. In the words of Judge Ashley McHugh in his closing address, the Tribunal has avoided 'specific recommendations as to the quantum of compensation payable or parcels of land that should be returned to Maori ownership'.[53] It has, instead, been very intentional in providing a number of examples which make it very clear to the Crown, the claimants and the public at large, the order of magnitude of the injustices involved. In the Otakau block, for example, the Ngai Tahu residents were left with less than 30 acres per head. By contrast pakeha settler John Jones was awarded 11,060 acres after prolonged dispute. Averaged over himself, his wife and their nine children, this represented more than 1000 acres per head.[54] At a more global level the 12.5 acres per head reserved for Ngai Tahu is compared with the 1133 acres per head which would have met guidelines used by the New Zealand Company in its pre Treaty publicity.[55]

Negotiations Proceed/Negotiations are Suspended

Negotiations between Ngai Tahu and the Bolger National Government proceeded during 1992 and 1993. The parties were moving towards a settlement of the claim when the 1993 Elections intervened. The Bolger Government remained in power but its majority was substantially reduced and the electorate had voted for a system of Mixed Member Proportional Representation to take effect from the following election. Government reassessed the ability of the Crown to pay compensation and published proposals to introduce a Fiscal Envelope which would cap the national total of Treaty Settlements at $1 billion.[56] Ngai Tahu, with the largest claim, would be most affected. The Government also reshaped its negotiating teams.

Negotiations slowed during 1994 and were suspended when Ngai Tahu rejected an interim offer by the Crown. At that point Ngai Tahu requested the Tribunal to reconvene and went to the Courts to prevent the Government from disposing of Crown Forestry and other assets. The political climate has changed in the short term and it is not clear when or if negotiations for a Ngai Tahu Settlement will be resumed.

The Waitangi Tribunal: an Assessment

The year 1993, ten years after the publication of the Motunui Report, provided an appropriate date to overview the working of the Waitangi Tribunal. It had firmly established itself as an even handed, accessible and patient forum for Maori grievances to be explored in depth and in detail. At every point the Tribunal has been meticulous in weighing up the evidence brought to it by claimants and Crown. Its own researchers, staff and commissioned, have widened the pool of knowledge and it has been open to receive the evidence and listen to the concerns of other parties. At every point it has recognised that the Treaty of Waitangi, signed in many different places over a period of eight months in 1840, was a compact between Crown and *iwi.* All of its internal procedures and each of its published reports are based on the recognition that the honour of the Crown and the *mana* of the *iwi* must each be affirmed by the outcomes of the claims process.

During the period under review the Tribunal has worked biculturally drawing widely on the political skills and the day to day courtesies of both cultures. It has animated a process

53 Waitangi Tribunal 1991:1219.

54 Waitangi Tribunal 1991:43.

55 Waitangi Tribunal 1991:829.

56 Office of Treaty Settlements 1994.

which has drawn together a great diversity of people with a wide range of historical, legal, cultural, scientific and practical skills. It has drawn evenly on both cultures and endeavoured to avoid any suggestion that the insights or priorities of one culture should give ground to those of the other culture. It has frequently tapped in to the pool of good will available in both cultures and mostly, but not always, avoided head on collisions with the ill will that has accumulated during 150 years of uneven development.

The fact that the Tribunal is unable to make binding recommendations has proved to be one of its strengths. Its impact is the result, not of its legal authority but its skills of analysis and synthesis and its ability to cumulate historical and legal evidence.[57] It has drawn on legal insights and precedents from Canada and the United States of America. Equally important, it has used an awareness of Canadian process to affirm ways of working which seemed to it to be culturally appropriate in the New Zealand context. Its main strengths have come out of process and performance. Its *wairua* has expanded and its *mana* consolidated with each successive hearing.

The Maori language title of the Waitangi Tribunal is *Te ropu whakamana te Tiriti.* Its achievements redirect New Zealand, Crown and people, to the partnership inherent in that founding document. The Waitangi Tribunal identifies injustice and unravels grievances, but its intention is not to dwell on the past. To use the words of Edward Taihakurei Durie, it enables us 'to move beyond guilt and ask what can be done now and in the future'. The Treaty is seen as a living document, always speaking. The ethos of the Tribunal is '(to release) the Treaty to the Modern World, where it begs to be reaffirmed, (to unshackle it) from the ghosts of an uncertain past'.[58]

A 1995 Perspective

The future of the Treaty settlement process is still uncertain. Government has recently completed a direct settlement with Tainui in the North Island but progress with Tribunal claims has slowed to the point where the mana of the Tribunal and the honour of the Crown are at risk. The Waitangi Tribunal is now seriously underresourced and understaffed. The Fiscal Envelope proposals have been widely rejected by Maori but reconfirmed in the 1995 Budget.

In this context *iwi* are biding their time and weighing up their options; awaiting the outcome of elections in 1995 or 1996 and preparing, if necessary, to move away from Tribunal and negotiating table into the Courts.

Editor's Note, November 1996.

The political situation in New Zealand changed when the formation of a United Party gave the Bolger government a clear majority for the remainder of its term. Negotiations between the Crown and Ngai Tahu resumed in June 1996 and an Agreement-in-Principle was signed on October 4th, seven days before the 1996 General Election. The agreement is a basket of remedies involving land, cash, co-management, place names and a formal apology by the Crown.

57 cf. Renwick,1990:136; Stokes 1992:182-184.

58 Waitangi Tribunal 1987:86 cited by Renwick 1990:135; Royal Commission on Social Policy 1988:3, 1, 79-127.

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Appendix 1. Maori and English Texts of Te Tiriti o Waitangi

Te Tiriti

KO WIKITORIA, te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenau, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kea tukua mai tetahi Rangatira-hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaaetia e nga Rangatira maori te kawana-tanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.
Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kau ai nga kino e puta mai ki te tangata Maori ki te Pakeha a noho ture kore ana.
Ng, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani a tukua aianei amua atu ke te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuino o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarita ka wakaae ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tukuiki te Kuini te hokonga o era wahi wenua e pai ai te tangata mona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawana-tanga o te Kuini-Ki tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki, nga tangata o Ingarani.
(signed) WILLIAM HOBSON Consul and Leiutenant-Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga enei kopu ka tangohia ka wakaaetia katoatia e matou, koia ka tonungia ai o matoa ingoa o matou tohu.
Ka meatia tenei ki Waitangi i te ono o nga ra Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.
Ko nga Rangatira o te wakaminenga.

Treaty of Waitangi Amendment 1985, Schedule

The Treaty

HER MAJESTY VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, regarding with Her royal favour the Native Chiefs and Tribes in New Zealand, and anxious to protect their just rights and property, and to secure to them the enjoyment of peace and good order, has deemed it necessary, in consequence of the great number of Her Majesty's

subjects who have already settled in New Zealand, and the rapid extension of emigration both from Europe and Australia which is still in progress, to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those Islands. Her Majesty, therefore, being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of necessary laws and institutions, alike to the Native population and to Her subjects, has been graciously pleased to empower and authorise me, William Hobson, a Captain in Her Majesty's Royal Navy, Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty, to invite the confederate and independent Chiefs of New Zealand to concur in the following articles and conditions:-

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand, and the separate and independent Chiefs who have not become members of the Confederation, cede to Her Majesty the Queen of England, absolutely, and without reservation, all the rights and powers of sovereignty which the said Confederation of individual Chiefs respectively exercise or to possess, over their respective territories as the sole sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of preemption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof, Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection, and imparts to them all the rights and privileges of British subjects.

W. HOBSON Lieutenant Governor.

Now, therefore, we, the Chiefs of the Confederation of the United Tribes of New Zealand, being assembled in congress at Victoria, in Waitangi, and we, the separate and independent Chiefs of New Zealand, claiming authority over the tribes and territories which are specified by our respective names, having been made fully to understand the provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof; in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Treaty of Waitangi Act 1975, First Schedule

Appendix 2. Kaituna Report Recommendations, 1984

10.1 *TO THE HONOURABLE THE MINISTER OF MAORI AFFAIRS THAT* notice be taken of the Finding of this Tribunal that the policy of the Crown by which a pipeline is to be constructed to discharge effluent from the Rotorua District Council Waste Water Treatment Plant into the Kaituna River is contrary to the principles of the Treaty of Waitangi.

10.2 *TO THE HONOURABLE THE MINISTER OF WORKS AND DEVELOPMENT*

10.2.1 *THAT* the policy of the Crown by which a pipeline is to be constructed to discharge effluent from the Rotorua District Council Waste Water Treatment Plant into the Kaituna River be abandoned as being contrary to the principles of the Treaty of Waitangi,

AND

10.2.2 *THAT* research be undertaken into the possibility of disposing of such effluent by discharging the same on the land in a suitable and practical manner instead of discharging the same into Lake Rotorua,

AND

10.2.3 *THAT* the Water and Soil Conservation Act 1967 and related legislation be amended to enable Regional Water Boards and the Planning Tribunal properly to take into account Maori spiritual and cultural values when considering applications for grant of water rights, the renewal thereof or objections to such applications.

10.3 *TO THE HONOURABLE THE MINISTER OF WORKS AND DEVELOPMENT*

and

TO THE HONOURABLE THE MINISTER OF HEALTH

10.3.1 *THAT* the present subsidy granted for the Kaituna River Major Scheme be altered to enable the Rotorua District Council to treat the effluent from its Waste Water Treatment Plant by a suitable biological or chemical stripping process without loss of that subsidy so that phosphorus and nitrogen can be removed from that effluent up to the standard required by the water right now granted permitting the District Council to discharge such effluent into Lake Rotorua.

10.4 *TO THE HONOURABLE THE MINISTER IN CHARGE OF THE PARLIAMENTARY COUNSEL'S OFFICE*

10.4.1 *THAT* the attention of the Chief Parliamentary Counsel and other appropriate officers be drawn to the Finding of this Tribunal with particular reference to the consequences of legislation being enacted that is in conflict with the principles of the Treaty of Waitangi.

DATED at Wellington this 30th day of November 1984.

THE SEAL OF THE WAITANGI TRIBUNAL

E.T. Durie
Chief Judge of the Maori Land Court
CHAIRMAN

Sir Graham Latimer
MEMBER OF THE TRIBUNAL

P.B. Temm Q.C.
MEMBER OF THE TRIBUNAL

THE SEAL OF
THE WAITANGI TRIBUNAL

Appendix 3. Glossary

Aotearoa	New Zealand
hapu	subtribe
iwi	tribe or people
kaitiaki	guardians
kaitiakitanga	guardianship, environmental decisionmaking
kaumatua	elder
kawanatanga	governorship
mahanga kai	food gathering places
mana	authority, identity, prestige
manawhenua	authority in relation to land and resources
marae	meeting place
pakeha	European New Zealanders
pounamu	greenstone or jade
rangatira	chief of an iwi or hapu
rangatiratanga	tribal authority exercised through rangatira
rohe	district or tribal domain
Tane	God of the forests
Tangaroa	God of the seas
tangata whenua	people of the land, Maori
taonga	treasures
tauiwi	non Maori
tino rangatiratanga	full tribal authority
Tiriti	Treaty
wairua	spirit
whanau	family

ABORIGINAL HISTORY

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PART 2

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CONTESTED PLACES: THE SIGNIFICANCE OF THE MOTUNUI-WAITARA CLAIM TO THE WAITANGI TRIBUNAL

Paul James and Eric Pawson

Introduction

The Waitangi Tribunal is the statutory body charged in New Zealand with investigation of Maori grievances against the Crown that stem from alleged breaches of the Treaty of Waitangi.[1] In a series of reports the Tribunal has provided a means of demonstrating that places and landscapes do not have single, essential identities. The Motunui-Waitara claim, of the Atiawa people of Taranaki, was the first case dealt with by the Tribunal that received nationwide focus. The Tribunal reported on the claim in 1983. It drew the attention of a broader public to differences between Maori and Pakeha (white settler) concepts of the environment and environmental behaviour, and the ways in which these are expressed in different places. The purpose of this article is therefore to sketch and evaluate the geographies of this particular claim, in order to demonstrate and account for cultural differences in environmental behaviours in a specific place.

Central to the account is the concept of place: how people make places and the significance that different peoples attach to different elements of place. Places are therefore taken to be socially constructed and to bear the marks of contestation.[2] The places of the New Zealand landscape, like any other, are not neutral, but reflect power relations and dominant ways of seeing the world.[3] Those dominant ways of seeing are sometimes claimed to have 'erased' alternatives, whereas they have rather rendered them hidden through a refusal to read 'other' narratives (in this case, the primarily oral geographies of the Maori). In reality, place is 'a hotly contested site', those contests being of physical possession, naming, mapping and 'of tribal, racial and personal memory'.[4] Differences between Maori and Pakeha attitudes to the environment are located in differences of history and culture, and it is windows into these that Tribunal reports provide. The broader context of the Motunui-Waitara claim and the wider impact of the Tribunal's report since its publication in 1983 also serve to illustrate the ways in which what happens in particular places is both affected by processes originating at broader spatial scales and can in turn have wider impacts, affecting places elsewhere.

Sense/s of Place

Domestic airline flights between the cities of Auckland and Christchurch pass directly over Taranaki, using that region's most prominent icon, the volcanic peak of Mt. Taranaki, as a navigational marker (Fig 1). The tip of the peak lies invisible to passengers, being

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1 Stokes 1992.
2 Short 1991.
3 McDowell 1994.
4 Pitts 1992: 87.

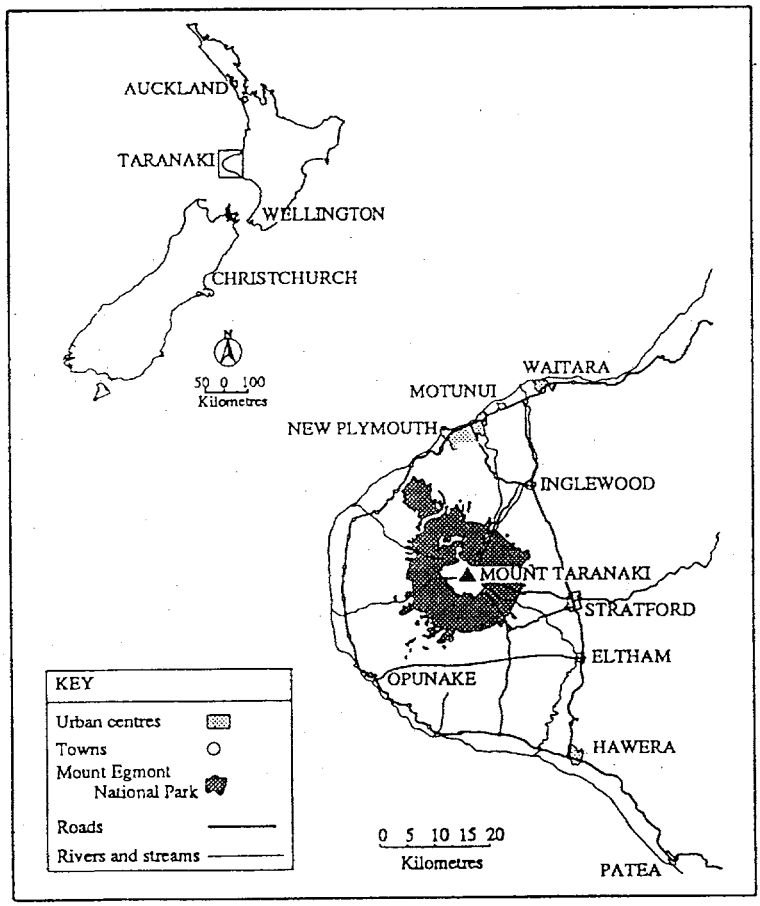

Figure 1. Location Map

directly beneath the plane, but the slopes of the cone can be clearly seen. They are thrown into prominence by an abrupt circular boundary carved between the forest that still stands on the lower fringes of the mountain and the complex patchwork of fields and roads that makes up the landscape beyond.

The circular boundary is that of the Egmont national park, named for a European sailor. The mountain at its centre was long known on Pakeha maps as Mount Egmont, but in the mid 1980s, the New Zealand Geographic Board decreed that it could also officially resume its original Maori name, Taranaki. The starkness of the park boundary from above symbolises the imposed geometry and the ordered regularity of the farming landscape that has so often characterised the appropriation and reordering of indigenous territories by Europeans. For centuries Taranaki was home to a substantial Maori population which was dispossessed of its lands in the New Zealand wars of the 1860s. One *iwi* (tribe) which

fought against the Crown was Te Atiawa, thereafter being left with little but the food bearing coastal reefs along the margins of its former territory.

These reefs are clearly visible from the air, fringing the coastline of north Taranaki, defying the regularity and order of the farms and roads. 'Collectively they constitute one of the most extensive traditional fishing reefs of the Maori people'.[5] They have long provided Te Atiawa with both sustenance and (as a means of feeding guests) honour and prestige (*mana*). Pakeha activities in the appropriated landscape however have led to increasing pollution and health problems for reef users. It was a large scale industrial proposal which would have generated still further pollution that prompted the *iwi* to take a grievance to the Waitangi Tribunal.

A Pakeha Geography of Taranaki (Fig 2)

The Pakeha appropriation of Taranaki was part of the British colonisation of Maori Aotearoa, which itself can only be understood as a component of the global expansion of nineteenth century capitalism. But although the town of New Plymouth was established at the relatively early date of 1841 (within a year of the signing of the Treaty of Waitangi between Maori chiefs and the British Crown), Pakeha settlement of the region was slow. Of the 101,214 European immigrants arriving in New Zealand as a whole to 1882, only 2,223 went to Taranaki, compared with Canterbury in the South Island which received 57,695 immigrants in the same period.[6]

These figures reflect the inherent difficulties for Pakeha in settling a place that was for them insecure, where access to land was actively contested by indigenous owners and where the land itself was heavily forested. In these respects the situation in Taranaki was a microcosm of that for Pakeha in the North Island as a whole. The wars of the 1860s were initiated by the Crown as part of a strategy to increase its tenuous authority in the North Island, using as a pretext an incident concerning disputed sale of Te Atiawa land in the Waitara district.[7] The conflict in Taranaki prompted the Crown to confiscate substantial territories in 1863. Although active and peaceful resistance from Maori continued south of New Plymouth, land confiscations (*raupatu*) drove the Atiawa from their land in north Taranaki into the inland hill country, from which they did not emerge until 1872, and then on government terms. As 'rebellious people', they did not regain legal (ie Crown recognised) ownership to their lands (Fig 3).

Subsequent Pakeha development of the land depended on clearance of the forest,[8] an enterprise celebrated in progressive terms. 'The axe, the slasher, and fire, in the hands of the settler, worked wonders. Comparatively few years were sufficient to demolish the growth of centuries'.[9] The trees were replaced by grass, setting the stage for farm based production. Initially this was limited by a lack of the infrastructure necessary for Taranaki's participation in interregional and export trade. However a railway was completed between New Plymouth and Stratford in 1879 and was linked up with a line from Wellington in 1885. Contemporaneously New Plymouth became a key port in the coastal trade between Auckland and the southern provinces.[10] With the advent of refrigeration in the 1880s,

5 Waitangi Tribunal 1983: 9.
6 Rawson 1967: 25.
7 Belich 1986; Sinclair 1991.
8 Arnold 1994.
9 Stratford Jubilee 1928: 7.
10 Pawson 1992a.

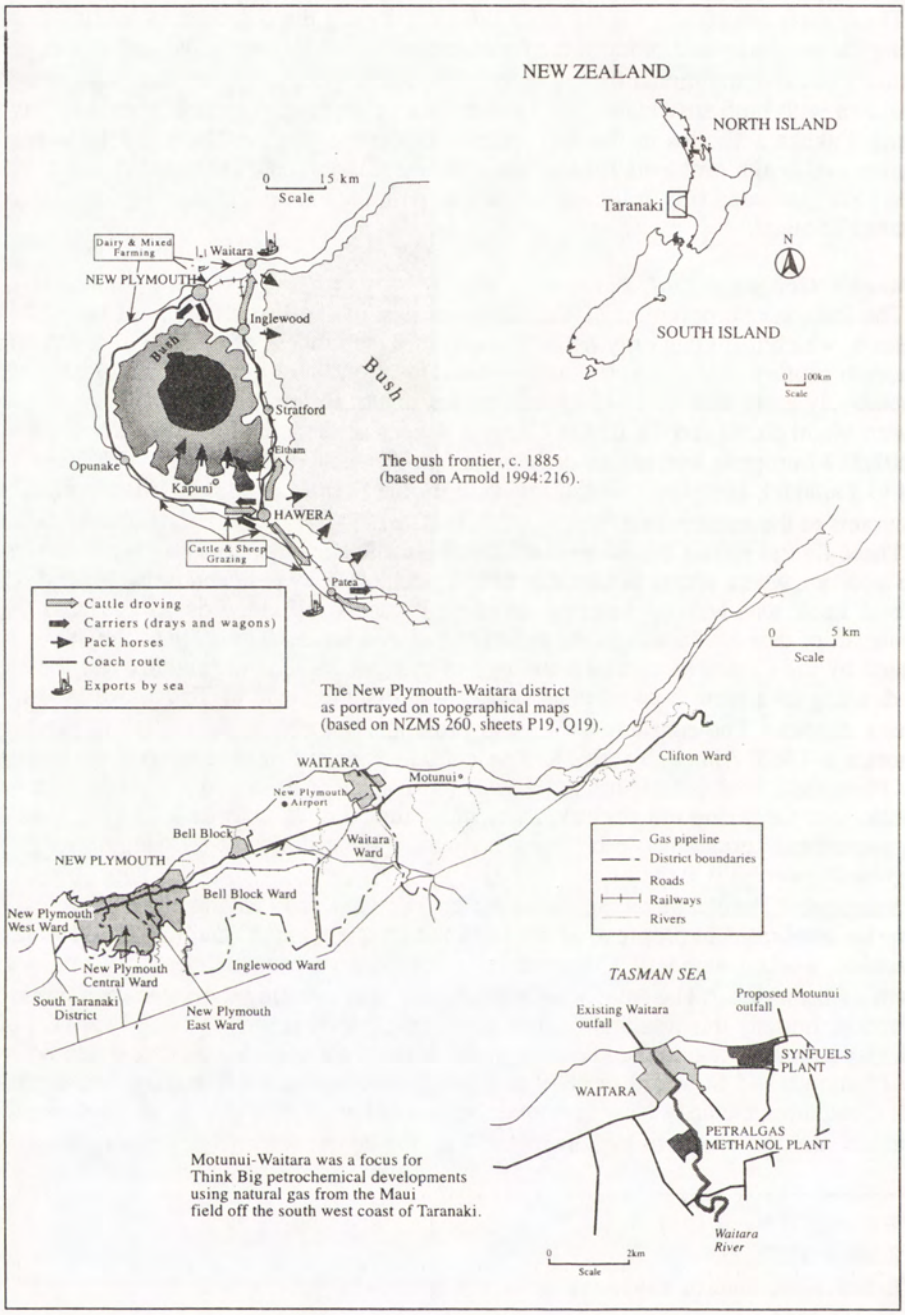

Figure 2. Pakeha Place in Taranaki

expansion of the export trade in dairy products and meat was possible, and with the construction of rural roads a network of local dairy factories developed. By the 1940s, there were about two hundred small cooperative dairy companies throughout Taranaki and two meatworks on the fringes of the cow country.

In recent decades Taranaki has achieved prominence in another sector of New Zealand's economy. In 1969 the Maui gasfield was found some 50 kilometres offshore, ten years after the discovery of the Kapuni onshore gas and condensate field. Together these constitute one of the larger natural gas fields in the world. The manner of their exploitation was dictated by a report from the Liquid Fuels Trust Board (LFTB), established by parliament in 1973 (in the wake of the international 'oil crisis') to recommend ways in which transport fuels could be produced in New Zealand using domestic resources.[11] Following the second oil crisis at the end of the 1970s, the National Government established its 'Think Big' programme to promote rapid heavy industrialisation using domestic energy supplies, in order to maximise short term economic growth.[12]

Taranaki became one of the key foci of the Think Big programme. The LFTB recommended that 50-60 petajoules of Maui gas should be allocated each year for the manufacture of synthetic petrol and that chemical grade methanol for export should be made from the same source. These recommendations took form as the Petralgas Chemicals New Zealand (Petralgas) and New Zealand Synthetic Fuels Corporation (Synfuels) plants in north Taranaki. In addition an ammonia/urea works was established at Kapuni. These plants represented state of the art technology, but it was the technocratic approach to their environmental implications which was ultimately responsible for revealing the manner in which they symbolised a Pakeha and exclusionary narrative of the landscape (Fig 2).

The Waitangi Tribunal and the Motunui-Waitara Claim

Over the last century the imprint of both state policies and the broader processes of global capitalism have been apparent in the development of the Taranaki landscape. In the 1970s, these wider links were fused in the state's response to the oil crises of that decade through its involvement with multinational capital in the Think Big projects. The Synfuels plant, for example, was a joint venture between the state and Mobil Oil, the latter providing 25 percent of the capital. At the same time however, events in a wider cultural global sphere also facilitated the hearing of the voices of those people previously excluded from the dominant discourse of place in north Taranaki.[13] The 1960s and 1970s saw widespread decolonisation of the Third World, including those island states of the Pacific with which New Zealand has close links. Television enabled civil rights activism in the United States to be seen the world over; the United Nations took an increasing interest in indigenous peoples. There was thus an international context within which Maori activism in New Zealand developed. At the level of the state this activism was recognised when the Third Labour Government established the Waitangi Tribunal in 1975.[14]

The Tribunal was seen by government as a minimalist means of defusing dissent that in the same year had grown to the point of producing a conspicuously large and assertive Land March through the North Island into the grounds of Parliament in Wellington. It was thought that such an agency might once again direct Maori disaffection out of the public

11 Maiden 1983: 33.

12 Peet 1981: 26.

13 James 1993.

14 Pawson and Cant 1992.

arena back into the courtroom,[15] a venue within which Maori had themselves tried, for over a century with little success, to seek redress for loss of territory.[16] The Tribunal was empowered to inquire into claims from any Maori or group of Maori that they had been prejudicially affected by actions of the Crown since the date of passage of the Act, which the claimants believed were inconsistent with the principles of the Treaty of Waitangi. Historical land claims could not therefore fall within the Tribunal's purview; neither could it enforce its findings, its role being solely that of making recommendations for action, if deemed necessary, to the government of the day.

The Tribunal made little impact for several years. It followed Pakeha protocols in its operation and was not seen by Maori as an appropriate forum for the investigation of grievances. However for the first time in 1981 a Maori became Chief Judge of the Maori Land Court and, by virtue of this position, chair of the Tribunal. The first case heard subsequently was the Motunui-Waitara claim, 'the turning point in the life of the Tribunal'.[17] For the first time it met on a *marae* (a meeting house, called in the case Manukorihi) belonging to the claimant tribe, adopted procedures more in keeping with the culture and experience of those claimants, and accorded their world view and environmental insights equal standing with those of Pakeha tradition.

The claim had been brought by Te Atiawa to protest the pollution of the north Taranaki reefs by existing and proposed future waste discharges from the town of Waitara (population 6012 in 1981) and the new Think Big projects. Until the completion of the Waitara marine outfall in 1978, industrial and domestic waste from that part of north Taranaki had been discharged directly into the Waitara river. This included semi raw sewage from the Waitara Borough's septic tanks and effluent from the Borthwicks (subsequently AFFCO) freezing works. It was not until 1956 that there was some preliminary treatment of the latter to remove most sediment fat and other solids. In 1967 polluted shellfish were implicated in an outbreak of typhoid in nine local Maori. In 1972, the Borough Council concluded that the pollution of the river could not continue and in 1973 a water right was granted by the Taranaki Regional Water Board for the discharge of waste through a marine outfall. Borthwicks paid for 72.8 percent of its capital cost.

The integrity of the Waitara outfall was questionable from the outset.[18] Due to problems experienced during the launch, two of the five diffuser ports were against the ocean floor and 70 percent of the effluent was discharging from one of the three remaining ports. There was no secondary or tertiary treatment of this effluent and the outfall was poorly located, being between two reefs and adjacent to the borough (see Figs 2 and 3). Freezing works waste was subsequently found on nearby beaches and reefs,[19] and bacteriological tests undertaken by the Taranaki Catchment Commission (TCC) showed that the shoreline waters in the vicinity were not meeting quality requirements set in the water right.

Concerns stemming from the Waitara outfall's deficiencies were exacerbated with proposals to dispose of waste from the Think Big projects in similar ways. In 1980, Petralgas applied to the Planning Tribunal to discharge directly into the Waitara river from its methanol plant in the Waitara valley (see Figs 2 and 3). After a number of negative

15 Oliver 1991: 9-10.

16 Walker 1990.

17 Oliver 1991: 10.

18 James 1993.

19 Kirk 1984: 5.

submissions from agencies such as the TCC and the Ministry of Agriculture and Fisheries, it successfully changed its application to discharge through the existing Waitara outfall. No opportunity was given to local people to comment on the addition of industrial waste, which included heavy metals, to the Waitara outfall load.[20] Synfuels then applied for, and in December 1981 was granted, consents by the Planning Tribunal for the construction of a stand alone marine outfall at Motunui.

The Motunui outfall met with objections from people mindful of the inadequacies of the existing Waitara outfall, and of the proliferation of outfalls along this stretch of coast (the New Plymouth outfall west of Waitara had just been installed). Te Atiawa and environmental groups took objections to the Regional Water Board at the various water rights hearings; made submissions to the Commissioner for the Environment's audit of the Synfuels and Petralgas environmental impact reports; made submissions to the Planning Tribunal hearings and then protested the Tribunal's Motunui decision in the Court of Appeal. All this being of no avail, Te Atiawa submitted to the Waitangi Tribunal that they were:

> prejudicially affected by the policy or practice adopted by or on behalf of the Crown which results in failure to properly control discharge of sewage and industrial waste into the sea between New Plymouth and Waitara such policy or practice being inconsistent with the principles of the Treaty of Waitangi in that it has in particular adversely affected fishing grounds known as Tauanga, Te Puna, Titi Rangi and Orapa reefs belonging to Manukorihi, Otaraua and Ngati Rahiri hapu.[21]

The claim was made more specific in the course of the hearing, in particular to include the Motunui outfall, the Tribunal being of a mind that the expression of grievances should not be constrained by 'undue legalism'.[22]

A Maori Geography of north Taranaki (Fig 3)

The subsequent Tribunal hearing and its report acted as means by which Pakeha could begin to see the place of north Taranaki through different eyes: they exposed the Maori geography of the region to a much wider audience. One writer has referred to the process started by this and subsequent Tribunal reports as part of a 'radical reinterpretation' of New Zealand's history.[23] For Pakeha in the early 1980s, the exposure of a hidden history of places such as north Taranaki *was* radical. It questioned the assumed universality of Pakeha landscape ideals. In this sense, the newfound accessibility of Maori place alongside that of the dominant tradition was a 'reinterpretation'; in another sense it was a retrieval for Pakeha of a geography that had always been there; the reading of a narrative that they did not know how to see.

The evidence heard by the Tribunal made it clear that Maori environmental relations contrast sharply with the basic duality of people 'apart from' nature that is central to Pakeha tradition.[24] Rather Maori envisage themselves as 'part of' nature, personifying its different elements as an environmental family.[25] Although people have a superordinate position in nature, there is a kinship between all things, with *whakapapa* (genealogy) used to establish

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20 Waitangi Tribunal 1983: 30.

21 Waitangi Tribunal, 1983: 76.

22 Waitangi Tribunal, 1983: 8.

23 Sorrenson, 1989.

24 Durie 1987.

25 Yoon 1986.

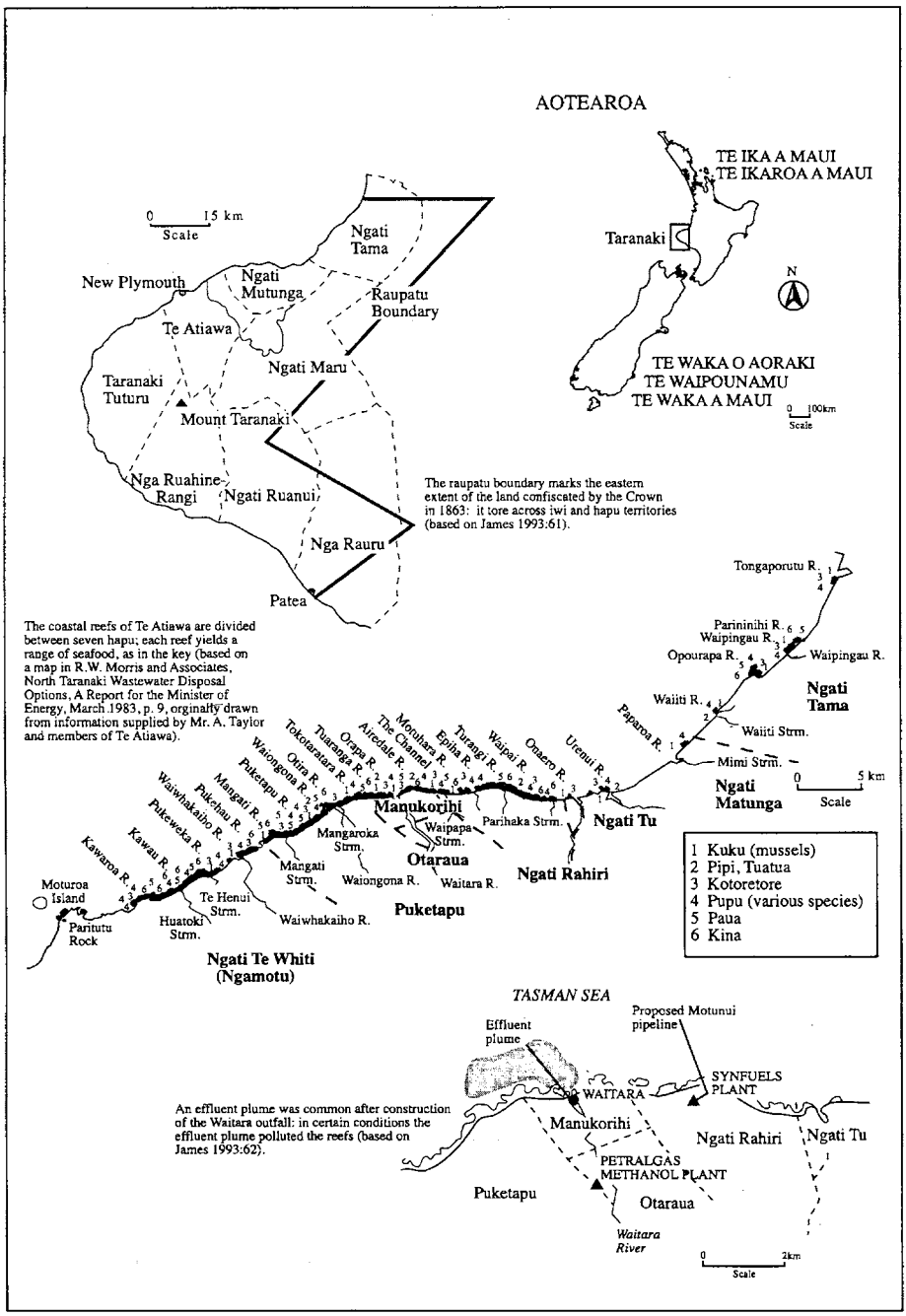

Figure 3. Te Atiawa Place in Taranaki

the links between people and land. Land identifies the people and people identify with the land: out of this spiritual and historical association comes the status of Maori as *tangata whenua* - literally people who belong to the land. Maori are 'of' the land, as they have maintained a mutual covenant with Papa-tu-a-Nuku (the earth mother) since the beginning of history.[26] [An alternative, not necessarily conflicting, interpretation is that this cultural bond was evolved through time in order to sustain resources for purposes of survival].

Following *raupatu* Te Atiawa became known as 'te iwi o te wahi kore' - the people with nothing. Confiscation tore apart their sense of place:

> For Te Atiawa land [including the coastline] was everything. It was the foundation of life, the permanency and stability which provided the basis of economic and social survival. Every aspect of life for Te Atiawa involved land. It provided the history, the culture, the food of life and the politics. Te Atiawa was an integral part of the land, its environments and nature's endowments of the land. Every social activity was influenced by the land, the respect for land was paramount and in over a thousand years of occupation, Te Atiawa had nurtured the resources of the land and the sea'.[27]

With the loss of land Te Atiawa *mana* became focussed on their water resources. In evidence to the Tribunal, an elder asserted the importance of the Waitara river: 'my people personify the river, an entity aligned to our ancestor Maruwaranui, with the spirit or *taniwha* of the river. Those who cast pollution onto the spirit of the river are casting it onto the spirit of my people'. The coastal reefs, which Te Atiawa had stewarded for centuries, likewise assumed an even more important role. The Tribunal was told that '... *maitaitai* [seafood] is very valuable, more valuable than meat - without that our table is nothing'.[28] Aila Taylor, the tribe's chief spokesperson, has summarised the importance of the reefs, demonstrating the social construction of the Atiawa environment:

> Reef use exclusive to *hapu*
> The reefs of the north Taranaki coast are divided up between seven *hapu*. It is not done to gather food from another *hapu's* reef. If a reef is spoiled by an outfall then that family group may be deprived altogether.
>
> Much of our seafood is eaten raw
> We gather a large number of different species from the reefs including *kuku, kina, paua, wheke, kotoretore, pipi* and crabs. Much of this can be eaten raw. We have had people suggest that outfalls are no risk to health because everyone cooks their seafood.
>
> Seafood is the 'crown' of our tables
> The warmth of a welcome to guests is measured by the quality of the food provided, in particular the quantities and varieties of seafood. Our *marae* runs on voluntary effort, we have little money, we could not possibly afford to buy the things that we catch and gather.
>
> Cleanliness on the reefs
> We have an extensive set of customs which keep the reefs healthy by not polluting them in any way and by not overfishing. For example shellfish are not eaten on the

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26 Henare 1988.

27 Love 1991: 11-12.

28 Waitangi Tribunal 1983: 12.

reef, women do not gather while menstruating, people do not urinate whilst on the beach, a stretch of coastline is declared out of bounds for a period if someone is killed at sea until after the body is found (a *rahui*)..

What comes from the earth goes back to the earth
We believe that human waste should go back to the earth. We believe that anything to do with human waste should have nothing to do with food; clothes should be washed separately from tea towels; people should not sit on food tables; seafood should not be gathered from reefs polluted by an outfall. This belief is not just related to 'scientifically detectable' pollution; even if scientists 'proved' that an outfall was not polluting, we would be unhappy gathering seafoods from a reef near such an outfall'.[29]

The Tribunal hearing provided a forum in which Te Atiawa geography of north Taranaki was revealed, uncovering the Atiawa relationship to environment and resources. It demonstrated the critical differences between this geography and that of the Pakeha. Rather than water being a convenient carriageway for the passage of wastes, for example, it was shown that the traditional Maori view is that water is *tapu* (sacred), and once polluted by effluent it remains culturally polluted even if treated to standards set down by Pakeha science (Fig 4). And since each reef has significance to different *hapu*, it could not be argued that containment of pollution to certain parts of the coast would resolve the problem.

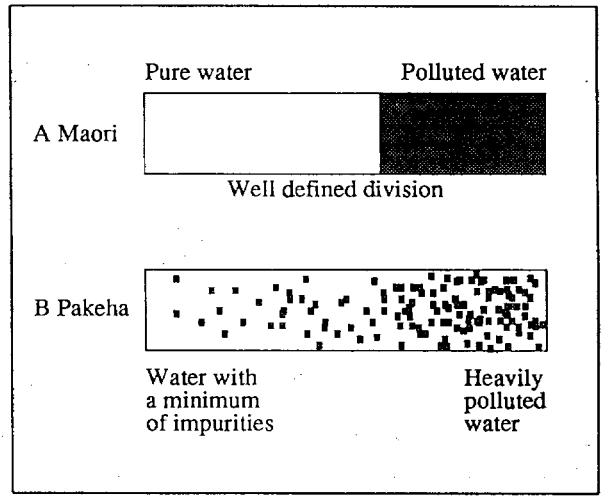

Figure 4. Maori and Pakeha Representations of Water

29 Taylor 1986: 2; also Waitangi Tribunal 1983: 12-14.

The centrality of water in the claim, as opposed to its marginality in the industrialisation of the region, was clearly revealed as a product of the history of place, following the remaking of north Taranaki in the wake of land confiscation. And the legitimacy of the claim was supported by reference to the principles of the Treaty, in both its Maori and English texts. The first of these gives Maori '... the unqualified exercise of their chieftainship over their lands, villages and all their treasures' and the second guarantees them '... the full, exclusive and undisturbed possession of their lands and estates, forests and fisheries ..'. In its Muriwhenua report the Waitangi Tribunal found that 'Maori have never abandoned claims to their original fishing entitlements.[30]

The Tribunal's Report and its Reception

The Tribunal found that the Waitara river and the reefs constituted 'significant and traditional fishing grounds of specific *hapu* of Te Atiawa people'.[31] that these were being increasingly polluted, especially in the vicinity of the river mouth, and stood to be further polluted. Furthermore it found that construction of a new outfall at Motunui would be deleterious to the reefs thereabouts, there being no guarantee against further pollution. It found that the Crown had failed to recognise Maori interests which were guaranteed by the Treaty and which should have been protected by law.

In light of these findings, the Tribunal made three types of recommendations:

- Case specific
  that the proposal for the Motunui outfall be stopped, that waste from the Synthetic Fuels plant should in the meantime be discharged through the Waitara Borough outfall;
- Regional
  that a regional task force be established, to plan for the development of the region and associated infrastructure, and attend 'in the first instance' to replacement of the defective Waitara outfall and in the long term to provision of land-based disposal of waste;
- National
  that a committee be established, with representatives from a number of government departments, to promote the recognition of Maori fishing grounds in law, and to protect them by improving the ways in which new developments are assessed.[32]

The National Government's response to the Tribunal's report was 'awaited with interest as being probably the most important decision to draw formally on the Treaty for more than a century', said an editorial in the conservative South Island newspaper, *The Press* (30 March 1983). However the government, whose credibility by now hinged significantly on success of the Think Big projects, announced that the Motunui outfall would proceed immediately in order that the synthetic fuel plant could be finished on time. The Prime Minister dismissed the Tribunal's findings and sought once again to marginalise the environmental knowledge upon which it was based. He stated that 'there was no possibility of pollution from the outfall as all the necessary safety standards would be adhered to';[33] that all the evidence presented to the Tribunal had already been considered at the water rights

30 Waitangi Tribunal 1988: xiii.

31 Waitangi Tribunal 1983: 6.

32 Waitangi Tribunal 1983: 6.

33 *The Press*, 29 March 1983.

hearings and that 'the technical appraisal of the scheme was a great deal more rigorous than any evidence discussed at the Waitangi enquiry'.[34]

In contrast the Tribunal had questioned the extent to which Pakeha scientific evidence should be preferred to the knowledge of Te Atiawa.

> The Maori lore on the conservation and preservation of natural resources, as inherited by word of mouth, represents the collective wisdom of generations of people whose existence depended on their perception and observation of nature. We do not consider that the weight given to scientific evidence should be such as to denigrate the worth of customary law ... In the final analysis it is the test of experience (and the generations of the future) that will determine the worth of scientific postulates'.[35]

Here was a clear recognition that scientific knowledge, far from being fixed and absolute, is also culturally defined.

As media and public pressure grew the *Daily News*, a local Taranaki paper, commented that 'it becomes clear that the government has grievously miscalculated the depth of opposition by Maori people and many Europeans to the discharge of industrial wastes into coastal waters which embrace traditional fishing grounds'.[36] On 9th September 1983, in a major political about turn, the Synthetic Fuels Plant (Effluent Disposal) Empowering Bill was passed, allowing Synfuels effluent to pass through the Waitara marine outfall. A North Taranaki Regional Wastewater Taskforce was then given responsibility for reporting on the provision of upgraded sewage facilities for Waitara. At the time a member of Te Atiawa commented that 'We now put our faith in the Taskforce to come to an early solution .... saving the Waitara river from suffering'.[37] In October 1986 after more than two years of study the Taskforce released its report and recommended the establishment of a new regional outfall at Waitara with land based treatment of all waste streams.

Following the report there were protracted negotiations between the Crown and the outfall users as to implementation of the recommendation. As delay grew so did Te Atiawa disgruntlement: 'They [officialdom] have been doing it to us all along [delaying] ... A person can urinate in the street and be fined $100 for it, but industry can spew tonnes of waste into the sea each day and still nothing is done'.[38] In September 1988 Works Consultancy (a state-owned enterprise set up following the dissolution of the Ministry of Works and Development) provided an alternative proposal. This showed that the existing Waitara outfall could be upgraded to provide an acceptably low structural risk for a twenty five year life period. The New Plymouth District Council was given the responsibility for the renewal of the outfall and the construction of a treatment plant to treat the waste from Waitara township and the freezing works. These projects were both completed by February 1992, with 90 percent of the cost being met by the Crown.

In terms of the national recommendations made by the Waitangi Tribunal the Maori Fisheries Act passed in 1989 was designed to give protection to *taipure*, defined as fishing grounds controlled and managed by Maori. This in conjunction with the passing of the Resource Management Act in 1991 has established a regulatory framework which addresses the Tribunal's recommendations concerning Maori fishing resources.

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34 *The Press*, 30 March 1983.

35 Waitangi Tribunal 1983: 34.

36 *Daily News*, 4 April 1983.

37 Taranaki Catchment Commission 1983: 21.

38 *Taranaki Herald*, 21 January 1988.

Conclusion

This article has sought to show that there are two geographies of Taranaki (Figs 2 and 3), one imposed upon and obscuring the other. The first is overt, taken for granted by the majority Pakeha population, based on human authority over nature and reproduced through technocratic manipulation of resources. The other affords identity to Maori, even though much of its resources have been appropriated by the Crown and the knowledge upon which it is based and understood to operate was long excluded from mainstream forums.

The Motunui-Waitara claim occurred at a time and in a place that was conducive to the emergence of this other to wider view. However the chain of resistance to the Motunui outfall proposal demonstrated that those excluded by the dominant culture had by no means been silenced into a passive acceptance of their lot. The Tribunal itself contributed to the process of emergence of a different way of understanding 'place'. This was not only by providing the forum within which a previously marginalised geography could take centre stage, but also through making a politically attainable set of recommendations which gained widespread exposure through the media following their initial rejection by the government.[39]

It was suggested earlier that this was part of a process of reinterpretation and retrieval of New Zealand geographies. With the benefit of hindsight, the significance of the Motunui-Waitara findings was that they began the process, for Pakeha, of drawing attention to the appropriation and subsequent degradation of the traditional Maori resource base. They were a step along the way to revealing different histories, environmental knowledges and narratives of place. In response to this changing cultural climate, in 1985 the Fourth Labour Government extended the Tribunal's brief for the investigation of Treaty grievances back to 1840. This action was part of a broader policy initiative to incorporate Maori aspirations in the political structure which also saw the Treaty included in significant pieces of resource management law, and which reallocated some resources to Maoridom via the purchase of fisheries quota by the state.[40] The effectiveness of these policies in delivering substantial degrees of control over resources and of self determination has been questioned.[41] However, since the Motunui-Waitara claim much that was once hidden from the gaze of the dominant culture is now coming into the open, albeit yet to be taken for granted. Aotearoa-New Zealand can be said to be not only retrieving and reinterpreting its geographies, but also in the process of inventing them anew.

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Postscript

Since this article was accepted for publication, the Waitangi Tribunal has published a 370 page interim report on the 21 Taranaki land claims brought under the 1985 legislation. The report gives a full account of the loss of land by Te Atiawa and the other *iwi* and *hapu* of the region. The reference is The Taranaki Report: Kaupapa Tuatahi. Wai 143. Wellington, 1996. All Tribunal reports, including those on Taranaki and Motunui-Waitara, are now available on the Internet, at

http://www.knowledge-basket.co.nz/waitangi/welcome.html

NATIVE AMERICAN LAND RIGHTS IN SOUTHERN ARIZONA [1]

Elliot McIntire

One of the themes which ran through the Ninth International Conference of Historical Geographers in Perth and its Pre-Conference Symposium in Singapore was the rights to land ownership by peoples of the First Nations. Nancy Hudson-Rodd raised this question with regard to Indians in Canada and Aboriginals in Australia. A. J. Christopher examined the situation of Bantu peoples in South Africa, and Catherine Robinson presented a detailed look at the case of the people of the Torres Strait area. I would like to examine this question from the perspective of the situation in the United States, not only because it is inherently interesting, but because of the broader concerns it raised in the early part of this century with regard to land tenure in the Southwestern United States, which had echoes reverberating until well past the mid-century mark.

Differing concepts of land ownership have been at the heart of much of the conflict that accompanied the European expansion and settlement of the area that became the United States. Don Meinig, in *Continental America 1800-1867*, the second volume of *The Shaping of America*, his monumental historical geography of North America, develops this theme at length. The very different interpretations of treaties and agreements by the parties involved were fundamental to many of the conflicts that arose during this process. Meinig points out in his discussion of treaty boundaries:

> It was of course clear ... that such boundaries were not immutable. They were not intended to be; they were understood by those who imposed them to be geopolitical devices to effect orderly change, a means, so it was always argued, to allow the reasonable expansion of the one people without the destruction of the other.[2]

In contrast, the native inhabitants of these regions viewed such agreements as recognition of their sovereignty and sacred rights to the land.

Earlier, William Cronon had pointed out that different concepts of land tenure were responsible for the differing approaches taken by the Indians of New England and the European settlers who replaced them.[3]

Elliot McIntire is currently Professor of Geography at California State University. His doctoral dissertation dealt with settlement and land use patterns on the Hopi Indian Reservation in northern Arizona and much of his research has focussed on historic change in the settlement and land use of native American lands in the Southwest.

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1 An earlier version of this paper was presented at the Ninth International Conference of Historical Geographers, in Perth, Western Australia, July 7, 1995. Research for this study was supported in part by a grant from the California State University, Northridge Foundation. Much of the material used is found in manuscript form in the records of the U.S. Indian Claims Commission on the Papago land claim, primarily in the materials of Office (later Bureau) of Indian Affairs investigator William Bowie, who looked into the Hunter-Martin claims in 1915-18 (Bowie 1919, Cook 1973).

2 Meinig 1993:79.

3 Cronon 1983.

F. P. Prucha has stated this position in a different way.

> Underlying United States policy was an overriding concern for the advance of White settlement, for it was an axiom that the expansion of White civilization should not be obstructed or prevented by hunter or agricultural societies, spread thinly over the land, and not fully using the resources according to White standards.[4]

In the Southwest these issues were complicated by the presence of yet a third view of land tenure, that of the Spanish and their successors, the Mexican government. It is within this context that the struggle for control of the traditional lands of the Tohono O'odham must be assessed.

The Tohono O'odham (until recently generally known as the Papago) have a well defined sense of their traditional lands which they have occupied for at least the last several centuries: roughly everything in southern Arizona south of the Gila River and west from the Santa Cruz River valley, extending well into what is now Sonora, Mexico. Within this area family groups moved between summer and winter village sites and farm lands around permanent water sources, and shared hunting grounds and gathering areas with other such groups. Although individual saguaro cacti (the fruit of which provided one of the group's staples) might be individually owned, other resources were shared in common.

This, of course, conflicted with the American view of resource ownership, which was one of individual tenure, and that areas that were not obviously utilized, such as fields or home sites, were unowned. In the context of the American legal system, such lands were viewed as part of the public domain.

Under Spanish, and later Mexican law, a distinction was made among the aboriginal inhabitants of their territories. 'Wild' Indians were not viewed as citizens, and had no property rights. On the other hand, 'civilized' Indians who were settled in permanent villages and practiced agriculture were recognized as citizens, with all property rights to the lands they utilized, just as any other citizen. Although the law did not require it, this status was often confirmed by charter or other 'official' recognition by the national government. Most of the New Mexican pueblos, for example, had received such recognition, but, although the Spanish and Mexican governments dealt with the Tohono O'odham as settled peoples, no such documentation was ever developed.[5] And, since the Tohono O'odham did not live year around in large, permanent villages like the New Mexican pueblos, American settlers did not view them as having the same status.

When much of the northern Mexican territory was added to the United States under the treaty of Guadalupe Hidalgo in 1848, and the area south of the Gila River were added by the Gadsden Purchase in 1853, the rights of all Mexican citizens were explicitly protected and confirmed. The story of how much of this land in California, New Mexico and Texas was transferred to Anglo owners in the course of the legal challenges that followed annexation is a complex one, and has been dealt with elsewhere. The status of Tohono O'odham lands was at best, ambiguous under these provisions. It is the legal vacuum created by this situation that I wish to examine.

The Tohono O'odham had been a peaceful people, early converts to Catholicism, and frequent allies of the Spanish and Mexican governments in fighting off the increasingly frequent raids of the Apache into the settled areas of the Pimaria Alta (southern Arizona and

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4 Prucha 1988:40.

5 Those Tohono O'odham who remained on the Mexican side of the international border were viewed as citizens able to sell their land. Within a short period, most of their lands had been acquired by non-Indians, and most of the dispossessed Tohono O'odham gradually moved north, joining their relatives in the United States.

northern Sonora). During the early nineteenth century the Tohono O'odham had largely withdrawn from their settlements east of the Santa Cruz River, as had many of the Spanish/Mexican ranchers in the area, under the pressure of Apache raiding. Just as they had previously allied themselves with the Spanish and Mexican settlers, the Tohono O'odham joined with the newly arrived Americans in resisting the incursions of the Apache.

Since the American settlers were concentrated in the river valleys already abandoned by the Tohono O'odham, and the desert lands to the west were generally unattractive to the Americans, there was little cause for friction between the two groups. As a result, no Indian Agent was appointed for them until well into the American period, and, with minor exceptions, no reservation was set aside for their use. During this period (1853-1916) all the lands occupied by the Tohono O'odham were viewed by American officials as part of the public domain, and since the tribe had no occasion to assert their rights to the land, nor any awareness that they needed to do so, this view went unchallenged.[6]

The only real potential for conflict was in the fertile agricultural lands near the San Xavier del Bac mission (where a small reservation was created in 1874), and those water sources located near newly discovered mineral deposits in the desert to the west.[7] In fact, it was one of these water sources that precipitated the chain of events examined below.

In the early 1870s a Tucson merchant named Solomon Warner filed a claim to the Santo Tomas mine, which included one of the few permanent water sources in the Santa Rosa Valley, some 50 kilometers west of Tucson. This was of concern to the Catholic Indian Mission Society, headquartered in Washington, D.C., since, if deprived of access to water, the Tohono O'odham settlement would be unable to survive. Although it does not appear that there was immediate development of the mine, the Mission Society filed a protest with the General Land Office in 1874, followed by a second protest in 1880 and in late 1880 Colonel Robert F. Hunter arrived in Tucson on behalf of the Mission Society, to 'arrange for the protection of the Papago [Tohono O'odham] Indians ... in the rights to lands.'

Colonel Hunter is one of many interesting characters who helped shape western history. Although described in later accounts as an Arizona pioneer, rancher, trader, fearless defender of Indian rights, missionary to the Papago, and Civil War hero, he was none of these. A West Point graduate, he rose no higher in rank than Captain, and was cashiered for drunkenness on duty in Washington, D.C. early in the Civil War. Through family connections he eventually obtained a position with the Catholic Indian Mission Society, even though he was not Catholic. In 1880 he traveled to Tucson, where he stayed for several weeks, apparently his only visit to Arizona. On two occasions, groups of Tohono O'odham were brought together at the home of Bishop Salpointe in Tucson, where a number of deeds were executed. According to a witness, the deeds were not translated, or even read in English, or in any way explained to the Indians, who were merely told to sign.

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6 By Act of Congress on October 1, 1886 (Stat. L., XI, 374) the U.S. asserted its ownership of all areas west of the Santa Cruz River and south of the Gila River occupied by the Papago, Pima, and Maricopa Indians. Charles Royce, in his massive study of Indian land cessions, states "No treaty of purchase was ever made with these tribes, who have a common origin. The U.S. took possession of their country, the boundaries of which are shown on Arizona map No. 1. Reservations were, however, assigned them, upon which they were concentrated...." (Royce 1899). Royce erred in this assessment. Only those Tohono O'odham who already lived on the tracts set aside occupied them. Most remained outside the reservation system.

7 McIntire 1977.

These deeds covered many of the areas occupied by the Tohono O'odham, and conveyed an undivided half interest in these lands to Hunter, presumably so that he could act on their behalf in any legal actions taken (Figure 1). Such documents acquire legal standing only when recorded at the local land office, but curiously, Hunter did not record these deeds. Instead, he returned to Washington, where, for the next two years he made repeated unsuccessful efforts to get the United States Surveyor General for Arizona to investigate the legal basis of Tohono O'odham land title under Spanish and Mexican law.

Hunter seems to have made some sporadic attempts to follow up on this issue over the next decade or so, but the story really jumps ahead to 1911. The eighty year old Hunter, visiting his children in Los Angeles, sold a three-fourths share of his undivided half interest in these lands to one Robert M. Martin, a Los Angeles real estate developer and stock manipulator, for $6000 to be paid in installments, with an option on the remaining one-fourth for $250,000 when the land was segregated. Hunter soon died, leaving his estate (the deeds) to his eight children.

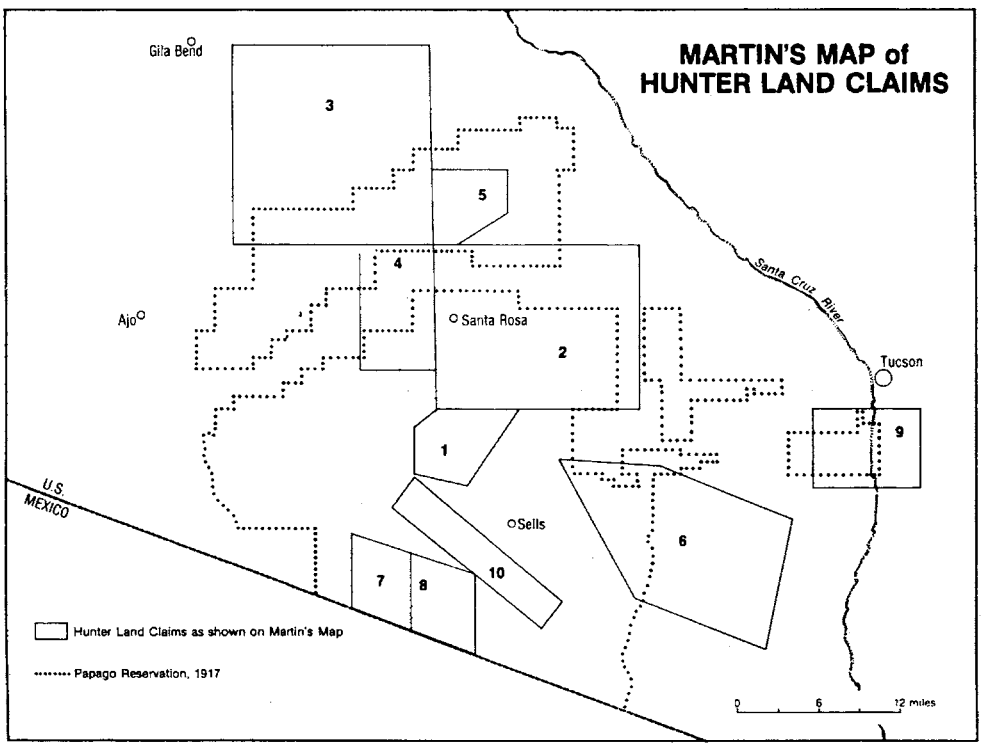

Figure 1. Location of Hunter's Deeds in Relation to the Papago Reservation.

According to the heirs, this sale was with the understanding that Martin would bear the cost of having the land surveyed and segregated from the public domain, as well as any legal expenses involved, with 'all proceedings to be instituted in the name of the Indian inhabitants of the respective villages named in the deeds.'

The proposition was clearly very attractive to the Hunter heirs: some immediate return, and the prospect of a sizable income in the future, with no risk to them, all for otherwise worthless deeds their father had been holding onto for thirty years. For Martin, it gave him potential access to a huge area of southern Arizona for a very modest investment.

There seems to have been some differences among the heirs, but two, Executrix Virginia Hunter and son-in-law C. B. Guittard became seriously involved, and Guittard worked closely with Martin for several years. In fact, it was Guittard who recorded ten of these deeds at the Pima county courthouse in Tucson in June, 1914. A year later, a suit was filed in Washington, D.C. on behalf of 'the Pueblo of Santa Rosa' (one of the larger Tohono O'odham settlements), seeking to enjoin the Department of the Interior and the General Land Office from 'illegal encroachment upon its land' by treating it as part of the public domain, permitting mining and homesteading claims to be filed on it. As it turns out, the suit was filed on behalf of Martin, without the consent, or even the knowledge of, the inhabitants of Santa Rosa village.

On one level this suit could be viewed as an effort to assert the rights of the Tohono O'odham to ownership of their traditional lands. If the suit was successful it would establish that the tribe held title under Spanish and Mexican law (and therefore under U.S. law). If the courts also held that the Hunter deeds were not obtained fraudulently, Martin and the Hunter heirs would have title to half of the land around virtually all of the Tohono O'odham settlements. Presumably title to the rest of the lands would be assigned to the tribe.

However, it is difficult not to assign sinister motives to Martin and the Hunter heirs, for in retrospect it seems clear that the recording of the deeds and the filing of the lawsuit were merely devices to further one of the more creative land schemes in southwestern history. No effort was made to contact the Tohono O'odham regarding the suit, and the tribe did not even know that it had been filed. If the legality of title to the land could be obscured by legal maneuvering for several years Martin could proceed with plans to profit from the confusion. And, in fact, Martin had begun selling shares in his project even before the deeds were recorded.

Martin, or more probably, Guittard, provided a map indicating the lands covered by the deeds recorded in 1914. Martin had divided these lands, totaling approximately two million acres, into one thousand 'units,' with boundaries of these units unspecified. Five hundred of these were to be allocated to the Tohono O'odham as their share, while the remainder were available for sale as soon as the land could be segregated from the public domain, which of course, was dependent on a favorable outcome of the law suit. In the meantime, Martin, whose share was 375 units, with an option on the remaining 125, had already begun selling the first hundred units at $1,000 each. A 1914 investigation by postal inspectors, suspecting mail fraud, showed that about ninety of these units had already sold. Since only units, not land, were offered for sale, the post office ruled that no fraud had occurred.

The greed exhibited by this operation is staggering. For an initial investment of $6,000 (probably much less, since this was to be paid in installments) Martin already had a return of some $90,000. Those who had purchased units would, if title to the land was confirmed, find themselves owners of some two thousand acres, somewhere in southern Arizona, for an investment of $0.50 per acre.

But the efforts to profit from these deeds did not stop with the 'unit' scheme. A number of organizations seem to have been set up to exploit these lands. The Bureau of Indian Affairs investigation turned up the American-Mexican Land & Colonization Company, a wholly owned corporation of Martin's, which was inactive. A second scheme was the Santa Rosa Valley Colored Settlement project. There is no clear evidence of Martin's involvement with this scheme, but its similarity to the previously mentioned company makes one suspicious. In about 1916 the Progressive Education Association, active in the black community of Los Angeles, began to promote establishment of an African American community in southern Arizona. Its publicity noted that it had negotiated for '107,000 acres of the best farming land in the west' (see Appendices A and B). If we assume these were purchased from Martin, it would represent an investment of over $53,000. This land was being offered in forty, eighty, or one hundred acres parcels, at $5.50 per acre. Sale of all 107,000 acres would have come to nearly $600,000.

Much of the literature for this project was freely adapted from a report for Martin written by Guittard, and a few extracts will give a sense of its content. 'The plains are green the year round, an ideal climate and a healthy country. Plenty of rain for two crops a year ...' 'The land will produce cotton and corn, 50 to 75 bushels per acre ... lemons and oranges, grapes and all kinds of nuts, and any fruit that grows in any semi-tropical climate.' The land is 'level valley land ... purely silt soil, absolutely free from alkali or clay,' and it notes that the Indians of the area grow their crops without irrigation, the rain being sufficient for two crops a year.

In contrast to these glowing accounts, the area is extremely arid, with rocky and sandy desert soils. The crops mentioned above can be grown only in the alluvial river valleys north and east of the Tohono O'odham country, and only with massive irrigation schemes. The agriculture practiced by the native peoples employed a very sophisticated locational scheme, which took advantage of the spread of runoff from torrential summer thunder storms where it spreads out at the mouths of mountain canyons, but sites for such fields are extremely restricted.[8]

A recent observer of the area has characterized the precipitation in the following way:

> A Sonoran Desert village may receive five inches of rain one year and fifteen the next. A single storm may dump an inch and a half in the matter of an hour on one field and entirely skip another a few miles away. Dry spells lasting four months may be broken by a single torrential cloudburst, then resume again for several more months.[9]

Although there are no records of exactly how much land was sold under the colony scheme, the Bureau of Indian Affairs estimated that Martin had taken in over $1,000,000. In the meantime, Guittard recorded additional deeds, which claimed an even larger portion of southern Arizona. As these legal questions worked their way through the courts, the government found itself in a curious position.

During most of the early history of the United States government policy toward native Americans was shaped by the assumption that they would soon disappear, and for most of this period, such a position was clearly justifiable. The population of nearly every group declined sharply, and several groups disappeared entirely, or their few remnants were absorbed by other tribes, while a handful assimilated into the dominant white culture. However, beginning with the 1880 census, it became increasingly clear that, far from disappearing, many tribes were rapidly increasing in population. Recognition of this fact

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8 Bryan 1929.

9 Nabhan 1987.

forced a reappraisal of official policy, and while many of the previous policies remained in place, there was a growing awareness that long term accommodation to a growing population would be necessary.

The establishment of many new reservations (nearly all in the far west) and an expansion of efforts to speed assimilation were elements in this new approach. A shift to government, rather than mission schools, and the allotment of Indian lands to individuals rather than to the tribe were part of this effort. The Tohono O'odham, however, never having opposed the United States, had generally been neglected by the government.

Late in the nineteenth century a few small reservations for the tribe had been established, primarily along the eastern and northern margins of their traditional lands, where irrigable river bottom lands were also attractive to white settlers. But as late as 1916 these reservations totaled only 148,000 acres, a minute fraction of the more than five or six million acres utilized by the tribe.

If Martin's suit prevailed, the Tohono O'odham would have title to a large portion of southern Arizona, including the obligation to pay property taxes, and the right to sell it. Given the history of other groups in the area, it is likely that within a very few years the tribe would have found itself essentially landless and impoverished. To prevent this by setting aside a reservation, the government had to maintain that the tribe did not hold title under Mexican law, and that the land was all part of the public domain. In January of 1916 President Wilson set aside, by Executive Order, a reservation of some 3,100,000 acres. Interagency correspondence makes it clear that creating of the reservation was largely an effort to preempt land sales by Martin and his associates. Although there were subsequent deletions and additions to this area, the tribe's current reservation is substantially the same as that set aside by Wilson (Figure 2).

However, in order to provide this reservation, it was necessary for the government to prove that the Tohono O'odham had no claim to the land. If the tribe had a legitimate claim under Spanish and Mexican law, then the Hunter-Martin deeds might well be found to be valid, and the sale of much of the tribe's traditional lands would proceed. If, on the other hand, they had no legal claim to it, then the whole area was within the public domain, and the government could set it aside as a reservation for the tribe.

Although the suit was eventually dismissed by the United States Supreme Court in 1927, it was only on the technical grounds that the ostensible plaintiffs, the people of Santa Rosa village, had not authorized the suit. This ruling clearly left the basis for Martin's claim to the land unresolved. But by the time of the ruling Martin's 'unit' sales had long since stopped, and no more was heard from Martin or the Hunter heirs. The government proceeded to act as if the Supreme Court's ruling had validated its position, although it was, in fact, still an open question. As a result, property owners throughout southern Arizona, and indeed, much of the southwest, remained apprehensive about the legality of the title to their land. It is likely that this case (and others) was a significant contributing factor in the establishment some twenty years later of the United States Indian Claims Commission to 'deal finally with the long-standing claims of Native Americans against the Federal Government.'[10]

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10 The government of the United States cannot be sued without Congressional approval, but the Indian Claims Commission Act of 1946 established a tribunal to hear all suits from recognized tribes which filed claims within five years of enactment, and nearly five hundred claims were filed. By filing a claim, tribes explicitly waived any future claim against the U.S. The commission held hearings with both sides presenting expert witnesses on the exclusive utilization of lands by the tribe at the time the land was taken from them. When

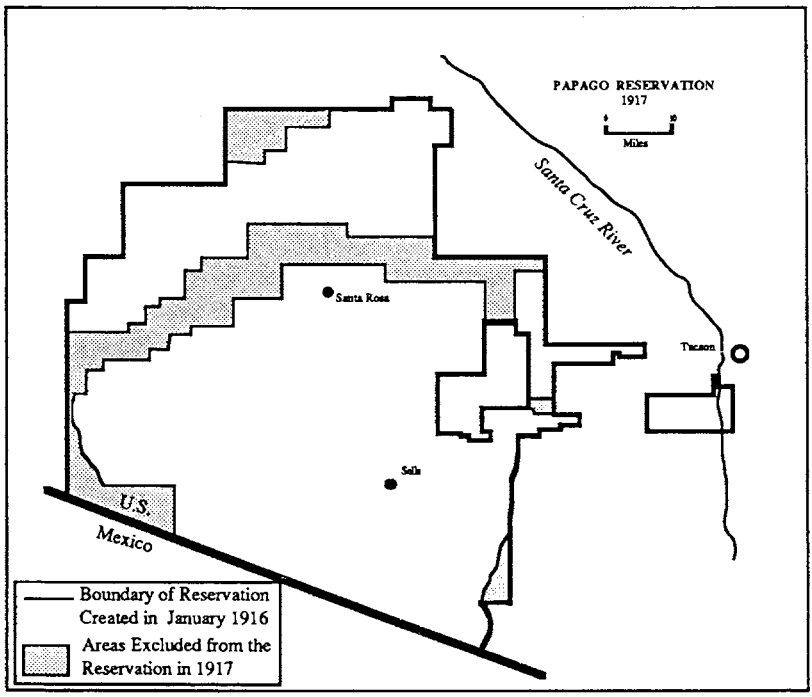

Figure 2. The Papago Reservation in 1916 with later modification

When the Tohono O'odham (Papago) claim was finally settled in 1976 the ruling held that the tribe had held aboriginal title to virtually all of the area south of the Gila River and west of the Santa Cruz River, an area virtually identical to the Hunter claims, and was entitled to compensation of $26,000,000 for lands taken, the loss of subsurface rights, and trespass prior to the taking of the lands. It is worth noting, however, that the title was based on aboriginal possession, not title under Spanish or Mexican law. In effect, the Commission ruled that Hunter's basic argument was correct: the tribe did have title, and that the government should not have treated their lands as part of the public domain.[11] All

areas were used by more than one tribe, neither received compensation for it. The area of reservations was also excluded (since the tribe retained this land), and compensation was computed at the value of the land at the time of taking. This usually was less than a dollar an acre. The Commission, originally scheduled for a ten year existence, continued to function until 1978, when its 68 remaining cases were transferred to the Federal Court of Claims. (Imre Sutton 1985).

11 While this, and other rulings by the Commission, acknowledged that the taking of some lands was illegal, the settlements also ratified the legality of subsequent land titles to these

land outside the reservation was confirmed as part of the public domain, and most of it remains in that status. Nearly all is within Organ Pipe Cactus National Monument, the Cabeza Prieta National Wildlife Refuge, or the Luke Air Force Bombing and Gunnery Range. The tribe has used much of the compensation for programs such as provision of water and electricity to remote settlements, stock improvement, and job training. Its most important result, however, was to give the tribe a degree of independence from funding controlled by the Bureau of Indian Affairs bureaucracy.

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areas. Thus, current land owners did not face the possibility of having their lands turned over to the tribe. The only significant exception came with the Maine Indian Claims Settlement Act of 1980 (P.L. 96-420), which authorized the Passamaquoddy and Penobscot Indians to reacquire some 300,000 of the 12 million acres taken from them in unratified transactions. Aboriginal title to much of Alaska was recognized under the Alaska Native Claims Settlement Act of 1971 (85 *Stat.* 688).

Appendix A

[Text of promotional brochure sent to prospective purchasers of Hunter-Martin Lands]

SANTA ROSA VALLEY
Colored Settlement

YOUR QUESTIONS ANSWERED

1. WHERE IS THE LAND?

In the wonderful Santa Rosa Valley of Pima and Pinal counties, in Southern Arizona.

2. WHAT IS THE CHARACTER OF THE LAND?

The land is level valley land, covered with a growth of native grasses, sage brush and grease wood. It is a purely silt soil, absolutely free from alkali or adobe, and several hundred feet deep.

3. WHAT IS THE CLIMATE?

It is comparable to that of Southern California. There are no great extremes of heat or cold. A light frost has been known only twice in twenty years, and there are no fogs.

4. IS THIS A NEW AND UNKNOWN COUNTRY?

No, it has been inhabited and these lands have been farmed for several hundred years. There is evidence of there having been a high state of civilization in this country when Columbus discovered America.

5. WHO ARE THE INHABITANTS?

We call them the Papago Indians, but they are citizens of the United States, and have the right to buy and sell property the same as other citizens. They are farmers and stock-raisers.

6. WHAT AGRICULTURAL PRODUCTS DO THEY RAISE?

In the winter months they sow their wheat and barley, which is harvested in May and June; in July they plant corn, beans, peas, melons, pumpkins, sorghum, etc. and harvest these crops in September and October.

7. DO THEY IRRIGATE?

No, they never irrigate; the rainfall has always been sufficient to grow two full crops a year without irrigation. If one should wish to irrigate an unlimited supply of water can be developed by pumping from wells.

8. WHAT IS THE RAINFALL?

There are two rainy seasons, the primary maximum occurring during the months of July, August and September, and a secondary maximum during the

colder months of the year. Practically no rainfall occurs during the months of April, May, June, and October, November, and December. The average rainfall is from 16 to 30 inches per year.

9. WHAT IS THE WATER SUPPLY?
The land is all water bearing, wells of from 20 to 80 feet give all the water needed for domestic purposes, and deeper wells give an inexhaustible and unlimited supply for irrigation purposes if necessary.

10. ARE THERE ANY HIGH WINDS OR CYCLONES?
No, the U.S. Weather Bureau reports that the average wind velocities are comparatively light, ranging from above 4 miles to slightly above 7 miles per hour.

11. WHAT WILL THE SOIL RAISE?
Anything that can be raised in a semi-tropical country. In fact, these lands are susceptible of the highest cultivation of any lands in the world, in this latitude.

12. WHAT ARE THE RAILROAD FACILITIES?
The lands are about 20 miles due south of Casa Grande, a station on the main line of the Southern Pacific R. R. and a new Rail Road is projected through these lands.

13. WHAT IS THE TITLE TO THESE LANDS?
These lands are old Spanish grants and are guaranteed by treaty and the U. S. Government.

14. DO I GET A GOOD TITLE TO THE LAND?
Yes, the title is guaranteed.

15. HOW IS THE LAND TO BE DIVIDED?
In regular sections according to U. S. custom.

16. IF I BUY, WHEN CAN I MOVE TO THE LAND?
Just as soon as it is segregated, from public domain. The territory is still unsurveyed and our deeds are by meets and bounds.

17. WHEN WILL THE SEGREGATION AND SURVEY BE MADE?
Just as soon as we can get the Government to order it. We hope to have it done in less than a year.

18. HOW WILL IT BE DIVIDED?
In 80 acre tracts or less.

19. HOW WILL I KNOW WHERE MY LAND IS LOCATED?
When the land is surveyed you have the privilege of picking it out yourself.

20. WHAT IS IT REASONABLE TO SUPPOSE THE LAND WILL RAISE?

Anything that any other land will raise, and a great many things that other farms will not: corn, sorghum, wheat, barley, alfalfa, oats, cotton, kaffir corn, milo maiz, potatoes, melons, and all kinds of vegetables, also dates, figs, olives, oranges, lemons and walnuts.

21. IS IT A GOOD STOCK COUNTRY?

Yes, we believe it unexcelled for hog, horse and cattle raising.

22. WHAT IS YOUR OPINION OF THE FUTURE VALUE OF THIS LAND?

It is reasonable to suppose that within five years from the time we get possession of our land it will be worth $150 per acre.

23. ON WHAT DO YOU BASE YOUR ESTIMATIONS?

We know that land that will raise 40 bushels of wheat to the acre is worth $150.00 per acre, in any land. And land that will produce 80 bushels of corn to the acre is worth $150.00. This land is known to produce 60 bushels of wheat and 80 bushels of corn to the acre on the same land in the same year. We will demonstrate it in less than that time.

H. H. Williams and W. H. Rozier,
966 Hemlock Street
Phone Main 6368

Appendix B

[Text of promotional brochure from the Progressive Educational Association]

Progressive Educational Association

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The Greatest Proposition Ever Offered for the Benefit of the Race. Absolutely Bona Fide The Future of a Struggling People.

gggggggggg

THE GREAT OPPORTUNITY

Progressive Educational Association, Rev. J. D. Gordon, president, has negotiated for 107,000 acres of the best farming land in the West. Said land is located in the State of Arizona, and is known as Santa Rosa Valley. This fine farming land is set apart for an industrial colony. A town site will be located in the center of the tract, and a college erected for the training of the youth of the Race, for the varied pursuits of life.

OPPORTUNITY FOR THE NEGRO IN THE WEST

In the State of Mississippi and Oklahoma, where the Negro is oppressed and disfranchised of his God-given privileges and citizen rights, they have seized the opportunity to building for themselves and have made good.

Why not the Negroes in the West, with the knowledge offered them, come together and make a show?

Our people are making a gross mistake in flocking to the great cities of the West, where Organized Labor has the door closed against them, and their wives and daughters have to go out in service and work to pay house rent, and part of the time the men are walking the streets without work.

Some of them are trying to buy homes on the installment plan, and contracting four and five thousand dollars indebtedness, and it takes all their spare money just to keep up the interest.

This same person could take $440 and purchase them 80 acres of the best farming land in the West, and the first year he is on the land it will pay for itself, and wife and daughters can remain at home.

The widow woman who is out in service can grow fruit and raise enough poultry to make her life happy, without such hard work.

THE CLIMATE

There is not another location in the United States that has more suitable climate for the colored man. It is never too hot and never too cold — average 1800 feet above sea level, no heavy frosts and no snow. The plains are green the year round, an ideal climate and a healthy country. Plenty of rain for two

crops a year, the rainy seasons coming one in the winter and the other in the summer months, July, August, and September.

PRODUCTION

The land will produce cotton, and corn, 50 to 75 bushels per acre; wheat, barley, oats, and other small grain, 40 to 60 bushels per acre; potatoes and beans, peas of all varieties, melons of all kinds, and all semi-tropical vegetables.

FRUITS

Lemons, oranges, grapes, and all kinds of nuts, and any fruit that grows in any semi-tropical climate.

A smooth table land.

THE SURVEY

The land will be allotted in 40, 80, and 100-acre tracts, and the cost per acre will be $5.50 for the present.

TERMS

40 acres @ $5.50 = $220.00
80 acres @ $5.50 = $440.00
100 acres @ $5.50 = $550.00

These amounts can be paid on the installment plan if desired.

When the European war comes to a close, and it is made possible for the thousands to come to this country, all thinking people are agreed that all or most of our idle territory will be taken up by the homeseekers. Having this in mind, and also seeking to provide for the Western states a school or university for the religious training of our girls and boys, we desired a location. We have searched California for a desirable place, but could not find in the State just what we wanted.

We have succeeded now in laying hands upon more than 100,000 acres of the best land now idle on the North American continent.

1. There is no alkali in this land anywhere
2. There is no adobe soil in this land
3. There are no rocks on this land
4. There is no sand or sand dunes on this land.
5. Nor can you find gullies in this territory.
6. The land is so level that you would never need to level it for irrigation.
7. This is fine soil for cotton raising.
8. Cattle and hog raising
9. You can produce two crops a year without irrigation: one you plant in December, and the other in June.
10. This land without irrigation, will produce 50 to 60 bushels of wheat to the acre, and then the same year, without irrigation, produce 50 bushels of corn per acre.
11. The wind velocity is an important matter to the western farmer, many have to plant trees around the farm to protect the produce from high winds, but here, according to government reports, the velocity of the wind is from four to seven miles per hour.

12. This land, every foot of it, is water bearing, and you can get water from 15 to 50 feet, when you are seeking surface water.

13. The water from the artesian depth is so pure that in using the engine for four consecutive years, the boilers did not have to be cleaned out once during this time.

14.This land will produce the finest cotton possible, and when opened should be a rival to Imperial Valley.

15. It is nearly 1800 feet above the sea level, and out of the reach of fogs.

16. This is an orange producing climate and soil, but we can only know from the fact that 40 miles away oranges and lemons grown in abundance, therefore we safely conclude that lemons and oranges will grow here.

17. This land, from its productivity powers, is easily worth $150 per acre. Everything that we have said about this land can be verified.

Now we are putting 20,000 acres of this land on the market at such a figure that it will startle you. We do so because we have plenty land left, and what we sell at this figure will help us sell the rest of the land for what it is worth.

We have 250 certificates, called "Founders Certificates" which members are to keep for the coming generation and memorial.

These Certificates will cost you $440 on terms and will entitle you to cast one vote for the Trustees of the School in this Province, and give you 80 acres of this matchless land, thus letting you have the land at the rate of $5.50 per acre. This door will not be open always for the ambitious men and women among us.

One-fourth of all the proceeds from the sales of said land will be placed in escrow for the establishment and endowment of this University thus avoiding the necessity of asking anyone for a donation, white or black. We hope that all Negroes who believe in and delight in the Negro's possibility, will enthusiastically join in with this religious, industrial, civil, and educational movement that promises so much for the Race.

We hope to see a great city, surrounded by a great number of prosperous farmers and cattle raisers, and artisans skilled in every department of hand-craft, and turn out from there to the world, the best articles along all lines, bearing the name and stamp of this great University, and nothing can stop the Race from going on to greatness. The Race cannot go to greatness by saying great things alone, but by our deeds shall we be promoted in this world.

Some of the agents already installed are:

H.H. WILLIAMS, 1315 E. 12th St.
REV. W. H. ROZIER, 5401 Holmes Ave.
MRS. C. A. BASS, 814 Central Ave.
L. C. ROSS, Victorville, Calif.

See these for further information

IDENTIFYING THE PROCESS: THE REMOVAL OF 'HALF-CASTE' CHILDREN FROM ABORIGINAL MOTHERS

Suzanne Parry

In searching for clues as to why white public servants, missionaries and others believed they had the right, and not only the right but the duty, to remove children of mixed Aboriginal and non-Aboriginal descent from their Aboriginal mothers during the middle decades of the twentieth century, it is easy to be beguiled into accepting the justification as it was articulated by contemporary society. One would then accept that so called 'Half-caste' children were institutionalised, or fostered into white families, because contemporary belief has it that their white 'blood' fitted them for a life better than that available in Aboriginal camps. This is essentially as it was explained at the time and such a rationale allowed the 'removalists', mostly white male missionaries, police officers and patrol officers, to face the task with resolution and a sense of duty. This rationale also allowed the wider society to support the actions of the removalists as being guided by high moral principles and generosity to the less fortunate. Folklore heightened the moral necessity of removing the children as it perpetuated the myth that light skinned children would be killed if left with their Aboriginal families.[1] While one might accept these explanations at face value they fail to explain the relationship of the individual with the beliefs articulated and fail to explain the generation of the beliefs themselves. Why was it that there was such wide support for removalist policies; indeed, why the assumption that the belief on which the policy was based was an indisputable truth? One is left with the feeling that there is much more to it than contemporary explanations would lead us to believe.

In an attempt to provide a more comprehensive explanation I will argue here that there was a more pervasive and largely unarticulated set of beliefs that were more powerful than the individual historical actors and that these beliefs governed action. This is not to suggest that the overarching beliefs were never articulated, for they were in the context of other social and political debates, but that they were rarely, and then only tangentially, used to justify the removal of 'Half-caste' children. Individuals then were influenced by a process greater than themselves, even where they were articulating, formulating and implementing state policy, so that many of the beliefs that were informing behaviour remained unacknowledged and unchallenged but nevertheless created the milieu in which the removalists operated. Thus, while we can seek understanding in the contemporary articulation of both policy makers and those who implemented the policy, and in the perceptions of society, this will only hint at a process that was largely unidentified and the

Suzanne Parry completed a doctorate in medical history and continues to research aspects of the history of Aboriginal health. She also combines her work in teacher education with her historical interests by publishing in the area of the history of education for Aboriginal children.

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1 We are led to believe by a number of historians including Anne McGrath, in Patricia Grimshaw et al, 1994, *Creating a Nation*, McPhee Gribble, Ringwood, that there is some evidence that this was so in early colonial times but there is no reference to it extant official records of the period in question. As folklore it persisted well into the 1970s when as a neophyte teacher I began to teach some of the children who, I was assured, had been 'rescued'.

strength of which can be more clearly gauged from a temporal distance. It will also be argued the milieu created by a particular set of beliefs was difficult to dislodge so that even where new ideas were gaining acceptance they would not be reflected in individual action or stated policy until long after they were recognised as being valid.

In his work *The Logic of Practice* Pierre Bourdieu provides a very succinct explanation of the process explored above and he refers to the creation of a set of beliefs instituted at societal level at the *habitus.*

> The conditioning associated with a particular class of conditions of existence produce *habitus*, systems of durable, transposable dispositions, structured structures predisposed to function as structuring structures, that is, as principles which generate and organise practices and representations that can be objectively adapted to their outcomes without presupposing a conscious aiming at ends or an express mastery of the operations necessary in order to attain them. Objectively 'regulated' and 'regular' without being in any way the product of obedience to rules, they can be collectively orchestrated without being the product of the organizing action of a conductor.[2]

In her exploration of the construction of female sexuality Frigga Haug provides an explanation of the way in which the individual adopts societal beliefs, the structures of Bourdieu's *Habitus*, which is useful well beyond the context in which Haug came to conclusions about its workings.

> The process of subjectification can be understood as the process by which individuals work themselves into social structures they themselves do not consciously determine, but to which they subordinate themselves. The concept allows for the active participation of individuals in heteronomy. It is the fact of our participation that gives social structures their solidarity: they are more solid than prison walls.[3]

Bourdieu eschews the differentiation between conscious and unconscious as being misleading, but there is nevertheless a difference between the beliefs which are articulated by the individual and those that, while still informing behaviour, remain unarticulated. I will be arguing here that where beliefs related to removalist policies were articulated there was frequently a personal commitment to them by those involved. This goes some way towards explaining the apparent altruism of many policy makers[4] and the good intentions[5] of many of those acting in official capacities which has been noted.

Using Bourdieu and Haug's explanations of the structures of the *habitus* and the individual's relationship with its social structures we can then explore the beliefs which came to be its 'structuring structures', for it is those beliefs which influenced the shaping of policies regarding the removal of children from their Aboriginal families and it is this set of beliefs which is hidden from immediate view. Mostly such beliefs have been ably dealt with by other historians but not in the context of removalist policies. They are the patriarchal state, which is most tellingly defined though challenges to it such as when women began to exercise power in determining family size,[6] the creation of a nation, with its attendant beliefs about the superiority of a 'white Australia' and the efficient nation-state, and the nature of 'race' as it was defined in eugenic and, importantly, scientific terms as 'blood'. Aboriginal women giving birth to 'Half-caste' children in the Northern Territory

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2 Pierre Bourdieu 1990:53.

3 Frigga Haug et al 1987:59.

4 Tim Rowse 1990.

5 For example see Bain Attwood et al 1994.

6 Neville Hicks 1971.

flouted all those beliefs as espoused by our nation builders and guardians of the patriarchal hegemony, as did single mothers in earlier decades of the twentieth century.[7] For their transgressions they had their children removed from their care, the clear intention being that the legitimacy of their claims as mothers would be denied thereafter. The policies which denied Aboriginal motherhood were invariably composed and legitimised through reference to the children of mixed descent but the unspoken and unacknowledged legitimacy concerned the transgressions of the mother.

Patriarchy was at the pinnacle of the hierarchy of beliefs that created the *habitus* within which policies that denied Aboriginal mothers the right to raise their children of mixed descent were formulated and implemented. Patriarchy was the basis of state power, economic rationalisation and family structures. In its most fundamental manifestation it acknowledged men as head of family, with others, that is wife and children, in a relationship of dependency.[8] Aboriginal women, even when they had borne the children of white and other non-Aboriginal men, indicated that they were indifferent to their masculinity and all that masculinity implied; they could survive, even if only as a group given that many individual Aboriginal women suffered severely as a result of their contact with white males. The formal, accepted trappings of 'the home', where white men provided both the income and the link with the political world, was absent, leaving white men deprived of the means to exercise power in this socially acceptable way. Nor did Aboriginal women appear to reflect motherhood in the same way as white women and it was this idealised vision of motherhood that had done so much to legitimise patriarchy. From a Eurocentric viewpoint Aboriginal women did not appear the loving, self-sacrificing and virtuous guardians of the moral and physical development of their young.

Some Aboriginal women chose to use white male sexuality to their own advantage, as amusingly portrayed at the expense of Tom Ronan's character Mr Toppingham in *Vision Splendid*. Toppingham willingly deludes himself into believing that the nightly visits of an attractive young Aboriginal woman, Lillie, are based on mutual attraction and his chagrin when she demands payment for herself and her husband is intense.[9] More open forms of prostitution by which Aboriginal women contributed to family incomes was common. Many Aboriginal women were taken by force but even then Aboriginal women did not lose their place in Aboriginal society and children born of rape were absorbed into an extended family that did not lack for the absence of the white male. It is significant that where a white male entered into a more permanent relationship with an Aboriginal woman, which was, paradoxically, unlawful and accepted paternal responsibility for the children and was acknowledged as head of the family, then the rights of motherhood were less likely to be denied the Aboriginal woman.[10] More commonly a father could retain control of his child by distancing himself from the child's mother and assuming paternal responsibility.[11] Most women had no choice in the lack of paternal responsibility shown to their 'coloured' offspring, and no doubt would have welcomed at least material assistance, but while often impoverished they were not destroyed by its absence. Although individually they suffered, collectively they survived and continued to produce and raise children independent of a white

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7 Punishment of single mothers for their denial of male power was principally financial. See Renate Howe and Shurlee Swain 1993

8 For detailed analysis see Marilyn Lake 1993.

9 Tom Ronan 1954.

10 For example see the biography of Matt Savage and his Aboriginal wife in Keith Wiley 1971.

11 For example see the autobiography of Jack Gibbs, in press.

male, Aboriginal women threatened the power base of Australian society by making the men redundant.

The Northern Territory lagged behind other parts of Australia by several decades in developing a strong sense of national identity so that when, in the early decades of the twentieth century the newly federated colonies consciously sought to create a nation, the Northern Territory was still struggling for survival. It was mid-century before continued development was assured and attention could be focussed on creating an identity that would shake off the frontier image and would be more aligned to the respectable working and middle classes of southern Australia. The knowledge that children of white fathers were growing up amongst Aboriginal people in the poorest of circumstances was anathema to the vision of a strong, vigorous and respectable society. Open scorn was directed at those men known to have fathered a child by an Aboriginal woman but the greatest derision was reserved for those who attempted to incorporate an Aboriginal woman into a nuclear family. The challenge this posed to accepted norms was too great to be countenanced. The collective shame of society, about which Tony Austin writes,[12] was perhaps less consciously experienced but it too was indicative of a reaction to the powerful challenge inherent in an alternative family structure, although it stemmed also from beliefs about the supremacy of the white race.

But moral indignation was not the only concern of white Australians. Aboriginal mothers who were raising their children of mixed descent within Aboriginal society were also removing them from the control of white Australia. This had implications culturally and well as economically, and both related to the aspirations of Australian nation builders. At no time in the twentieth century had the Australian birthrate been thought satisfactory for a developing nation and the sparsely populated Northern Territory was of particular concern. While the settlement of white women in the north was actively encouraged[13] and their role as wives and mothers highly regarded,[14] the white population continued its very slow growth. By the 1930s, however, the decline in Aboriginal numbers had slowed and the overall trend in the Aboriginal population was beginning to turn. Most noticeable, for social rather than numerical reasons, was the increase in the number of children of mixed Aboriginal and non-Aboriginal ancestry. As the increase in white population was far below requirements, and growth in Aboriginal population discounted except as a positive marker in Australia's international reputation for fair treatment of its indigenous people, something worthwhile might be redeemed from the growth in the number of 'Half-caste' children. This could be achieved, however, only if the children were raised under the influence of the dominant culture where 'appropriate' attitudes to work and authority could be inculcated.

Here, as with the rejection of Aboriginal women as suitable mothers of children of mixed heritage, was a racism which accorded Aboriginal culture no value and judged Aboriginal physical and intellectual inheritance of a very low order. Although scientific explanations of social Darwinism were no longer widely espoused by the middle decades of the twentieth century, beliefs regarding the inferiority of the Aboriginal 'race' continued to inform attitudes to Aboriginal people. This would remain so until 'race' as a basis for genetic inheritance was challenged. Aboriginal women, then, were unfit to raise children whose 'white blood' made them superior.

That 'Half-caste' children had the potential to respond to the 'training' that was to be provided in their institutional homes was a negative belief premised on prevailing ideas of

12 Tony Austin 1993.

13 Suzanne Parry 1992.

14 Lyn Riddett 1993.

race. In the 1930s Xavier Herbert had argued that the 'Euraustralian', that is, a person of mixed Aboriginal and non-Aboriginal descent, was the ideal person to populate and develop the Northern Territory[15] combining the Aboriginal instincts of bush life and survival with European intellectual capacity for work focussed on development. There were few who agreed with him; most saw 'Half-castes' as being salvageable because a white heritage gave them a limited, diluted as it was, intellectual heritage which could be cultivated. Thus the 'Half-caste' was placed marginally above other Aborigines. Although positive where others were negative in their response to the question of children of mixed Aboriginal and non-Aboriginal descent, there was shared understanding of the nature of 'race' between the race positivist represented by Herbert and the negative majority. Both believed that intellectual capacity was an inherited racial characteristic as was the capacity for self-discipline and adaptation to change. Clearly defined as the *Other*, Aboriginal people lacked these inherited capacities in the same measure as Europeans possessed them, in irremediable position given their supposedly genetic transmission. Franz Boas' assertion that there were no grounds for belief in 'hereditary racial characteristics'[16] and Ashley Montagu's arguments that 'race' represented one of the most 'dangerous myths' of the time[17] had done little to change race ideologies in Australia. Even where new ideas were adopted at an intellectual level their proponents had grave difficulty in sustaining them within their own discourses, even without the additional burden of using the new theories to refute opposition. Claude Levi-Strauss, the well known international anthropologist, joined Montague arguing in the early 1950s that 'to attribute special psychological characteristics to the biological races, with a positive definition, is as great a departure from scientific truth as to do so with a negative definition.'[18] But changing beliefs which had become structures was a very slow process.

A.O. Neville who had been Western Australia's Chief Protector of Aborigines for over thirty years, continued to influence Aboriginal policy in the post-war years. He graphically, albeit unwittingly, gave voice to the dilemma in his 1947 treatise on 'Australia's Coloured Minority' when he echoed Montagu's ideas when arguing for the invalidity of 'race' as a meaningful classificatory term but concluded his publication with the injunction that the intermarriage of 'full-blood' Aborigines with 'Half-castes' should be legally restricted.[19] Contradictions were equally apparent in his discussion of assimilation, a state of grace which he clearly believed could only hope to be achieved by his so-called 'coloured people'.

Race, evidently, was the one informing factor which could be made conscious and, indeed, was from time to time. Increasingly, however, as the policy of removing children was challenged, it remained unstated. The reluctance to articulate racist ideologies even where they were clearly informing policy, claiming instead environmental considerations, was tellingly revealed in a 1953 challenge to the Acting Director of Native Affairs that

> if it was agreed that the removal to an institution was the best means of facilitating the 'assimilation' of part-aboriginals, then the best interests of the full-bloods from the same environment would be served by the same treatment.

The Acting Director hinted darkly at other factors which required consideration but would elaborate no further.[20] Ideas regarding the maintenance of patriarchal hegemony and the

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15 Suzanne Saunders 1990:62.

16 Quoted in Derek Freeman 1983:32.

17 Ashley Montagu 1940.

18 Claude Levi-Strauss 1952:7.

19 A.O. Neville 1947.

20 AANT (Australian Archives Northern Territory), CRS A1361/1 45/3/1, Part 5.

desire to build a nation informed but were rarely articulated, while race ideologies moved from the conscious and articulated sphere to the level of powerful but unarticulated structures. What was at the conscious and articulated level of social operation, and could therefore be given voice by the individual and adopted as personal, was confined to other areas.

In the immediate post-war period and up until the passing of the *Welfare Act, 1953*, patrol officers of the Native Affairs Branch removed Aboriginal children of mixed ancestry from their Aboriginal families under powers conferred on the Director of Native Affairs through the *Aboriginals Ordinance 1918-1947*. Under Section 7 of this legislation the Director of Native Affairs was the legal guardian of every Aboriginal person and every 'Half-caste' child in the Northern Territory. Charged under the Act to provide for the case, education and training of 'Half-caste' children, the policy was to remove children to an institution where they could be raised in the care of white guardians.

Removing children had been commenced in the early decades of the twentieth century by Baldwin Spencer and pursued with a degree of vigour under C.E. Cook's regime as Chief Protector of Aborigines, although even then it was not a written policy which had been through the process of gaining Ministerial approval.[21] It was given its first official expression in John McEwen;s 'new deal' for Aborigines in 1937. There it was encoded in a policy statement and given formal ministerial sanction. When E.W.P. Chinnery was appointed Director of Native Affairs in 1939 on McEwen's recommendation, he restructured the removal process. This was formally endorsed by H.S. Foll, the new Minister of the Interior. F.H. Moy took over as Director of Native Affairs in 1946 and unquestioningly and systematically continued the implementation of the policy.

The correctness of this policy, in terms of its morality, legality or effectiveness, was questioned neither by the public, the patrol officers nor the responsible federal minister until 1951 when Dr Charles Duguid visited the northern parts of the Northern Territory. The Scottish born Duguid, a medical practitioner from Adelaide, had been campaigning for improved conditions for Aboriginal people for almost twenty years. He had frequently proven a thorn in the side of the government in Canberra and his own Presbyterian church whose mission policy he criticised.[22] On his return south Duguid published his observations of the workings of the Aboriginal policy, suggesting that in some aspects it was unwise and inhumane.[23] He was particularly concerned about the removal of children from their Aboriginal mothers, and was evidently distressed to witness many of them being removed when still babes-in-arms. When, in 1953, the *Aboriginals Act* was to be replaced by the *Welfare Ordinance* Duguid's criticisms were given no consideration; the policy had been upheld to the satisfaction of the Minister by officials in the Northern Territory.

By 1953, however, international opinion recognised the injustice of racist legislation and in an attempt to conform with international codes the Minister for Territories, Paul Hasluck, ordered that Aboriginal people not be identified by race in the new law. The Act was, however, always intended as a means for continued intervention in the lives of Aboriginal people and its euphemistic formal title was 'An Ordinance to Provide of the Care and Assistance of Certain Persons'. Aboriginal people were therefore made subject to the law because of 'their manner of living', their 'perceived standards of social habit and behaviour', their 'personal associations' and their perceived 'inability to manage their own

21 Tony Austin 1989.

22 Suzanne Parry (in press).

23 Charles Duguid 1951.

affairs'.[24] Any person defined and categorised on these criteria was to be declared a ward of the state and clearly the intention was to 'declare' any children, regardless of parentage, who were living with Aboriginal people. In relation to the institutionalisation of wards, the Act recognised the increasingly privileged position of the family in Australian social and political life by stating that children would not be removed from their families nor parents from children. Where, however, the 'family' failed to conform to accepted norms it would be subject to injunctions which denied its validity. As it was intended that the removal of 'Half-caste' children be continued, the proviso was added that children could only be removed with the written authorisation of the Administrator. This very quickly became a blanket authorisation where the intent of the law, that every case be given individual consideration, was conveniently overlooked. Adult 'Half-caste' people who were not declared wards, were nevertheless frequently denied the validity of their family where the family failed to abide by accepted norms but the process of removing their children was through the courts under the *State Children's Act.*

When, in 1951, Charles Duguid had publicly raised the issue of removing Aboriginal children a ministerial inquiry prompted the Territory administration to defend its policy. The Secretary for the Department of the Territories was informed that, since the policy had been adopted, 583 children had been removed to institutions, with a total of 109 children removed between the years 1946 and 1951. Of those removed, a little over sixty percent were girls, a ratio that was to be maintained for as long as the policy was pursued. In the post war years the majority of children had been sent to institutions run by the Catholic and Methodist churches on Melville Island and Croker Island respectively and to the Retta Dixon Home run by the Australian Inland Mission in Darwin. Smaller numbers had been fostered into white homes in southern states, some were sent to St Mary's Hostel in Alice Springs and some who were classified as 'almost white' were sent to St Francis Home in Adelaide. The policy of removing children continued into the 1960s. By the mid-1960s, however, removal was increasingly reserved for those believed to be suffering serious neglect, although where parental neglect was evident only children with visible non-Aboriginal heritage would be removed from the Aboriginal family. The policy was not officially abandoned during the 1960s but was employed less and less, particularly as a system of 'native schools' was established in remote areas by the Commonwealth government and the educational imperative of the removalist policy was negated.

Assimilation was the most clearly articulated and readily acceptable justification for the institutionalisation of Aboriginal children. It has been written about extensively[25] but is important here because, socially and morally, it was a widely shared ideology and could be easily appropriated by the individual as a personal motivation and justification. As both Bourdieu and Haug explain the role of the individual was important in maintaining and perpetuating the beliefs which allowed these structures to operate effectively. To 'uplift' Aboriginal children to a white standard of living and to accommodate Aboriginal children within a 'superior' culture was seen to be both morally commendable and politically astute. An assimilationist policy had been first accepted nationally at a 1937 meeting of state and territory bureaucrats responsible for Aboriginal affairs. The Second World War delayed its introduction in any serious way but, by the 1960s, a common statement regarding assimilation had been adopted and funds were being channelled into its implementation. There is little to suggest, however, that white Australians ever genuinely believed that 'full-blood' Aboriginal people could assimilate or could be assimilated; the comparatively

24 *Welfare Ordinance* 1953: Clause 14.

25 For example Tony Austin 1989.

limited funds available for primary schooling, the emphasis on 'training' rather than 'education' and high level of white control on Aboriginal settlements are all testament to this. The assimilation of Aboriginal children who had some non-Aboriginal heritage, significant genetically rather than culturally, had been seen as possible long before voice was given to such a policy and was still current when, in 1951, the Administrator of the Northern Territory, F.J.S. Wise, wrote:

> Assimilation of full-bloods will, of course, be difficult and slow but partly coloured people have inherited qualities and instincts which, if developed in a proper environment, will make the task of assimilation relatively easy and quick, even of those born in aboriginal camps and under nomadic conditions.[26]

The discourse of assimilation for 'Half-caste' children could readily be couched in terms of benefits to the child, terms which sat easily with the individual. Focus on the child allowed assimilation documents to refer to the removal of the child not from the mother, as motherhood was positive and sanctified, but removal of the child from the Aboriginal camp, where 'Aboriginal camp' carried with it an image of filth and degradation in which no child of white heritage could, in good conscience, be left. No justification beyond this was needed; the 'social training and social adjustment' and the 'formal education and training for employment'[27] which the institutionalised children would receive was so highly regarded that the policy was rarely challenged.

While racist, Eurocentric attitudes had long been privileged in formulating Aboriginal policy, by the 1950s cases of maternal distress were being reported and given some, if limited, validity. But Aboriginal women were also expected to accept the view that it was in the best interests of their child, or children, to be removed from their care. The resignation of these women in the face of an implacable authority was willingly read by Native Affairs personnel as concurrence. Administrator Wise convinced himself and others of Aboriginal complicity in the process:

> When a partly coloured child is found in a native camp, a Patrol Officer is directed to prepare the mother for eventual separation. This is done over a period of time, which may be as much as two years, by explaining to the mother and the tribal husband the advantages to be gained by removal of the child and the disadvantages of allowing him to remain in the camp. If the parents are reluctant to surrender the child, he is left undisturbed and the explanations are resumed at the next visit of the Patrol Officer. The parents' confidence is thus gradually strengthened until the child is willingly handed over.[28]

Even where, as reported in 1952, 'some distress' to the mother was caused at the removal of her four year old daughter, but on the return of a Patrol Officer some seven months later was 'no indication of resentment' the administration was overly willing to believe that Aboriginal women supported a system that denied their motherhood.

From time to time the emotional 'attachment' of Aboriginal mothers to their children was raised but, as the discourse suggests, at a very superficial level. Neither the deep psychological interaction between mother and child nor the rights of the mother were given any weight; the 'attachment' referred to could easily be broken and the powerlessness of Aboriginal women was interpreted as compliance. The only recourse open to Aboriginal families was to physically place children beyond the reach of the Patrol Officer, a ruse which sometimes bought them time but rarely proved a long term solution. Administrator

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26 AANT, CRS F1 52/250.

27 AANT, CRS F1 52/250.

28 AANT, CRS F1 52/250.

Wise acknowledged that 'in a white community, a mother's right to the control and care of her child may be overruled only for very grave reasons and after the most careful inquiry' but had no compunction in recommending to the Minister through the Secretary of the Department of Territories that assimilation could best be served through a blanket policy of removing all 'Half-caste' children from their Aboriginal mothers. Charles Duguid stood out against the policy. He had once favoured the removal of children as being 'in the best interests of the child' but in 1951 pointed out that 'in all enlightened countries today it is recognised that early separation of mother and child is a real misfortune'.[29] Rather than separate mother and child Duguid was persuaded that an education system that was extended to all Aboriginal children would facilitate schooling for 'Half-caste' children without family dislocation. In arguing thus he was either naively or provocatively ignoring the deeper motivation for removing children from Aboriginal families, that of placing them beyond the influence of Aboriginal culture. While, during this time, the desire for reducing cultural transmission remained a strongly influential factor, it was nevertheless being called into question as western countries began to reassess the position of indigenous peoples in the post-colonial world.

During the 1950s the age at which a child was to be removed came in for considerable debate. It was a debate which the individual could enter although again the racist imperatives were subsumed and the discourse centred on the child and what was in his or her 'best interests'. In 1952 when, for the first time, guidelines were established for the removal of children, the Secretary for the Department of the Territories overrode the recommendation of the Administrator and the Acting Director of Welfare that no child under the age of four should be taken away from its mother, claiming that 'the younger the child is at the time of removal the better for the child'.[30] Unstated by the Secretary, C.R. Lambert, in his claim for benefits to the child was the attitude that the younger the child the shorter the period of obvious emotional distress which the authorities would be forced to endure. It also reduced opportunity for cultural transmission prior to removal. As all that the children had learnt from their Aboriginal families would henceforth be discarded as undesirable, perhaps, indeed, the greater their youth the less traumatic their separation. L.R. Newby, Senior Education Officer with the Commonwealth Office of Education in the Northern Territory was undoubtedly aware of the Director of Welfare's concern for the influence of Aboriginal culture on the children when, in 1954 he reviewed and commented on the policy. He was of the opinion that early removal of the children would 'ease their social adjustment and would enable them to commence school with something closer to the background of the normal European child'.[31] An integral part of Aboriginal culture learnt by the children was the language and this was also of concern to Newby as no value was invested in any language other than English. Real schooling must then be delayed for as long as it took the child to master English.

In reality, convenience proved to be the greatest single consideration. Thus if a mother was hospitalised at the time of the birth, the new-born child was placed in an institution before both mother and child could return to their home country. Visits to Darwin for other medical treatment were also seen as an opportune time for the institutionalisation of the child. More commonly the child's existence would come to the notice of the Patrol Officer as the child gained independence and moved beyond the immediate protection of mother or grandmother. It was then that the 1951 injunction to adequately prepare the mother for the

29 Charles Duguid 1951.

30 AANT, CRS F1 52/250.

31 AANT, CRS A1361/1 45/3/1, Part 5.

eventual loss of her child could be complied with. There were also the rare, but frequently cited, cases of mothers who sought institutional care for children of very young ages; the reasons why a mother might seek such care were rarely investigated. Figures and anecdotal evidence suggest that by time of the review children were more likely to be taken when they had reached school age: of the 109 children removed in the five years up to 1951, fifteen were under four years old at the time of removal, 84 were between the ages of five and twelve, and eleven had been removed between the ages of thirteen and eighteen. Figures for the Catholic home at Garden Point in 1954 suggest that Lambert's policy of 'the younger the better' was adopted as of the 138 children there, sixteen were under the age of four and nineteen were between the ages of five and nine. Several of the children were only months old;[32] it was at about this time that a Patrol Officer delivered a seven day old baby to the mission who was then cared for by several of the older girls. By this time an increasing number of children, both of whose parents were 'Half-castes', were being sent to the so called 'Half-caste' homes as a result of court action which placed them in the custody of the State Childrens' Council.[33] Whether from 'Halfcaste' families or from Aboriginal mothers the motives and the results were the same.

An extension of the discourse couched in terms of promoting the interests of the child was that of facilitating his or her entry into the workforce. Genuine assimilation would have meant the right of the 'Half-caste' to exercise full choice in the economic arena but the limited education offered to children of mixed ancestry largely determined their socio-economic position in society. Assimilation, which was only ever intended to be partial, then became a mechanism for control. Occasionally the discourse would lose focus on the child and lapse into the benefits to be gained by the nation as a result of removing children from their Aboriginal families. In 1949 Moy reported that 'Half-castes' were making a definite contribution to the economic needs of the Northern Territory and that they could expect to be 'accepted insofar as the worth of their labour is concerned'.[34] By the mid-1950s there was some recognition, at least by those distant from the situation such as Lambert in Canberra, that the social stigma suffered by people perpetually relegated to the bottom rungs of society was in no-one's best interest.[35] Some suggested that the discontent thus generated would make 'Half-castes' a ready prey to communist subversion while Lambert was concerned about the 'moral regression' which might result. However, even while these concerns were being voiced in official correspondence the removal of children continued and it was not until a decade later that the incidence of removal was significantly decreased.

If further justification was needed for assimilation it was provided through the adoption of the belief that 'Half-caste' children left to grow up with their Aboriginal families became adolescent misfits in Aboriginal society. By the time their discontent and rejection was manifested it was too late for assimilation, the only grounds on which they would receive limited acceptance in white society. The extent to which this was a convenient belief easily embraced by the individual, but little based on fact, is difficult to determine. Evidence beyond the extant official records of the period suggest that it was only a hazy reflection of the facts. Many of those raised in Half-caste Homes were welcomed back into their Aboriginal families and where the returning family member was willing to demonstrate an

32 AANT, CRS F1 54/61.

33 Legislative Council for the Northern Territory 1957. Of the 99 children placed in the care of the State Childrens' Council between 1952 and 1957, 89 were from 'part coloured families'.

34 AANT, CRS F1 1943/24.

35 AANT, CRS F1 52/250.

affinity with Aboriginal culture the welcome was all embracing. Both David Trigger's[36] work on Gulf communities and Elizabeth Sommerlad's[37] study of Kormilda College confirm that acceptance and rejection in Aboriginal society were more likely to be based on a demonstrated valuing of Aboriginal culture rather than on shades of skin colour or biological heritage. Any maladjustment of 'Half-caste' young in Aboriginal society was more likely to have been brought about by differential treatment by whites than by blacks. Institutionalised 'Half-caste' children were taught by society at large to despise their Aboriginal heritage and on missions and pastoral stations they were taught that they were superior, if only marginally in some cases, to their families. Without considering the source of the conflict, or indeed the distressing position of 'Half-caste' created by white attitudes, Moy wrote:

> The part-aborigine is striving to get away from his aboriginal ancestry - he cannot feel proud of his parents who were, in most cases, an ignorant aboriginal woman virtually raped by a dissolute white who later abandoned his unfortunate partner and still more unfortunate offspring to a benevolent Government. Unable to be proud of his ancestry the coloured person is endeavouring to merge into normal society as far as he can or is permitted.[38]

'Between two worlds' was a myth that became a reality through white intervention in Aboriginal lives. The power of the discourse can be seen in its influence on the construction of identity by individual Aboriginal people, one of whom recently reflected that she was glad she had been taken so as not to be like 'them', leading a meaningless life in an Aboriginal camp.[39] Assimilationists would have counted this a success.

Personal commitment to a policy of removing children was highly dependent on the adoption of a discourse with which the individual could identify. Any self-respecting citizen could feel justified in pursuing or supporting a course of action which rescued an innocent child from 'ignorance' and 'dissolution' and provided such an 'unfortunate' with a chance to enter 'normal society'. Those into whose care the children were placed also adopted a discourse which allowed them to proceed with personal conviction. Thus institutionalised children were referred to as 'orphans' and 'deprived children' who were 'without families',[40] euphemisms which banished potentially disturbing images of bereaved Aboriginal families from mind. The creation of such myths was an important part of the psychological scaffolding for those implementing a removalist policy.

The success of a policy of assimilating children of mixed Aboriginal and non-Aboriginal heritage into white society through removing them from Aboriginal culture and placing them in institutions began to be questioned in the late 1950s, and by the mid 1960s the policy was recognised as failing to meet its objectives. The institutional system was dismantled in the late 1960s and increasingly all Aboriginal children were able to attend schools in their own communities. This change of policy had little to do with any recognition of the rights of Aboriginal mothers. Nevertheless, although the hegemony of

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36 David Trigger 1989.

37 Elizabeth Sommerlad 1976.

38 AANT, CRS F1 52/250.

39 Personal communication.

40 For example see Bro. R. Pye, 1962, Looking Around Garden Point Mission Station on Melville Island, Annals, Vol. 73, No. 9, pp. 260-1 and Sister Mary Venard, 1974, History of the Australian Province of the Daughter of Our Lady of the Sacred Heart, OLSH, Kensington, pp. 171-7.

patriarchy has not been entirely torn apart it has become frayed around the edges making any reintroduction of such a policy absolutely unacceptable and causing us to censure policy makers of the past. Nationalism as an ideology which made the rights of minority groups subordinate to the aspirations of the emerging nation has also fallen into disrepute and the legitimate ways in which women may bear and raise children has been considerably widened. Race ideologies have also undergone considerable change. While racist beliefs were clearly articulated in the early days of the removalist policies, they were less and less so over time although as a basis for the policy they did not change. Where removalists consistently articulated, and gained wide community support, for their policies in terms of promoting the welfare of children, they could not have done so had not a system of patriarchy been so entrenched. It was here, with the supporting ideologies of nationalism and racism, that they gained their legitimacy. So deep and all encompassing were the beliefs which supported the hegemonic structure that they needed no articulation or acknowledgment at the conscious level; they informed and legitimised through beliefs that people took as being immutable and based on 'truths' that were accepted as natural.

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AUSTRALIAN DIPLOMACY IN A POLICY VACUUM: GOVERNMENT AND ABORIGINAL AFFAIRS, 1961-62

Susan Taffe

Australia in the early 1960s straddled two worlds. The tie with Britain both in terms of trade and in the less tangible area of a sense of heritage and identity was still strong. The British Empire defined and shaped an Australian view of the world. For many, it was a symbol of security and good in a world divided by the Cold War. In the 1960s, however, Australia's view of itself within the Empire was fundamentally challenged by three factors which I will examine in this article, namely: relations between new nations and former colonial powers; the spread of Communism, especially in Asia; and the perceived role of the United States of America safeguarding democracy.

Neil Jillett, writing in a prominently displayed feature article in *the Age* on Australia Day, 1961, reminded readers that if we 'reflect deeply upon our nationhood, we remember that we are part of the Commonwealth of nations'.[1] This comforting view of Australia as a 'distant outpost of Empire' displayed a blinkered nostalgia which took little account of events outside Australia's borders. Australian diplomats in politically sensitive posts, and their Department of External Affairs colleagues back in Canberra whose job it was to guide them, were interrogated about Australian policy with regard to Aboriginal people. Some of the questions asked of Australian diplomats in Africa, the United Nations and eastern Europe proved difficult to answer.

This article is a study of the effect on Australia of the emergence of race issues in international diplomacy during 1961 and 1962, and the responses of senior staff in the Department of External Affairs to those issues. Prime Minister Menzies was responsible for the External Affairs
portfolio from February 1960 with Garfield Barwick taking over from him in December 1961. Paul Hasluck, as Minister for Territories, was responsible in turn, for the development and implementation of special policies for Aboriginal people in the Northern Territory. The period under discussion is prior to the 1967 referendum so, consequently, the Commonwealth did not have power to 'make special laws' for 'the

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1 N. Jillett, 1961:2.

aboriginal race in any state'[2]. Paul Hasluck saw his role as twofold: to implement the policy of assimilation in the Northern Territory which was within Commonwealth jurisdiction and to persuade the states in their jurisdictions to adopt similar policies designed to assist their Aboriginal populations to join and reap the benefits supposedly available in mainstream society.

On Australia Day, 1961, a meeting of State and Federal Ministers and officials responsible for Aboriginal welfare was in progress in Canberra. This was the first time ministers representing all states of Australia had met to discuss their area of responsibility. Agreement was reached on desirable goals in allowing 'Aborigines' to become Australian citizens, socially as well as legally. Although there was a range of quite different approaches to Aboriginal welfare across the states, Minister Hasluck gained agreement from all Ministers present to the following definition of what the assimilation policy being implemented in the Northern Territory and promoted to state governments meant.

> The policy of assimilation means in the view of all Australian governments that all aborigines and part-aborigines are expected eventually to attain the same manner of living as other Australians and to live as members of a single Australian community enjoying the same rights and privileges, accepting the same responsibilities,observing the same customs and influenced by the same beliefs, hopes and loyalties as other Australians.[3]

'Acceptable' lifestyle would be rewarded with rights and privileges. It was suggested that customs. beliefs, hopes and loyalties would be the same as other Australians. Belonging was predicated on acceptance of a value system. Hasluck's view, in promoting this policy, was that the 'Aboriginal problem' was a social problem, rather than a racial problem. His commitment was to social justice and to the extension of human rights to Aboriginal Australians. His view was that improved social conditions would lead to opportunities for Aboriginal people in the general Australian community. Eleven years earlier, in his first address to the House of Representatives, Paul Hasluck had reminded members that:

> When we enter into international discussions, and raise our voice, as we should raise it in defence of human rights and the protection of human welfare, our very words are mocked by the thousands of degraded and depressed people who crouch on rubbish heaps throughout the whole of this continent. ... Let us cleanse this stain from our forehead or we shall run the risk that ill-intentioned people will point to it with scorn.[4]

While Hasluck's policy of advancement for Aboriginal people—gradualist and based on education to allow them to take up the full rights of the citizen— may have seemed

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2 Section 51, clause xxiv of the Constitution of the Commonwealth of Australia reads: 'The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to— The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws.' The phrase 'other than the aboriginal race in any State, was deleted as a result of the overwhelming support at the 1967 referendum for the Commonwealth government to be empowered by the Constitution to legislate for Aboriginal people as a special group, and for the repeal of section 127 which omitted 'aboriginal natives' from the Commonwealth census

3 P. Hasluck, 'Native Welfare Conference', Statement by leave by the Minister for Territories in the House of Representatives on Thursday 20 April, 1961, Series A1838, File no. 557/1, pt. 2, Australian Archives, Canberra.

4 *P. Hasluck,* 1953: 5-12

enlightened in contrast to the neglect of the past, events outside Australia meant that Australia's record, past and present, was scrutinised as never before.

Prior to 1961, the Information Branch of the Department of External Affairs did little more than 'distribute to overseas posts small quantities of information booklets about Aborigines, published by the Department of Territories.' It also passed on to Territories 'infrequent reports of critical overseas references to the condition of the Aborigines'.[5] Events outside Australia in 1960 led to an upsurge of interest in Australian policies regarding Aboriginal people and their treatment and place in Australian society.

Two situations, in particular, in 1960 led to international attention focusing on Australian policy regarding her indigenous peoples. Reactions to the Sharpeville massacre of March 1960 reverberated through the Commonwealth. At the Commonwealth Prime Ministers' Conference the following year, South Africa, having decided to become a Republic, formally applied for permission to remain a member of the Commonwealth. In the discussions surrounding this application Prime Minister Menzies' support was based on the view that the policy of apartheid was a matter of domestic jurisdiction for South Africa, and thus not the business of other Commonwealth prime ministers. But other African heads of state saw the situation differently and the ensuing publicity drew the attention of new African and Asian nations to the situation in other Commonwealth countries with indigenous populations such as Australia.

The United Nations was the other international forum in which issues concerning colonialism and questions of race were discussed. By 1961, the admission of seventeen new African nations had changed power relationships within the organisation. Asian representation had also grown in this period: from seven to twenty. These additions made the Afro-Asian Group the largest voting bloc in the United Nations.[6] The Soviet Union presented the view to new African and Asian countries that colonisation was Western exploitation of 'the cheap labour of colonial peoples'. It proposed a declaration on the granting of independence to colonial peoples. In a speech to the General Assembly on October 12, Nikita Khruschev put the case for such a declaration. In arguing that 'the time is ripe for the complete and final liberation of all peoples from colonial oppression, which had been represented by the West as "'bringing a higher civilisation to these peoples,"' he quoted examples of the devastating effect on indigenous communities of colonisation.

> As a result of this 'civilisation' the population in a number of colonies— as, for instance, in the Congo— decreased by nearly half. It is common knowledge how the native population was exterminated in Australia. Mr Menzies, who spoke here, should not forget that.[7]

Khruschev's comments were reported in newspapers around the world, though Africa and Asia were seen by Australian diplomats as the areas where most damage could be done to Australia's reputation. Sharpeville, and the Soviet Union's attack on Western colonialism and wooing of the newly independent nations of Africa and Asia, can be viewed as expressions of a changing world: one in which those unaware of the demands for justice and representation coming from South Africa will be left behind in understanding world politics. The Information Branch of the Department of External Affairs asked all posts to

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5 H. Gilchrist, 'Australian Aborigines: External Affairs Interest, 29 August, 1961, Series A1838/2, File 557/1 Part 2, Australian Archives.

6 J. G. Hadwen & J. Kaufmann, *How United Nations Decisions are Made*, New York, 1962, pp 126,127.

7 N. S. Khruschev, 1961: 171.

report on 'the state of overseas knowledge and opinion about Australian Aborigines'[8] and, as a result, criticisms of Australia's treatment of Aboriginal people flowed in from posts all around the world.

Declaration on the Granting of Independence to Colonial Peoples

Khruschev's direct reference to 'how the native population was exterminated in Australia' and his admonition that 'Mr Menzies should not forget that' was part of a speech clearly directed to nations newly freed from colonial control. Plimsoll, Permanent Representative, Australian Mission to the United Nations, wrote a detailed despatch to Menzies, reporting on the passage of the UN 'Declaration on the Granting of Independence to Colonial Countries and Peoples' on 14 December, 1960. He expressed a concern about the 'many disturbing elements' to this debate and 'many grave danger signals for the future'.[9] His description of and comments about this debate showed that the older member countries of the United Nations were grappling with a new situation. African representatives, now in a position of equality with their former masters, referred to the '"ancient wisdom of Africa" being brought to the counsels of the United Nations'.[10] Plimsoll's response to this comment by the Ghanian representative, in a despatch to Menzies, was 'the truth is of course that the ancient wisdom of Africa consists of cannibalism and witchcraft'[11] thus illustrating the dismissiveness of those assuming cultural superiority. In commenting on the colonial powers' response to the Ghanian's reference to 'the wisdom of Africa', Plimsoll recognised the new complication brought to international diplomacy with the Afro-Asian group now being the largest group in the United Nations. He explained to Menzies that 'it was not politic for representatives of colonial powers to prick these balloons'[12]. And furthermore, reasoned that:

> No matter how powerful the arguments that the representative of an administering power might bring forward in the United Nations, it is never easy for an Asian or African country to vote against the general trend of the Afro-Asian group, or to take a detached view on matters which can be interpreted in terms of colour or of economic underdevelopment.
>
> There are strong irrational elements in the feeling on colonialism. ... Colour consciousness is a major element — the strong sense of solidarity of all coloured people against whites, the inbred sense of centuries of domination and discrimination. [13]

Plimsoll wrote about the 'extreme view' put by the communist states in arguing for the immediate end to colonialism everywhere 'and the fact that the Soviet Union 'will try to build on the declaration that has been adopted'.[14] He reported that his own statement in debate was motivated by a desire to 'combat any idea that Australia was pursuing policies of economic exploitation, racial superiority, or permanent white domination.' The particular

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8 Gilchrist, 'Australian Aborigines: External Affairs Interest' 29 August, 1961, Series A1838, Australian Archives, Canberra.

9 J. Plimsoll, Permanent Representative, United Nations to R. G. Menzies, Minister of State for External Affairs, 24 February, 1961, Series A4321/1, Item 1961/62/ Pacific & Americas.

10 Ibid.

11 Ibid.

12 Ibid.

13 Ibid.

14 Ibid.

references in his despatch related to Australia's relation to New Guinea rather that to indigenous Australians. Plimsoll's report ends:

> The predominant view now in the United Nations is that relations between a state and its dependant peoples are out of the sphere of domestic jurisdiction.[15]

In considering relations within the Commonwealth, this view was rejected by Menzies.

The 1961 Commonwealth Conference and South Africa

Shortly after Plimsoll's report on the 'Declaration on the granting of independence to colonial countries and peoples' Menzies was upholding the principle of domestic jurisdiction and opposing the notion of Commonwealth Prime Ministers 'sitting in judgement' on each other. At a press conference on March 19, 1961, after South Africa's withdrawal from the Commonwealth he expressed the view that 'to have a member of the Commonwealth virtually excluded on a matter of domestic policy presents a rather disagreeable vista for the future.[16]

The Prime Minister's report to Parliament on South Africa's forced withdrawal of application to remain a member of the Commonwealth elaborated on this view. He saw the policy of non-interference in the domestic affairs of another country as being 'at the very root of Commonwealth Relations' and pointed out to the House the differences between apartheid and Australia's immigration policy which was based on 'a proper desire to preserve a homogenous population and so avert the troubles that have bedevilled some other countries'.[17] Menzies' defence of the principle of domestic jurisdiction anticipated attacks by Commonwealth countries such as India, Pakistan, Ghana or Ceylon on Australian immigration policy if the policy was not strongly defended.

Adverse Overseas Publicity Concerning Aboriginal Australians

The passage of the Declaration on the Granting of Independence to Colonial Countries and Peoples, South Africa's withdrawal from the Commonwealth, the growing criticisms of colonialism, and the Soviet Union's linking of the evils of colonialism with Western capitalism all led to an increasing interest in race politics in Australia. The First Secretary of the Australian Embassy in Moscow, in responding to a departmental request for information on unfavourable publicity about the present condition of 'Australian aborigines', reported that the topic was treated critically from time to time in the Soviet press. He referred to a 'definitive article by a leading *Pravda* journalist, Mayevzky, concerning the trial and death of Albert Nimitjira [sic] published in the journal *October*.[18] More significant was Radio Moscow's broadcast to South East Asia in English. The following is an extract of Soviet comment on the 'White Australia' policy.

> The Australian Government has developed racism to the level of State policy. It is for good reasons that at the conference of the countries within the British Commonwealth last spring, Australia came out in support of misanthropic apartheid, followed by the Government of the South African Republic...

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15 Ibid.

16 R. G. Menzies quoted by Ronald May in 'Political Review', *Australian Quarterly*, Vol. XXXIII, No 2, June 1961, Australian Institute of Political Science, Sydney, p. 96.

17 R. G. Menzies, Parliamentary Papers General Third Session, Vol. IV, 1961, p. 1487.

18 R. A. Woolcott, First Secretary, Australian Embassy, Moscow, 'Overseas Opinion on Aboriginal Welfare', 9 March 1961, Series A 1838, File No. 557/1, AA, Canberra

> In vain indeed is the Australian official propaganda trying to convince world public opinion that the policy of 'White Australia' is an internal matter of the country. 'White Australia' is racism which is being condemned by all progressive people.[19]

Such broadcasts to Australia's near neighbours such as Malaya, encouraging criticism of Australia's racially discriminatory immigration policy, were of concern to External Affairs.

Criticisms of Australian policies which affected Aboriginal people also appeared quite frequently in African newspapers. Following Namatjira's death in 1959, *The Central African Examiner* had asked 'Who is to Blame for the Aborigines' Tragedy?' This feature article referred to those who 'are hoping, now that the wave of sentimentality has broken in bloodshed that a policy will take its place'.[20] Over the next few years, news of Aboriginal issues was reported in African countries – a Federal Council for Aboriginal Advancement resolution alleging 'apartheid' was publicised in Ghana and Malaya in April, 1961.[21] An Australian MP, Mr McIvor, visiting Nigeria was questioned on television about Australia's treatment of Aborigines. Although Australian embassy staff felt McIvor had handled the situation well there were sixty communications the next day claiming that Australia 'had exterminated the last aborigine some years ago'.[22] A Department of External Affairs summary of overseas opinion on Aboriginal welfare described interest in racial questions as 'intense' with Federal Council for Aboriginal Advancement resolutions being released through Reuters news agency for publication in African and Asian countries.[23] Professor Prest from the Faculty of Commerce, Melbourne University, reported on his return from the Commonwealth Relations Conference at Lagos, Nigeria in January 1962 that:

> there was even a tendency to regard Australia as another Southern Rhodesia because of our treatment of aborigines. It is not generally realised in Australia that every press report of incidents involving Aborigines is reproduced in the African papers. [24]

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19 Cited by R. S. Laurie, Third Secretary, Australian Embassy, Moscow , in a letter to the Secretary, Department of External Affairs, 24 January, 1962, Series A 1838/2, File 557/2. pt. 3.

20 C. Ralling, 1958.

21 Confidential file note 'Overseas Opinion on Aboriginal Welfare', Series A1838/2, File No 557/1 Pt. 2,. These reports are also referred to by Peter Heydon, First Assistant-Secretary, Department of External Affairs when he appeared before the Select Committee on Voting Rights in 1961. Series A1838/2, File 557/1, Pt. 2, Australian Archives, Canberra

22 Series A1838/2, File 557/1, part 1, Australian Archives, Canberra.

23 The Third Secretary from the Australian High Commission, Kuala Lumpur informed Canberra of a Reuters report on the front page of the Malay Mail regarding the Federal Council for Aboriginal Advancement's plan to protest to all Commonwealth Prime Ministers against 'apartheid' in Australia.

24 Reported in *On Aboriginal Affairs,* No 2, April-May, 1962.p. 3. The Australian High Commissioner in Karachi reported an article in the *Morning News* which alleged apartheid in NSW country towns, 23 February, 1961; the Australian High Commissioner in Accra reported Reuters West African Service had distributedan item on the Federal Council for Aboriginal Advancement's annual conference, 3 April 1961; the third secretary Australian High Commission office in Kuala Lumpur reported on 4 April 1961 that the Malay Mail had run a front page article under the heading 'Apartheid in Australia'. Series A1838, File 557/1 part 4, Australian Archives Canberra.

Press criticisms were not limited to those emanating from the Soviet Union or appearing in African or Asian newspapers. The following personal, confidential letter from the Australian Ambassador, Tokyo, to
P. R. Heydon, First Assistant Secretary, External Affairs had this damaging comparison to add:

> I notice from the London Times that Eichmann's lawyer, Servatius, in his final address to the court in Jerusalem, compared Hitler's massacre of the Jews to the extermination of the aborigines in Australia. I gather that the whole of the world's press is there to publicise the proceedings under the headlines in every lanuage.[25]

Here was assistance for those trying to understand Eichmann's role in the attempted genocide of the Jewish people. His actions were not so unusual, his lawyer seemed to be saying, if one were to look to events in Australia which took place not much earlier than the horror of Europe. External Affairs staff were, understandably, sensitive to the repercussions which could flow from such a report.

Two months later the London office of Australian External Affairs showed their anxiety about a talk to be given by Miss Jacquetta Hawkes under the auspices of the Anti-Slavery Society. This particular organisation had had some association with Australian activists such as Shirley Andrews and Charles Duguid.[26] H. Marshall, on behalf of the Acting Senior External Affairs Representative, wrote 'We fully expected— and we were not disappointed— that Miss Hawkes would say some critical and officially obnoxious things.'[27] He reported that Miss Hawkes did say that Australia was moving 'in the right direction' but she added that the present policy of assimilation was not the immediately right policy'.[28] Marshall regretted the lack of discussion following the talk and also that '"the other side" was not presented, nor any opportunity given for it to be presented.'[29] The latter closes with a request to the Secretary of the Department for any Australian press coverage of the talk and notification that a copy of the memorandum is 'being sent to New York [United Nations Australian representative] for information and also to the Official Secretary and News and Information Bureau in Australia House.[30] Marshall makes the further observation in a letter to the Secretary, External Affairs that:

> One gets the impression that publicity, official or voluntary on aborigine matters consists of either hiding the material from view or having displays, posters or pictures (as in Commonwealth Institutes) that portray the quaint, primitive or 'colourful' aspects of the aborigine. ...

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25 L. R. Mc Intyre, Australian Ambassador, Tokyo, 30 August, 1961, A1838/2, 557/2 Pt 2, Australian Archives.

26 Charles Duguid, the first president of the Federal Council for Aboriginal Advancement had addressed the Anti-Slavery Society in June, 1954, Shirley Andrews had been in contact with the organisation in her role as Secretary of the Council for Aboriginal Rights since 1958. In 1963 she represented the organisation at a United Nations seminar on the role of police in the protection of human rights. Her presentation, critical of the police for their failure to protect Aboriginal Australians human rights received significant press coverage. See Council for Aboriginal Rights MS 12913, boxes 2/5, 8/3, 8/4, 26/4, SLV

27 H. Marshall, 'The Australian Aborigines— Talk by Miss Jacquetta Hawkes' 26 October, 1961, A452, 61/4496, AA.

28 Ibid., p 3.

29 Ibid

30 Ibid.

> I might comment that in two years here I have seen no reference to the native Australian in any poster, picture or what have you around the much be-posted [sic] Australia House. The impression left is that there is something to hide.[31]

Diplomats in overseas posts as well as External Affairs senior officials at home were sensitive to the possibility of Aboriginal legislative and social conditions becoming an issue in a United Nations' forum. Discriminatory legislation which was still on the books was seen as ammunition provided for the enemy. In May 1961 a member of Ghana's mission to the United Nations 'hinted confidentially' to the Head of the Australian Mission 'at the possible inclusion of the Aboriginal question on the General Assembly agenda.[32] R. A. Woolcott, First Secretary, Australian Embassy, Moscow made the point that the situation was threatening for Australia 'until such time as they [Aboriginal people] enjoyed complete political and social equality as well as equality of opportunity.'[33] R. L. Harry, First Assistant Secretary, Attorney-General's Department, recognised the need for information relevant to these considerations to be gathered as officers prepared to implement Cabinet Decision 1549 which required the preparation of a report on the desirability of removing discrimination.[34] Discriminatory legislation, such as the Post and Telegraph Act and the Commonwealth Immigration Restriction Act weakened Australia's position in relations with the new nations of Asia and Africa. The situation was made even more alarming by the publication of articles critical of current policy and practice by Australian academics

In June, 1961, the Secretary, External Affairs was informed of an article which appeared in the Spring (northern hemisphere) issue of the *Journal of the International Committee of Jurists.* The Journal had been sent to 'most or all of the delegations at the United Nations by the International Commission of Jurists'.[35] It contained an article 'Preventative Detention in Australia' by Zelman Cowen, Professor of Law and Dean, and Rachael Richards, LL.B., Research Assistant, both from the Faculty of Law, University of Melbourne. The article presented the results of investigations throughout Australia of infringements of the basic common law rule with regard to arrest which was that no person shall be arrested except for reasonable cause allowed by the law, and the reasonableness of any arrest is open to examination by the courts. They pointed out that the Australian rules relating to the freedom of the individual are very similar to those of Britain and that:

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31 H. Marshall 'The Australian Aborigines' to the Secretary, Department of External Affairs, 20 October, 1961, Series A452/1, File 61/4496, Australian Archives, Canberra.

32 Draft of a confidential savingram to all posts, 24 January, 1962, series A1838/1, File 557/9 part 1, Australian Archives, Canberra.

33 R. A. Woolcott, 'Overseas Opinion on Aboriginal Welfare', 9 March, 1961, Series A1838, File 557/1, Pt. 2, Australian Archives, Canberra.

34 Cabinet Decision 1549 approved the recommendation that section 16 of the Posts and Telegraph Act 1901-1950 be repealed. This section prevented the employment ofpeople who were defined as Aboriginal by the Postmaster General's Department. The decision also directed the Department of External Affairs and the Attorney-General's Department to confer 'regarding other Commonwealth Acts which contain provisions discriminating against the employment of persons in whom there is aboriginal blood, and prepare a report for consideration of the Cabinet on the desirability of removing the discrimination'. Series A1838, File 557/1, part 3, Australian Archives, Canberra.

35 Letter to the Secretary, External Affairs, 27 June, 1961, A1838/2, 557/2 pt. 2, Australian Archives Canberra.

> a person may not be arrested without warrant by a private individual except where he has committed a felony or a serious breach of the peace actually in the presence of the individual, or where a felony has been committed and there are reasonable grounds to suspect that it was committed by him or if the arrest has been expressly authorised by statute.[36]

The authors observed that the Australian rules are variations of these principles, and in some states almost identical to each other. The rest of the article builds up a detailed picture of breaches of this common law rule as it applies to Aboriginal people, and the variations which exist across the states. The research is not focused on the application of the law to people defined as Aboriginal . But it is the cases concerning Aboriginal people that breach the general principles as laid out in the introduction. The authors detail instances in the legislation of a number of Australian states which contravene the basic principles of common law protecting the rights of the individual, when that individual is defined in state legislation as 'Aboriginal'. For example, the Native Welfare Act of Western Australia 1905–1954 states that 'it shall be lawful to arrest without warrant any native who offends against any of the provisions of this act'[37] After providing examples from a number of states of breaches of the common law principle, the authors conclude that:

> It can therefore be said that in general no-one (apart from the aborigines) is entirely unprotected against the misfortunes of preventive or administrative detention, except perhaps in time of war.[38]

Reference to the potential for an article such as this to damage Australia's reputation abroad are made in External Affairs files at the time.[39] The standing of one of the authors– Zelman Cowen, Professor of Law, University of Melbourne ensured that the article would have international credibility. It was not polemic in style. It was not associated with a party political position. The article demonstrated for readers of this international journal, that the principles of common law did not protect Aboriginal Australians from preventive detention.

In April following publication of the Cowen/Richards article, Charles Rowley, Principal of the Australian School of Pacific Administration, sent a draft of an article to Hugh Gilchrist, Department of External Affairs. Gilchrist sent a copy of the article and a note to Harry, First Assistant-Secretary, Attorney-General's Department with the following comment:

> The article may help to indicate why I feel a good deal of discomfort in trying to act as an apologist for some aspects of current official policies in the field, and in trying to brief our posts accordingly. If both the Americans and the Russians were to attack our 'assimilation' policy we would fare rather badly in the UN. We have little time in which to revive the position, and I feel that we need to probe Territories for a thorough going analysis and exposition 'in the round' of what the policy is aiming to do, and why. Otherwise it is hard to expect this Department to defend it abroad. [40]

The article was published as 'Aborigines and Other Australians' in the June, 1962 edition of *Oceania*. Rowley showed the policy of assimilation, as implemented by administrators and

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36 Zelman Cowen and Rachel Richards, 1961: 29.

37 Native Welfare Act 1905-1954, Section 40, cited in Cowen & Richards, 1961: 31.

38 Cowen & Richards, 1961: 46.

39 Submission from H. Gilchrist to the Acting Secretary, External Affairs, 29 August, 1961, Series A1838/2, File 557/1, Pt. 2, p. 6.

40 H. Gilchrist to Mr Harry, 1st Assistant-Secretary, Attorney-General's Department, 30 April, 1962, Series A1838, Item 557/1, Pt. 3, Australian Archives.

welfare officers across the country, was based on little sociological understanding of the nature and role of the human group, of the likely effects on a people when coercion is used against the group. Attention is also directed to the likely effects on a people when, having been impoverished, they have no likelihood of acquiring property rights.

Rowley argued that the reasoning behind the policy was faulty and that as implemented the policy was socially destructive. He begins:

> There could hardly be a more complete case of racial exclusion and discrimination as a background to present race relations , than that affecting the Australian Aborigines. ... No Aboriginal right of possession to any part of the continent, based on observed prior occupation, was recognized.[41]

He builds a picture of the nature of Aboriginal social organisation and relationship with the land. He then analyses the 'assimilationist' approach to Aboriginal inclusion in mainstream society, pointing out that 'in many situations there remains sufficient of what might be termed 'vestigial' legislation, placing the responsibility on the station manager to inspect the interiors of Aboriginal homes' and encouraging the view that assimilation meant learning 'to be like the white man'.[42]

A further contribution to the debate was Rowley's description of policies concerning indigenous people in other parts of the world. Readers learn that the notion of indigenous people living as members of a single community was abandoned in the USA with the passage of the Indian Reorganisation Act in 1934, and yet policy makers in Australia continued to see assimilation as the only acceptable policy. Hasluck had even denied the relevance of analogies 'with racial situations in other lands.'[43] Such isolationist thinking about the issue was not shared by Rowley. Unlike articles in the Soviet press, or reports which could be traced to the Federal Council of Aboriginal Advancement, this article and the Cowen/Richards article were non-partisan and presented clearly argued and supported cases which demonstrated discrimination before the law and policies which seemed designed for social destruction. Hugh Gilchrist's ordering of 45 copies of the June 1962 volume of *Oceania* , containing the Rowley article, indicated his concern that External Affairs staff became properly informed in this (domestic) portfolio.

Responses of the Department of External Affairs to International Interest in Aboriginal Issues

External Affairs senior staff were monitoring a number of potentially embarrassing international situations. The critics, whether inside or outside Australia, were using international forums. The Soviet Union accused Australia of genocide; the Federal Council for Aboriginal Advancement publicised injustices suffered by indigenous Australians by using Reuters newsagency; academics wrote articles showing the structural inequalities experienced by Aboriginal people and these were published in internationally available journals. The likelihood of international embarrassment for Australia over the issue of the legal and social position of indigenous Australians was high. Issues which belonged in the Territories portfolio came to occupy the minds of First Assistant-Secretary, Phillip Pepper and Acting Head of the Intelligence Co-ordination Branch at the time, Hugh Gilchrist. External Affairs files show an unsigned, handwritten note from within the Department of External Affairs addressed to Gilchrist which expresses concern at the Minister for

41 C. D. Rowley, 1962: 247.

42 Ibid.

43 Native Welfare Conference, Canberra, 25 January 1961: Opening Statement by the Minister (Rowley, 1970, p 402)

Territories' views, as expressed in his 1959 ANZAAS address.[44] The writer states that there is a suggestion, in Hasluck's speech, that 'cultural genocide is a prerequisite for full assimilation of the Aborigines into the non-Aboriginal community.' The analysis points out that the address seems to argue that 'the change to the new society is inevitable and unavoidable.'[45] Some further criticisms are made. The author notes that Hasluck speaks of 'the grouping together of aboriginal people' as being 'one of the most serious obstacles to change.[46] The writer's concern about this point of view displays an awareness of the rights of a group to maintain culture which Hasluck seems to overlook. And the use of an expression such as 'cultural genocide' reveals a very different understanding to that presented by Minister Hasluck. The writer commented:

> Mr Hasluck attacks those who, unaware of the complexities of the problems facing Aborigines, are bold enough to criticise Government policy. The implication seems to be that Govt. policy, like the laws of the Medes and Persians, is unalterable and profoundly wise. It may be difficult to argue this point to overseas critics.[47]

Gilchrist and Peters from External Affairs, as well as Harry from Attorney-General's were expressing doubts about the policy of assimilation as defined and explained at the 1961 Commonwealth States Native Welfare Conference[48]. The task of External Affairs, however, was to present current Australian policy in the best light.

In April, 1961, members of the Foreign Affairs Committee[49], had met to discuss the 'implications for Australia's external relations of the treatment and the status of the Aborigine'.[50] Apart from foreign criticism, there were threats from within Australia to go to the United Nations to publicise injustices regarding Aboriginal Australians. Mr McColm, one of the members of this committee, referred to a report that 'a man named McLeod in Western Australia was trying to bring a case about the Aborigines to the United Nations and had written to the Prime Minister about this'.[51] A proposal was put that the Foreign Affairs Committee form a subcommittee concerned with the diplomatic implications of Australia's treatment of Aboriginal people. The meeting decided that the Minister for Territories, Paul Hasluck, should be informed of the existence of the proposed sub-committee but that the sub-committee 'should be treated as confidential within government circles'.[52] However, after speaking with the Minister for Territories, the

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44 I have good reason to believe, based on handwriting analysis, that Phillip Peters is the author of this note. Series A 1838, File 557/1, 'Aborigines: the Hasluck Philosophy', n.d. Australian Archives, Canberra.

45 Ibid.

46 Ibid.

47 Ibid.

48 See internal memos between Gilchrist and Peters, and interdepartmental communication between Gilchrist and Harry (Attorney-General's) Series A1838, File 557/1, Pt. 2.

49 The informal confidential subcommittee comprised the following MPs: Mr Wentworth, Mr Mc Colm, Senator Scott, Mr Failes, as well as Mr Gilchrist, External Affairs Liaison Officer. Confidential File Note, April, 1961, Series A1838/2, File 557/1, Part 3, Australian Archives, Canberra.

50 Ibid.

51 Ibid. Don McLeod worked with the Aboriginal pastoral workers in their strike in WA which began in 1944. See D. W. McLeod, *How the West was Lost: The Native Question in the Development of Western Australia,* Port Hedland, WA, 1984.

52 Confidential File Note, April, 1961, Australian Archives.

Foreign Affairs Committee decided not to proceed with the idea. Hasluck had argued that the establishment of such a committee would give foreign critics the opportunity to quote the fact that the Foreign Affairs Committee had considered the Aborigines as a matter having international implications, and to argue from this that it was a legitimate matter for discussion in international forums.[53] The Committee nevertheless felt that some of its members should continue to receive, informally, such information on the subject as the External Affairs Department could pass on to them. It was felt that these communications should be confidential.[54] Hasluck, like Menzies, seemed unaware of the real situation: Australia's treatment of her indigenous minority was no longer a domestic matter; the issue was already being discussed internationally.

While the task of the Information Branch of the External Affairs Department continued to be the passing on of relevant information to diplomatic posts, a further power sought by the Department at this time concerned the control of information. The linking of the effects of colonialism to capitalism by the Soviet Union in international debate led to strategies driven by political expediency. Moreover, senior politicians and officials saw the attacks by Australian citizens on Australia's policies concerning Aboriginal people as being ideologically motivated and potentially dangerous for Australia. Much government effort was put into arguing that criticisms of discriminatory policies or practices came from the Communist Party of Australia, were politically inspired and thus could be discounted, regardless of the actual quality of the arguments or information presented. Paul Hasluck expressed this view in introducing the Electoral Bill to Parliament in May 1962 :

> [Aboriginal welfare] is one of the targets of the Communists, and in trying to hit this target, they are developing the theme of race— not so as to obliterate racial considerations as being of no significance, but in order to magnify considerations of race and continue racial divisions. . .
>
> You see all over Australia to-day this attempt to perpetuate the aborigines as a separate race, not because of concern for the aborigines as human beings, but because this is a nice, juicy, divisive, controversial problem over which the Communists can cause a great deal of mischief.[55]

As Judith Brett, writing about this period, has observed, 'Communists were defined by their communism, lifted out of ordinary social life and emptied of their individuality by their political beliefs'.[56]

The close monitoring of organisations involved in Aboriginal affairs began in July, 1961 when the Secretary of External Affairs wrote to the Secretary of Territories requesting 'as comprehensive list as you can conveniently provide of the organisations at present in this field in Australia'.[57] The information was passed from the Information Branch, External Affairs to Brigadier Spry of Section D, [58] Attorney-General's Department. Section D compiled a list of members of organisations with voting rights on the Federal Council for Aboriginal Advancement. 'All members of organisations who have been members of the

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53 Ibid.

54 'Australian Aborigines: External Affairs Interest', 29 August, 1961, Series A1838/2, File 557/1 Pt 2, Australian Archives.

55 P. Hasluck, Australia, House of Representatives, *Debates*, Vol 35, p. 1771.

56 J. Brett, 1992: 93.

57 Draft letter on Aboriginal Welfare Organisations in Australia, Series No. A1838/2, File no. 557/1 Pt 2, Australian Archives.

58 Section D is the Australian Security Intelligence Organisation, (ASIO)

Communist Party'[59] were identified. Gilchrist wrote to the Acting-Secretary, External Affairs, that 'the Party is infiltrating existing Aboriginal welfare organisations and is helping to establish new ones in which it has influence or control'.[60] He concluded that:

> It is therefore to be expected that, in any international discussion of the Aborigines, the representatives of Communist countries will not only produce allegations aimed at causing maximum embarrassment to the Australian authorities, but will also offer policy proposals which may sound plausible to other countries.[61]

Hugh Gilchrist, as Departmental member of the short-lived Foreign Affairs subcommittee on Status of Aborigines in Australia, forwarded to Senator Scott, the convener of that subcommittee, information from the Australian Communist Party's 19th Congress. The Congress stated that the 'policy towards the New Guinean people and the aborigines is a national disgrace and an international issue'. The section specifically concerned with treatment of Aboriginal Australians, written in the rhetoric of class war, asserted that 'the Australian ruling class has long oppressed this national minority in the most brutal way and today is seeking to destroy their identity and culture in the name of 'assimilation'.[62] The analysis offered to Senator Scott by External Affairs was that:

> The Communists intend to exploit, for their own purposes, in international forums, the treatment of Australian aborigines ... The Australian Communist Party regards aboriginal groups as a target for political penetration.[63]

The position of Aboriginal people was seen as part of the war of ideology being waged between the Soviet Union and the West. Criticisms of policy or practice were responded to as in a war, a threat which needed to be countered. An External Affairs memo from this period argues that:

> Our main problem is Communist propaganda: we should endeavour perhaps to show that we are at least no worse than the uncommitted countries in Asia in our treatment of aborigines. I think pictures of extremely backward nomads (they are so obviously uncivilised in Asian eyes for example) are useful.[64]

The suggestion is that Asian notions of 'civilisation' can be exploited by the Australian government so that any incipient criticism of Australia's treatment of Aboriginal people can be defused, as the 'extremely backward nomads' are presented as undeserving of any better treatment.

While the response to overseas criticisms, especially those coming from the Soviet Union was politically reactive in the wider ideological conflict being waged between communism and capitalism, within the bureaucracy actions were being considered to control the flow of information about Australian policies concerning Aboriginal people.

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59 Report from R. L. Harry, 1st Assistant-Secretary, Attorney-General's Department to the Secretary, Series no. A1838/2, File no 557/1, Pt. 3, Austraian Archives

60 H. Gilchrist, Head, Information Branch, 'Australian Aborigines: External Affairs Interest' 29 Aug., 1961, Series A1838, File no. 557/1 Pt. 2, p. 3,Australian Archives

61 Ibid.

62 H. Gilchrist to Senator Scott, convener FAC subcommittee on status of Aborigines in Australia reporting 'Australian Communist Party Resolutions of Policy for Aborigines', April, 1961,Series A/1838/2, File 557/1/2, Australian Archives, Canberra.

63 Ibid.

64 'Publicity Abroad Relating to Australian Aborigines', signed WAV, January 1961, A1838/2, 557/2 pt. 2, Australian Archives. A marginal note signed by Hugh Gilchrist and dated 20 January 1961 agreed with this approach 'provided we don't let it be `inferred that their state is due in any way to lack of opportunity to advance'.

The situation was regarded as delicate. The Department of Territories had responsibility for the production of information about indigenous people and Commonwealth programs in the Northern Territory. At the same time the States, not the Commonwealth, had responsibility for Aboriginal welfare in the rest of the country. A further difficulty was that apart from the 1961 conference of State and Federal Ministers responsible for Aboriginal affairs there was no statement which could be taken as policy which underlay the plethora of legislation in the States and Territories currently being used to control the lives of Aboriginal people across the continent.

Beginning in 1957 a series of government information booklets had been produced, intended to give information and to break down racial stereotyping in the community. *Our Aborigines* was followed by *Assimilation of Our Aborigines* (1958), *Progress Towards Assimilation*, (1958) *The Skills of Our Aborigines* (1960) and *One People* (1961). This last publication presented problems for External Affairs. A copy had already been sent to the Department for clearance to go to overseas posts when a report of a Moscow newspaper using material from the publication to criticise Australian policy came to the notice of the department. The *New Times*, a Moscow newspaper published in eight languages, had drawn on information about an Aboriginal camp in NSW from a government publication which Territories was presenting to External Affairs as suitable for overseas distribution.[65]

One People is perhaps the most concrete manifestation from this time of the gap in understanding between Territories and External Affairs concerning publication of Australian policy regarding Aboriginal people. The publication 'prepared under the authority of the Minister for Territories, with the co-operation of the Ministers responsible for aboriginal welfare in the Australian States'[66] was found by External Affairs to be 'thoroughly unsuitable for overseas readers'[67]. The Department listed defects under six headings:' incomplete description of government policy, critical references to treatment of Aborigines, inconsistencies, inadequate editing, contradictions of policy and answering overseas questions and criticism'[68]. The analysis, supported with examples from the publication, shows the booklet to be muddled in its presentation of policy. For example reference is made to Aborigines who no longer speak Aboriginal dialects and who, 'apart from colour or a trace of colour, are indistinguishable from the rest of the community'. [69] External Affairs observe:

> the sense of the comment is that loss of identity is a good thing. On page 12, however, it is stated that " assimilation does not mean that Aborigines should necessarily lose their identity . . .that language, myths and legends, and art forms should be lost".'[70]

The External Affairs critic points out that the presentation in the publication contradicts policy. The January 1961 Native Welfare Conference had recommended against emphasising 'stone age' aspects of the culture yet six of the first ten photographs in the booklet illustrate 'primitiveness'. And perhaps most importantly for overseas readers the publication failed to

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65 Ibid.

66 Department of Territories 1961.

67 H. Gilchrist, 'Australian Aborigines: External Affairs Interest, 29 August, 1961, Series A1838, file 557/1, part 2, Australian Archives, Canberra.

68 'Defects in Department of Territories Publication 'One People' , n.d. Series A1838, file 557/2, part 2, Australian Archives, Canberra.

69 Department of Territories 1961:9;

70 'Defects in Department of Territories Publication "One People"', p. 1.

provide answers to frequently asked questions such as 'do Aborigines have full legal and political rights and, if not, for what reasons?'[71]

These questions, which had been asked within the Department a number of times, were not easily answerable. The Secretary had voiced the opinion in April 1961 that 'we may need a Commonwealth doctrine on Aborigines' [72] and Gilchrist in a confidential file note had added:

> The Commonwealth might be obliged for international reasons to declare an objective; this could precipitate a Constitutional controversy with the States; and the Commonwealth might have to state that there were constitutional limitations on its objective.[73]

The interest in Aboriginal affairs shown overseas and the failure of the Department of Territories to provide up-to-date suitable material which explained and supported Australian Government policy led to a submission by Gilchrist to the Acting Secretary prefaced by the following , rather unusual comment:

> As External Affairs has no responsibility for the status or welfare of the Aborigines, External Affairs' efforts can perhaps best be directed to informing the policy-makers (and, through them, Australian public opinion) regarding the effects of the current situation and policy on our external relations.[74]

He recommended that a submission by the Minister for External Affairs to Cabinet 'drawing on appropriate material which you are reading, be prepared as soon as practicable' and that the submission recommend:

i) that Cabinet place clearly upon the Department of External Affairs the responsibility for advising the Department of Territories and, through the appropriate channel, all other Government Departments concerned with the Aborigines, regarding the implications for Australia's external relations of all aspects of the condition and treatment of the Aborigines;

ii) that Cabinet direct the Department of External Affairs to prepare, in co-operation with other appropriate Departments, a list of all discriminatory provisions relating to Aborigines, in or under Australian legislation, whether Commonwealth or State, which could be quoted overseas as being contrary to provisions of United Nations instruments;

iii) that the Department of External Affairs consult with and advise the Department of Territories regarding the external affairs policy implications of official publicity material produced by the Australian Departments regarding the Aborigines.[75]

Such recommendations indicate the frustrations apparent within External Affairs resulting from what appeared to be lack of awareness within Territories of the diplomatic implications of their publications as well as the lack of clear Commonwealth Government policy guidelines. Although Gilchrist's proposals were not put to Cabinet, the Cabinet decision to repeal section 16 (Employment of Coloured Persons) of the Post and Telegraph

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71 Ibid.: 2.

72 Cited by Gilchrist, Confidential file note, April, 1961, Series A1838, File 557/1, Australian Archives, Canberra.

73 Ibid.

74 H. Gilchrist to Acting Secretary, External Affairs, 29 August, 1961, Series A1838/2, File 557/1 part 2, Australian Archives, Canberra.

75 H. Gilchrist, 'Australian Aborigines: External Affairs Interest', 29 August, 1961, Series A1838/2, Item 557/1 Pt. 2.

Act 1901--1950 which prevented the employment of Aboriginal people by the Post-Master-General's Department contained a second clause which directed that:

> the Department of External Affairs and the Attorney-General's Department confer regarding other Commonwealth Acts which contain provisions discriminating against the employment of persons in whom there is Aboriginal blood, and prepare a report for consideration of the Cabinet on the desirability of removing the discrimination.'[76]

In carrying out this directive, Peters from External Affairs spoke with Lyons from Attorney-General's. Lyons held that apart from the reference in the old Post and Telegraph Act there were no other discriminatory references in Commonwealth Acts. There were, however, some, such as the Immigration Act, which were discriminatory by implication. Lyons thought that 'widening the scope of the working party's investigations to include a comprehensive survey of all Commonwealth and state laws ... would be useful.'[77]

The best that could be done in the circumstances was for External Affairs staff to point out to politicians and other bureaucrats that ,in the last resort, legislative change was required. The United Nations Branch of the Department of External Affairs was concerned with possible discussion by United Nations bodies on the human rights aspects of the draft Covenant on Civil and Political Rights which was scheduled to be before the Third Committee of the General Assembly in September 1961. Article 23 on voting rights and Article 24 about equality before the law and prohibition of discrimination were of particular concern to this branch of the department. External Affairs had made urgent requests to Territories, Prime Minister's, Attorney-General's and Immigration for information on the allegations in the Cowen-Richards article so that the Australian delegation to the 1961 General Assembly could be briefed.[78]

Investigations had begun earlier in 1961 into the question of voting rights for Aboriginal people. Peter Heydon, First Assistant Secretary, Department of External Affairs appeared before the Select Committee on Voting Rights in that year. He was asked by Kim Beazley snr, 'If the Australian aboriginal were enfranchised throughout Australia, do you think it would have a good effect on Australian diplomacy?' Heydon's reply indicated the tightrope which External Affairs senior administrators felt they had to walk between providing positive publicity about Australia without providing evidence of past failures or weaknesses.

> Undoubtedly it would. I hope I am not trespassing on the field of policy, but this is the sort of advice I would give to Ministers. It would be unwise to publicise it too obviously or dramatically, but it is the sort of decision which, in the fullness of time, would have a real effect, because it is the sort of thing that the people who are intelligently interested would take into full account. It is also the sort of thing that the people who are critical of us would find difficult to misrepresent.[79]

In his report Heydon comments that the 'preoccupation with racial questions has become intense, among officials as well as among the people generally, especially in Africa and

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76 Ibid., Note re Cabinet decision no 1549,

77 P. Peters, record of telephone conversation with L. D. Lyons, 19 February, 1962, Series A1838, File 557/1 part 3, Australian Archives, Canberra.

78 H. Gilchrist, 'Australian Aborigines: External Affairs Interest', 29 August, 1961, Series A1838, File 557/1, part 2, Australian Archives, Canberra.

79 P. R. Heydon, 'Confidential Report to the Select Committee on Voting Rights', Series A 1838/2, File 557/1, Pt. 2, Australian Archives.

Asia.[80] It was important that Aboriginal people be enfranchised, and it was also important that the publicity surrounding such a change be handled with discretion. His comments display an awareness of the delicacy of the situation. Not only must justice be delivered in the form of voting rights, but it must be promoted in such a way that the focus was on the positive steps being taken by the present Parliament and not on the fact that before 1962 only some Aboriginal Australians had the right to vote.

The call for more direct Commonwealth responsibility for Aboriginal affairs was coming from a number of quarters. The Australian High Commission sent a cablegram from London in October 1961 saying in part:

> We wonder whether the Select Committee [on voting rights for Aboriginal people] or any other authority has in recent times given consideration to the problem posed by article 127 of the Constitution which provides that Aborigines shall not be counted in the population.[81]

While the Federal Council for Aboriginal Advancement had been pushing for a referendum to empower the Federal Government with regard to Aboriginal affairs for some years, in the early 1960s pressure was coming as a result of economic and political consequences as well as for reasons of social justice. There had been requests to Prime Minister Menzies from the Premiers of Queensland and Western Australia for funding for Aboriginal housing and welfare.[82] These were refused; however, the Queensland government publicly asked the Federal Government to 'sponsor a conference to draw up a uniform policy on native welfare in Australia'. The item was broadcast on the ABC news when the Minister for Health and Native Affairs, Dr Noble was reported as telling the state parliament that 'care of the Aboriginal population was passing from the realm of State responsibility and becoming a National problem'.[83] As publicity about poor living conditions in Aboriginal communities was spreading, pressure on limited state finances, especially in Queensland and Western Australia was the stimulus for Noble's public comment. Publicity about the criticisms of the assimilation policy voiced at the 1962 Federal Council for Aboriginal Advancement meeting drew further attention to the gap between government policy as implemented and the views Aboriginal people expressed about what they wanted.[84]

The Premier of Queensland in his request for funding support suggested:

> I would be prepared to support any constitutional amendments which handed over the care of our coloured people to your Government. Should no constitutional change be necessary, we would be prepared to make our entire administrative machinery, or any part of it, available to you or, if you preferred it, to maintain our Department as an agent for your Government, in whole or in part. [85]

At the same time Hugh Gilchrist was still asking exasperatedly:

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80 Ibid.

81 Australian High Commission, 20 October, 1961, Series A1838/2, File 557/1 part 2, Australian Archives, Canberra.

82 'Publicity on Australian Aborigines', Series A1838, File No. 557/1, Pt. 2, Australian Archives, Canberra.

83 Council for Aboriginal Rights MS 12913, Box 11/9, Letter to Shirley Andrews from Ian Spalding which included material quoted from the ABC news of 16 November, 1961, 24 November, 1961.

84 See for example J. Inglis, 1962.

85 Cited in submission by H. Gilchrist to the Acting Secretary, External Affairs, 29 August, 1961, Series A1838, File 557/1, part 2, Australian Archives, Canberra.

> In particular: can we now reasonably ask Territories for an up-to-date paper on official Commonwealth policy 'in the round' re assimilation? In there a philosophical justification and analysis of the assimilation policy? (In a Roy Milne lecture or some such document.) If there isn't we should ask Territories for it, and for comment on the distinction (if any) between assimilation and integration, since our posts must have a clear idea of what it is that they are supposed to be defending.[86]

Conclusion

The senior staff in the Department of External Affairs will, because of the nature of their work and the requirement that they have an up-to-date understanding of issues being debated overseas, have a clearer overview than most of ideas, attitudes and trends in thinking as they affect international relations. The records of the department during this time certainly show a developing interest in Aboriginal issues. In the 1960s the position of Aboriginal people in Australia was increasingly scrutinised. The death of Albert Namatjira in 1959 was given high press coverage in Australian newspapers and though the quality of public debate was poor— emotional, sensational and uncritical when it came to assumptions about race — by the 1960s there was evidence that the world was watching what was happening in Australia. The role of the United Nations in the establishment of charters to safeguard freedoms was significant as was the developing recognition that colonialist thinking and the ideal of the British Empire were being questioned. The Liberal Country Party government which had been led by R. G. Menzies for thirteen years showed no signs of questioning these ideas. For Paul Hasluck, the Minister for Territories, the ideal was of one Australia based on the British legacy into which Aboriginal people would learn to assimilate. In introducing the Electoral Bill in May 1962, Hasluck was at his most lyrical in praise of this ideal:

> The great feature of this bill and its true meaning— indeed its inspiring meaning— is that we are moving closer towards the ideal of one people that must be treasured by all of us ... It has been our ideal that we should be not a nation with divisions of race or class, or a nation of different levels, but that we should be one people, with one destiny, working together to serve one national good.[87]

Across the Tasman, however, the passage of the bill was seen differently. The *Greymouth Evening Star* had these comments to make:

> There can be little doubt that the legislation is an important step which will prove beneficial for many Aboriginals. But we cannot help feeling that it is something of a hollow gesture, a sop to all those
> with the genuine welfare of the Aborigines at heart ... What is really needed in Australia is a wholesale change of heart.[88]

The editorial points out that treatment of and assistance for Aboriginal people differed from state to state. While the passage of the Electoral Bill was of some assistance for External Affairs, the essential problem remained: there was no national policy, the Commonwealth did not have clear power to create uniform legislation, the States' legislation varied according to official state definition of what the term 'Aboriginal' meant. While activists were working for social justice and human rights, the bureaucrats in External Affairs were

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86 Gilchrist to Peters, 28 April, 1962, Series A1838, File 557/1, Australian Archives, Canberra.

87 Australia, House of Representatives, 1962-63, *Commonwealth Parliamentary Debates*, vol. 35, p. 1770.

88 *Greymouth Evening Star*, editorial 4 May, 1962.

motivated more by realpolitik and the need to strengthen weak points in the diplomatic armour. Meanwhile, the impetus was gathering for a referendum which would give power to the Commonwealth to legislate for Aboriginal people thus accepting a national responsibility which until this time had been avoided.

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COMMENTARY

THE UNCERTAIN FUTURE OF INTERNATIONAL INDIGENOUS COOPERATION

Peter Jull

Introduction

Genuine indigenous internationalism in the 'first world' is now more than 20 years old. At the beginning it was full of zeal and excitement. It had agreed agendas and very few resources. It seemed quixotic to outsiders, but a sense of purpose and of strong shared grievances carried it through the difficult years. It won astonishing victories and had enormous impact on non-indigenous majorities in some countries.

Today budgets are better, travel opportunities are many, new technology makes communication easy and instant, agendas are often so complex or clever that only their authors understand them, and governmental recognition is considerable, if superficial - but the force of indigenous agreement has sometimes been lost. Indigenous internationalism became too successful too soon. One can now see that some of its success came from novelty alone, while it is also clear that many of its early luminaries were domestic players acting briefly on an international stage rather than persons especially attuned or committed to international work. Like all international work, what is more, superficiality and bedazzled participants constantly threaten to take over.

Of course, these generalisations apply to the limited world of cooperation of indigenous political organisations. Does it matter that purposeful political work has stalled and failed to achieve what it first promised? After all, a growing number of informal and individual contacts, or organised contacts outside political networks such as school visits, have become more significant in their total impact. What has political cooperation achieved? What are the present position and future of political cooperation? What could or should it now achieve in a world growing more comfortably international in fact?

Australian Renaissance?

Two recent Australian reports by the national ombudsman for indigenous peoples, Mick Dodson, may be useful in summing up and clarifying the purpose of indigenous internationalism.[1] This material intended for Australian policy-making may be as important for indigenous organisations in the Northern Hemisphere. Indeed, this is not the only subject area where a new wave of Australian individuals and organisations are surveying the experience of others. With a critical eye and using insights gained, they are accelerating their continent's catch-up process in indigenous policy while providing, also, a new comparative literature which may be more widely useful in the world. While earlier mainstream official, academic, and indigenous opinion has usually failed to get beyond the uniqueness or special circumstances of Australian experience - the main reason why the

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1 Dodson 1995a:203-219; 1995b.

country has been a late starter in the renewal of indigenous-majority relations - some indigenous leaders and non-indigenous internationalists are now reaching out from their own experience for overseas inspiration. Many of these persons are already well-established in their work, what is more, demonstrating a new maturity within Australia rather than the mere search for novelty by the young. The Australians are 'going international' for solid practical reasons, unlike the first generation of modern internationalists in the Northern hemisphere who had stars in their eyes. For instance, *regional agreements* have now become one of the biggest items on the Australian political and policy agenda thanks to examination of Canada's experience with hinterland land claims resolution by Donna Craig and a handful of others.[2] There may be a wider lesson in this sort of focused international work.

In both reports Dodson urges more than occasional fancy-dress internationalism:

> Internationalism is something to be practised 365 days of the year. It provides a frame of reference, a way of thinking and a method of work, one by which we are able to see the shared elements of a universal struggle by peoples whose lands have been invaded and lives distorted by colonisers.[3]

He quotes Rigoberta Menchu, the Mayan Nobel Peace Prize winner and now world ambassador for indigenous internationalism, as saying that 'we as indigenous have no borders'.[4] In his later report he offers a sketch of the origins of modern indigenous internationalism, noting the Arctic Peoples Conference of 1973, foundation of the World Council of Indigenous Peoples in 1975, and of the Inuit Circumpolar Conference in 1977, and the flowering of indigenous internationalism in the most frigid zone of the Cold War with the Circumpolar movement of peoples and governments.[5] His aim is clear:

> International contact is perhaps the most under-used of the major resources of Indigenous peoples in the world today. ... The pressing priority is to gather inspiration, information, and precedents from overseas experience to help develop negotiating positions, options, and policy in Australia.[6]

Not surprisingly both reports stress the importance of comparative studies, and the second includes a background paper on the subject.[7] He recommends creation of 'an internationalist think tank' and goes on to say that

> What is needed is immediate material with practical political and public policy focus. This should be made widely available to Indigenous organisations, libraries and governments.[8]

Furthermore,

> There are some studies which need to be undertaken urgently and their results published. For instance, the concerns expressed by politicians of all parties for Aboriginal and Torres Strait Islander health and community conditions encourage us to look at Norway. Since World War II the Norwegian government has brought all Northerners, including impoverished Sami settlements, a level of public services and

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2 Richardson, Craig and Boer 1994; 1995.

3 Dodson 1995a:214.

4 Ibid.:215.

5 Dodson 1995b:42-43.

6 Ibid.:44.

7 Dodson 1995b vol. 3:123-129.

8 Dodson 1995b: 45.

personal conditions on its isolated and mountainous Arctic coast equal to the best in the world.

Another example concerns Indigenous coastal and sea matters. In the past two years Torres Strait Islander leaders have forged links with Canadian and Greenland Inuit, Norwegian Sami and Pacific Island nation leaders and found much common interest in marine and sea resource management issues. The Torres Strait Marine Strategy has attracted considerable interest in other countries.[9]

This need for indigenous marine work becomes a specific recommendation, No. 3:

A workshop on Indigenous marine policy issues and needs bringing Torres Strait Islander and Aboriginal representatives together with such overseas peoples as Coastal Sami, Inuit, and Indian First Nations of Canada's Pacific coast, and South Pacific peoples, should be held. The workshop would also consider the usefulness and feasibility of an ongoing international Indigenous marine network of peoples and organisations.[10]

The marine item is a particularly good example. Torres Strait Islanders, Canadian Inuit, and Coastal Sami share many social and political realities as peoples less well known in their own countries than Aborigines, Status Indians, or Reindeer Sami, and less defined, officially recognised, or regulated than those peoples. The Torres Strait initiative for a Marine Strategy was in part inspired by Canadian Inuit-government cooperation, while its development has interested overseas indigenous peoples and experts, e.g., Inuit Canada, Sami Norway, and the South Pacific, and fed back into their work and indigenous processes in their home countries.[11] This Torres Strait work, with all its overseas connections, proved important in Australia's national policy development process which was proceeding at the same time.[12] All the while in world forums Australian environmental internationalists were involved in promulgating agreements and guidelines for fisheries and traditional inhabitants in coastal areas. Torres Strait itself is largely subject to the terms of a unique Treaty between Australia and Papua New Guinea involving constant multi-partite dialogue and dispute. The Islanders' present marine coordinator came to her work from hands-on work of a similar kind in the Solomon Islands. In other words, conditions are ideal for international work on marine issues involving Torres Strait.

However, while Dodson was completing his report the leader of the Senate opposition party, Australian Democrats, posed for the media on a Sydney beach beside 100 different coastal reports urging Australian coastal management measures: her point was that there had been little action on their recommendations. Furthermore, all the footnotes to overseas parallels count for nothing unless a sense of practical purpose is instilled, and active and ongoing cooperation takes place. This requires initiative, confidence, *savoir faire* (or just plain savvy), and some degree of organisation and funds. Postage or e-mail will do, but someone must actually put the materials in an envelope or type in the message. It is at this point that marine cooperation - and most other ideas for international work - break down.

Dodson's Australian reports provide a useful update on needs and possibilities. These must now be translated into action. At the time of writing it is too early to know if this will happen.

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9 Ibid.:46.

10 Ibid.:48.

11 Cordell 1991; Lui 1994; Mulrennan 1994; Mulrennan and Hansen 1994.

12 RAC 1993; Smyth 1993; Jull 1993.

The Circumpolar Movement

Like Dodson we may turn to the Circumpolar movement for some idea of what can happen when indigenous internationalism is successful. The subject can be considered on four levels: local/regional, national, Circumpolar, and broader international. The Canadian case will be used here,[13] but it must be remembered that Inuit of Greenland, Alaska, and Russia find different meanings and value in indigenous Circumpolar linkages. It used to be said outside the meeting chamber at the week-long 3-yearly Inuit Circumpolar Conference (ICC) assemblies that Greenland Inuit had real political power, Alaskan Inuit had real financial resources (though this is not equally true of all Alaska's Inuit regions), and Canadian Inuit maintained the highest degree of traditional Inuit culture. It is important to note that indigenous internationalism to date has been entirely coloured by local and regional imperatives, and that a real internationalism scarcely exists except among *non-indigenous* lawyers, resource management researchers, anthropologists or human geographers, and human rights workers. Really international workers among indigenous people themselves are usually involuntary exiles from home, or pressing a home agenda in some international forum.

On the *local and regional level*, Inuit participation in ICC meant that isolated hunter-gatherer people and communities who had felt marginalised and disadvantaged in Canada now had the greater resonance of an international culture and the support of active political allies abroad. Every community played and replayed audio tapes and videos from the last ICC assembly week, a week as full of cultural performances and popular Inuit-language pop music as of political discussions. It is ironic that one of the world's most isolated peoples - no two Canadian Inuit communities being connected by road - gets more immediate benefit at an individual level from its leaders' international activities than do far more materially developed, educated, and powerful peoples and nation-states.

Also, Inuit leaders and organisation staff working on regional land/sea claims, environmental issues, social issues, and self-government projects have had frequent opportunities to discuss such matters with Inuit from other countries who are fighting or have fought the same battles. They know that however resistant may be the Canadian public and governments to their demands, such things are proceeding elsewhere and that such things are therefore neither impossible nor impractical. When visiting other countries they have the chance to speak about their problems at home to sympathetic audiences, while their gatherings and other projects attract international media attention. The importance of such psychological support cannot be overstated for a people who include almost no university graduates or higher work skills but who are negotiating their survival with a powerful national government.

At the opening of the 1980s the Arctic Pilot Project, a scheme to bring liquefied natural gas south by tanker from the Arctic Islands for markets in North America and Europe, saw all of the six Canadian Inuit regions joined by the Inuit of Greenland and North Slope Alaska in opposition. With the help of money and experts from Alaska and Greenland, the Canadian Inuit mustered all their resources to oppose the project in regulatory board hearings. The pilot nature of the project they saw as forerunner to marine oil drilling and shipment, a fear which unites all Inuit (who rely on the sea for their livelihoods and food), and as piloting industry through regulatory, indigenous, and environmental uncertainties. The eventual defeat of the project, by no means due only to indigenous and environmental concerns, seemed a tremendous vindication of Inuit cooperation. The effective Inuit role and their substantive views in the hearings marked a

13 Jull 1994a.

turning point in Canadian government and public infatuation with resource mega-projects in the far North. Of course, Inuit believed they had no choice: the coming of big industry and transport would pre-empt their attempts to get a say in the future of their homeland through eventual regional land/sea claims, national constitutional reform, and regional self-government structures.

At *national level*, publicity over issues like the Arctic Pilot Project and many others have altered Canadians' view of the North which is, after all, the fundamental myth of Canada since European settlement.[14] No longer an empty and forbidding white blur of snow and ice awaiting the transforming genius of white settlers, it came into focus as a place of well demarcated Inuit (and Indian) homelands with rich traditions, art both lively and profound, humour and pathos, intact cultures insisting on their distinct place in Canada even amid the welter of material change, and a social and economic ethic which repudiated facile European notions of industrial and liberal development. No mere isolated romantics, these young Inuit were, and were seen to be, part of a much larger international movement.

Furthermore, the Arctic was no longer an embarrassing backyard about which Canadian governments were coy with foreigners, a place in which one could slowly bring some recalcitrant primitives towards proper civilised life - rather, it was part of an extraordinary East-West region of peoples and homelands who had different ideas about the future and renewed confidence in the very traditions which Canadians had regarded as backward. It was clear that sanctimonious Canadians trying to change these people had been wrong in their assumptions, if not in their earnest goodwill. They had read the North all wrong. The North now made up about 75% of Canada's land area, i.e., the region beyond the Southern agriculture zone. Its scattered Inuit, Indian, and Métis villagers were now travelling overseas together to fight for their way of life in the fashionable capitals of Europe where gentle bourgeois wanted to end the trapping and hunting which provided their only sure sustenance.

There was also a direct impact on national political life through the constitutional review processes. There the Inuit and other Northern peoples were preaching their new social and cultural ethic via nationally televised conferences during the 1980s, and again in the 1990s. They advocated collective and cultural rights, and won recognition for pre-European Canada as a living political community which must be accommodated in any authentic national reform. The resolution of native title claims was, in fact, a grass-roots constitutional revision process which was filling in the map of Canada with new political structures.[15] Inuit were not coming to national conferences to negotiate the basics but rather to share with others the new Canada they were achieving and ask that these realities be reflected in the national Constitution.

At the *Circumpolar level* the cooperation among Inuit and between Inuit and other Northern peoples - Sami of Scandinavia, Russian peoples from 1989, and North American Indians - represented more than a thaw in the Cold War which had militarised and immobilised the Arctic. It challenged the notion that the national interest lay merely in rigidly maintaining central control of developments in that region. It now brought decentralist and pluralist values into the equation, and made a mockery of a Northern Development ethic which served the national balance of payments while leaving the permanent Northerners impoverished and risking their main economic asset, i.e., the natural environment. Led by Inuit, Canada saw a thaw in relations among peoples and interest groups at home, and a sense of excitement about the discovery of a new region of the world

14 Jull 1994a:66-76.

15 Jull 1995.

in which Canada really mattered (thanks to its sheer size no less than its outlook) and where many worthwhile challenges existed.[16]

Protection of the environment, especially the marine environment, with its corollary issues of resource and other physical development, became the most obvious area for cooperation. Mary Simon, the ICC president from 1986-1992, made this cause her own and made it also the centrepiece of her work to develop a truly Circumpolar regional structure linking all peoples, national governments, and sub-national Northern governments in the Arctic. A measure of her success is the fact that in 1994 Canada appointed her its first Ambassador for Circumpolar Affairs, a full-time post in the foreign ministry.

The breaking down of national isolation in the Arctic, and redefinition of the region as a place for multilateral cooperation, peace, and goodwill in which the indigenous inhabitants are respected interlocutors and leaders, is an overwhelming achievement. Its impact is being felt in all areas of Northern life and policy. In 1989 at the Sisimiut, Greenland, ICC assembly a succession of ministers and heads of government from national and Northern sub-national USA, USSR, Canada, and Denmark governments lined up in a sort of international accountability session to report on their progress and commitment in implementing ICC policy resolutions. A scattered hunter-gatherer people and their local delegates in the chamber had come a long way in a very few years thanks to international cooperation.

On the wider *international level*, Inuit alone and with others have taken their own culture and the Arctic from a realm of silly stereotypes and nature documentaries, subjects of curiosity, and made them serious representatives of environmental protection and respect for cultural diversity in world bodies. ICC has been very active in world forums of many types, and ICC events are typically reported by leading world media. What is more, an almost unknown region of the world is now open to world scrutiny and criticism, placing the Circumpolar governments under unprecedented pressure to behave well in the region. Inuit leaders and staff born in isolated snow-houses and tents and brought up with little knowledge of the nearest community beyond their own trading post now find themselves in mid-life talking with world leaders and travelling the world as a sort of global conscience. The view and confidence this brings to Inuit politics and society back home may be guessed.

New threats to their success come from Inuit transition from political associations to governing powers. Governments with complex agendas have little interest in free-lance idealists outside their control. With real power in their home regions, what is more, Inuit leaders are necessarily more occupied with local and regional issues and have less interest or need for wider appeals to higher or wider political authority or the public which supports such authority. ICC may have to trade some of its freedom and enthusiasm for more secure funding by Inuit governments, the alternative being irrelevance or gadfly status. If the most dramatic achievements of ICC as a virtually independent entity are past, there are many important possible roles ahead. What is more, the two-tiered indigenous-government multilateral cooperation structures for the Circumpolar region being pursued by Mary Simon with full official Canadian government support may transform the whole picture. ICC would be a logical inter-Inuit coordination office and secretariat for such work if the jealousy of regional Inuit governments can be overcome.

To conclude this subject, Inuit have won battles with local rednecks, regional development-hungry authorities, national governments, and international interests like the oil majors thanks to international contacts and cooperation. They have redefined large

16 CARC 1988.

hinterland regions and whole nation-states as indigenous space or space in which indigenous aspirations are central issues. They have also re-written world standards in the practice of indigenous rights and environmental protection (i.e., their basic economic concern). They have done this with minimal funding, with tiny and sometimes shoe-string operations, and without initial sympathy or support from governments. They have had their share of time-servers and wasted opportunities, but their essential sense of political purpose and shared agendas has seen them through all difficulties.

Sami Rights

The Sami present a puzzle. Perhaps the most well-educated and work-skilled indigenous people in the first world apart from Maori élites, the Sami have failed to convince Norway, Sweden, and Finland public and governments of the need to recognise their rights.[17] Each day more of their remaining territory in the North is lost to them through development or regulation - territory which they have indisputably used and occupied since the Ice Age glaciers receded many thousands of years ago. There have been official and other respected studies urging the three governments to recognise Sami rights, to no avail. The famed progressive spirit of the Nordic countries, evident in Denmark's accommodations of Faroese and Greenland ethno-regionalism, has not extended to Northern Scandinavia. Of course, national intellectuals in those countries have long recognised that pluralism is a different challenge from social equity and one which presents great difficulties for their societies.[18]

Why have Sami leaders not pressed hard for Sami rights, especially in Norway where dismissive reports released in 1993 fly in the face of common sense and international experience?.[19] Various answers have been suggested. Sami leaders are busy professionals in critical periods of mid-career or at the stage where they want a quiet life after long struggle. Sami leaders believe that governments will do the right thing. Sami leaders are now in the pocket of governments. Whatever the reason, three facts are inescapable. (1) No government in history has voluntarily sought out good to do by recognising the territorial rights of indigenous minorities - and it is probably safe to say that none ever will! (2) Sami leaders have been saying for 25 years that they must have land, freshwater, and sea rights. (3) Sami leaders are aware that all indigenous peoples seek land and/or sea rights and that a number of countries with whose indigenous leaders they fraternise have recently won court cases and policy changes *on the very grounds upon which the Scandinavian governments base their rejections!* (The Scandinavian argument is a slightly dignified *terra nullius* view.)

Clearly, then, the Sami leaders are unable or unwilling to use the benefit and precedents of others. This is remarkable in countries which are compulsively and habitually internationalist. It has been said that because Sami have had their living conditions improved in recent decades by governmental action, they are reluctant to claim indigenous rights. However, Sami themselves have been vocal for decades in denying that government policies which confer socio-economic benefits are the same as territorial, cultural, or self-government rights. It is very discouraging that an otherwise sophisticated socio-cultural movement is so unsure of itself in major political matters; it is worse that their uncertainty threatens indigenous peoples everywhere. After all, if the most progressive countries can deny the territorial and related rights of indigenous minorities, there is very little incentive for Indonesian or Guatemalan governments to do otherwise.

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17 Jull 1994b.

18 *Dædalus* 1984.

19 Brantenberg 1993.

Yet the Sami leadership are active in travel and attendance at functions abroad. They speak well and are multi-lingual to a man or woman. They are fine representatives of a mature indigenous modernity in all but one particular - they have failed to begin talks on, or even to win recognition for, their rights agenda, i.e., on the very thing which identifies them as an indigenous people. Far from being an international model for others, one might like to say, like Byron of a timid people of his time, 'For Greeks a blush - for Greece a tear'.

Discussion

It seems that the initial impact of indigenous internationalism begun in 1973 with the Arctic Peoples Conference has been spent. That early phase had several features. The sheer novelty of remote hunter-gatherer peoples taking on international roles and speaking to the world about hinterland regions little known even within their own nation-states caught the public and government off guard. Much of the Inuit ability to get Canadians' attention derived from no greater cause.

One may also doubt whether the early impact of indigenous representatives from different countries issuing joint statements on public issues is any longer as great as it once was. Governments initially had to adjust to this new source of political criticism, and in the Northern Hemisphere, at least, have largely done so. In the process, of course, indigenous peoples gained permanent benefits in terms of further influence on and access to policy-makers. For instance, Inuit internationalism is now a permanent factor in Canada's Arctic environmental work, and a much more substantial one than Torres Strait Islanders in the Torres Strait Treaty processes in Australia.

The indigenous persons who founded indigenous internationalism were young leaders at home no less than internationally. The more demanding home arena and the greater certainty of funding at domestic level have taken most of their time. For leaders as individuals, the passage of time, and the loss of novelty have often turned extroverted youth burning with activist purpose into comfortable middle-aged tourists.

As in domestic aspects of indigenous politics, the initial need for advocacy, attention-getting, and agenda-setting skills has given way to a politics in which more negotiation and work skills are needed to make real progress. Not all individuals or organisations have had the qualifications or patience to make that transition. The same problem has been a major stumbling-block for indigenous politics at home, e.g., within Canada. However unfashionable it may be to say so, a good part of the various failures in indigenous Canada in the past 15 years are due to indigenous groups being unwilling or unable to sit down and work through issues they themselves had raised when governments finally agree to negotiate solutions nor is all of this due to insufficient funding for indigenous preparation.

If some of the Northern Hemisphere indigenous internationalists have lost their way, or been seduced from their activist earlier agendas by the comforts of government-funded international travel, the Australian initiative of Mick Dodson may be a timely corrective. Not only does he endorse and sum up the genuine magnificence of the Northern Hemisphere peoples' international achievements, but he proposes practical ways to build on them. He also focusses his proposals on practical and issue-oriented work. Australia is now ready for the next generation of indigenous internationalism. Within ICC, too, it has been from the Russian side - the newcomers to the organisation - that most awareness of the scope for practical work has come.[20]

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20 ICC 1992a.

A guide for conduct in indigenous internationalism for voluntary use is badly needed. Much international indigenous contact is irresponsible, and most contact is productive of little more than the personal experience of individuals participating.

It is common for indigenous representatives to travel overseas and, like missionaries of old, co-opt foreigners into their feuds with other indigenous groups at home. In Australia, for instance, it is common for Canadian Indian speakers to misrepresent and disdain Inuit projects such as Nunavut.[21] The problem with this is that the information offered about Nunavut by such speakers is almost always wrong, and the listeners would usually find both Canadian Indian and Inuit progress with claims settlement and self-government of value because it is more advanced than their own. Also overlooked is the fact that all indigenous peoples are seeking the same things: recognition of collective rights (including rights to sea and land territories), more or less autonomy within existing nation-states, protection of traditional livelihoods and the environments which provide the base for those, cultural maintenance and enhancement, and powers of political decision-making. Different peoples, or different groups of the same people, may choose different approaches for various practical reasons, but there are important lessons for others in those choices.

As peoples who have suffered so much from the ethno-centricity of majority societies, indigenous peoples should be especially anxious to avoid chauvinism and insensitivity towards each other. Another form of this same problem is the enthusiasm with which some leaders rush to patronise others they deem more unfortunate then their own people. The proper relationship towards other indigenous peoples is respectful listening. However self-satisfied some indigenous leaders may be, nowhere more than in Scandinavia or parts of the Great Plains of North America, all have a great deal to learn and to understand before they are on an equal political footing with national governments. Admittance to an official dinner with king, president, or prime minister, and ability to articulate a position decorously in a formal setting, mean nothing.

No less important than a willing suspension of disbelief towards the political experience of others is good use of the opportunities available to oneself. Many of today's indigenous leaders remember well the recent times when overseas travel was unthinkable, and, when the chance came, a major personal experience. Today indigenous representatives spend many bored hours between duty-free shops in the air and in airports, and are as familiar with the ways of fine hotels and foreign dining as the pick of their home nation's Çlite. Too often they fail to use their contacts to gather documentary information or make notes on precedents; when they recover from jet-lag and cross-cultural daze back at home they have nothing but a few impressions.

Equally, they must become open to what they find. Many Canadian Inuit politicians dismissed Greenland's experience for years despite visits there because they had heard one or two of the young Greenlanders dismiss it as an empty deception by Danes. The fact is that from virtually any point of view, Greenland Inuit home rule is the standard-bearer of indigenous self-determination. The Canadian Inuit, who were trying to negotiate both land claims and regional self-government at the time, could have learned a great deal of immediate use to them. Various Canadian Indian groups who had none of the advantages of first-hand contact or a shared Inuit language were wiser and learned all they could from written accounts of Greenland's emerging nationhood.

If a few indigenous organisations would take the initiative to draw up, circulate, improve, and propose voluntary adoption or guidelines for indigenous internationalism, such work would be more prolific, more useful, and less conducive to mischief and ill-will.

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21 Jull 1994c.

One small step in this direction is provided by a 13-point list in the Inuit Circumpolar Conference Arctic Policy, 'Principles and Elements on Circumpolar Regional Cooperation'.[22]

As for larger questions of indigenous multilateralism, the essential divide may be between governments and proto- or quasi-governing authorities on the one hand, and NGOs (non-government organisations) on the other. Peoples fighting for rights against great odds, and with little to lose, are in a different category than recognised authorities who have complex agendas and sensitivities to manage. For instance, the fact that the Inuit Circumpolar Conference has been made up from the beginning of peoples with the reality or not too distant hope of managing their homelands in law may have fashioned the ICC tone no less than has the notoriously pragmatic Inuit culture. The different needs and interests of each category - recognised authority and NGO - should be recognised at the outset to prevent frustration or embarrassment and ultimate withdrawal from international forums by different peoples.

Although international awareness is growing among indigenous peoples everywhere, as well as individual travel and group exchanges, this has little impact on politics. Political work requires specific and focussed attention and conduct; it cannot be taken for granted. It is not sufficient for us to predict comfortably that in 25 years all indigenous peoples will be proud of sharing a common agenda if in the meantime their lands and seas are lost and they become a desperate rustic proletariat living in the packing crates left by oil companies and military forces and gathering food in the White Man's garbage dumps.

Already indigenous peoples have been widely recognised as having a special role to play in the philosophy and politics of environmental protection world-wide and this could become an organising principle for formal indigenous multilateralism. Much wider functions could flow from that, just as 'first world' nations have been taught by Aborigines and Islanders and other peoples that the land and sea are their first and best principles. The fact that the world understands environment as an issue, however lacking in will to act upon it, and that it is the easiest way for indigenous people to show their relationship to land and sea territories and their need for secure rights in relation to these, makes environment this the most obvious area for intensification of indigenous international work. Even social justice is not such a good bet in the long-term because societies will surely soon be levelling down, not up, and imposing harsh measures on all citizens during world crises of many sorts. Land and sea territory will better sustain indigenous peoples, as they have always done.

Conclusions

International cooperation by indigenous peoples began as an attempt to press governments at home to recognise indigenous rights, as a sharing of experience with other peoples in order to raise international standards for recognition of such rights, and as a way of learning from others' experience in order to grasp better the political options available and probable majority responses at home. In many cases today that work has become a means for governments to use indigenous leaders to justify national policies abroad, and, for indigenous leaders to patronise others by inflating home experience while rejecting the experience of others as of no relevance. Sadly, this change has often occurred without indigenous peoples achieving the basic goals for which their international cooperation was first begun. Sophistication in international matters comes not from staying at fine hotels or giving pretty replies when official gifts or welcomes are given, but from gaining

22 ICC 1992:28-30.

knowledge, insight, and allies. The political power relations between indigenous peoples and newcomers in their territories are everywhere the same. If Manhattan was traded for $24 worth of trinkets and cloth in 1626, the virtual handover of sea, land, and resource rights today in sweeping hinterlands across countries and continents for a few indigenous plane fares and invitations to official dinners is no less outrageous. Nor did the Indians of Manhattan become apologists for their dispossessors in the United Nations or in world news interviews.

Indigenous rights and international politics are not about social status. They are about the power to govern territory and the economic benefits from the exploitation of territory. All the rest is flim-flam and public relations - a certain amount of which is inevitable in political life, but not to be confused with political substance. Role models and individual success stories are all very nice, but they do little more than confirm or justify existing inequalities. They may sometimes symbolise real change or be its heralds, but they do not cause change. On the other hand, individuals representing real political power are rarely barred from the company of ministers or prime ministers, queens or kings, on account of their manners or morals.

Indigenous internationalism in 'first world' countries has so entirely lost its way - that is, become so distracted from its real value, purposes, and functions - that it must be virtually re-invented from the ground up. It has an important, even urgent, role in the immediate future of indigenous peoples: to enable them to secure legal and political rights as unique communities before they are finally alienated from their territorial and resource base (or before that is so poisoned as to be as good as gone). Generalised international niceness and fortuitous personal contacts abroad cannot make up for a lack of focussed political work. New technologies and other developments provide major advantages unavailable to the first generation of modern indigenous internationalists. The outline of a practical internationalism offered by Australia's indigenous peoples' ombudsman, Mick Dodson, may be a useful starting point. The task is really very easy, but someone must begin it.

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BOOK REVIEWS

Oodgeroo : A Tribute. A special issue of *Australian Literary Studies* . Volume 16, No. 4. Edited by Adam Shoemaker, Laurie Hergenhan and Irmtraud Petersson. University of Queensland Press, Brisbane, 1994. Pp xv + 190. $19.95

Glancing down the page of Janine Little's useful checklist of material by and about Kath Walker/Oodgeroo included in this special issue of *ALS*, I note that the present publication represents the only book-length discussion of Oodgeroo's work, with the exception of a text by Al Grassby. So *Oodgeroo : A Tribute*, guest-edited by Shoemaker, with Hergenhan as associate editor and Petersson as editorial assistant, fills something of a gap and does so within a year of the death of a notable Australian. It should be said that one approaches any tribute, and its attendant pieties, with understandable reservations. This one, however, works well as a book introducing Oodgeroo's preoccupations to the general public, and without excess of good manners and p.c. — in no small part because of the influence of Oodgeroo herself, whose vital personality breaks through formal barriers, in quotations of her own lively and pointed utterances, in obviously heartfelt reminiscences of those who loved her, and (even) in the assessments of well-meaning academics.

Oodgeroo : A Tribute consists of eighteen articles of varying length by relatives, friends, work-associates, writers and critics. Of its three sections, the first, which is the most personal, is headed 'Reminiscence, Record, Travel'; ' the second, which is analytic, is headed 'Poetry'; and the third, which looks at the wider range of activities and achievement, 'Voices: Educationist, Activist, Performer'. Out of this a portrait of the artist emerges: Oodgeroo as sister, friend, mother, poet, sketcher, political stirrer, propagandist, lecturer, traveller, educator, encourager of other people's talents, yarn-spinner, ambassador-in-residence-at- Minjerriba and more. A few cameo-shots of this physically diminutive and astonishingly energetic woman in action : Oodgeroo nicely reminding Menzies who offers her a drink that 'providing spiritous liquor to an Aborigine' incurs a fine in Queensland ; Oodgeroo fielding Harold Holt's inevitable 'is it correct that there are Communists in your organization?'; Oodgeroo not knowing if it will help but feeling 'certainly ... better' after returning her MBE; Oodgeroo (logically) empathizing with her plane hijackers; Oodgeroo impishly and with real affection resting her head on Manning Clark's knee; Oodgeroo replying to her literary critics : 'it *was* propaganda. I deliberately did it'; Oodgeroo returning from referendum campaigning to find clothes and curtains slashed; Oodgeroo defending multiculturalism to police cadets who thought that 'if people came to Australia, they should be prepared to be Australians' with the retort: 'you came to my country and you didn't turn black'; Oodgeroo — unAboriginally — wanting her name shouted out when she dies.

The essays themselves include especially informative contributions by John Collins of Jacaranda (in connection with Oodgeroo's publishing history) and by Rhonda Craven, Alan Duncan and Eve Fesl (focussing on Oodgeroo as educationist). There are also statements by Roberta Sykes and Robert Tickner. All in all the book canvasses issues larger than the literary, though the literary looms large. Here the primary concern, one way or another, is with that old chestnut of quality: are the poems 'good', are they 'poetry'? I confess to even more impatience with the question than some of the contributors themselves. My memories of Oodgeroo include her addressing a student rally in the sixties and, on another occasion, reading poems to an amused and sympathetic largely Aboriginal audience. In each case 'art' did not figure. I'm not sure some of the contributors anxious to defend Oodgeroo

against the criticisms of people like Andrew Taylor do her such a service. Taylor, desperate to approve of Oodgeroo for sound political reasons, could not, in all New Critical conscience, think much of her verse. In the present publication, Mudrooroo tries to get around the problem by inventing a new word, 'poetemics' (poetry/polemics), which functions rather like Demidenko's 'faction' (fact/fiction). But doesn't this amount to saying what Taylor said, viz that Oodgeroo is not exactly a 'poet'? The real difficulty is the notion of something called 'poetry' defined as distinct from something else called 'politics'. That puts poetry under the rubric of the aesthetic. At which point Oodgeroo, not the slightest bit concerned with aesthetics, appears either as no poet at all or as a bad one. To argue for poetic ambiguities, or, using less New Critical, more contemporary jargon, for poetic tactics, strategies and the like, doesn't get around the difficulty, which is of wholly academic origin and bears no relation to Oodgeroo's practice. Perhaps Anne Brewster is closer to the truth when she simply tackles Oodgeroo's work as that of an oral historian. The point is that it is the category of 'poem' which is problematical, not Oodgeroo's verse. Once we grasp this, complicated apologias (Bob Hodge arguing that the verse is postmodern, for example) become unnecessary. The expression 'political poetry' or even "propaganda poetry" ceases to fuction as an oxymoron. It becomes a neutral business to describe Oodgeroo as a poet. And on the question of quality, now divorced from aesthetic preconceptions about the nature of the artefact, it suffices to pass the kind of judgement we might pass on any human activity.

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Brisbane: The Aboriginal Presence 1824-1860. Edited by Rod Fisher. Brisbane History Group Papers No. 11, 1992, pp.106. Black and white illustrations, map, reference list, index. $26.95 p. b.

The Brisbane History Group is to be congratulated on this volume, their first using a new more professional format bringing together a number of articles on the same theme. The volume comprises six papers on race relations in the Brisbane region between 1824-1860. It covers the convict and early settlement periods until the separation of Queensland from New South Wales in 1859. Against this background it 'considers selected incidents and issues which offer insights into relations between Aborigines and Europeans'. Although the group consists largely of members of the general community, the articles in this volume have been written by academics and a post-graduate student'

Raymond Evans' opening article, 'The mogwi take mi-an jin', focuses on the period of the Moreton Bay penal settlement (1824-1842) and inter-action between the local Aborigines (approximately 5,000 in the Moreton Bay region with many more slightly more distant) and the newcomers of the penal settlement who were outnumbered aproximately five to one. The 'white toe-holds of occupation', first at Redcliffe Point, then upon the Brisbane river, Stradbroke Island and Limestone are described as 'like migrant enclaves, surrounded by the societies of the "indigenous others"'. Evans examines the nature of the encounters of the two races as they move back and forth across the 'enclave' boundaries. It is a distinctive frontier, Evans argues: 'a sedentary, moderately increasing, then rapidly contracting frontier', which evoked 'quite distinct responses from the beleagured Aborigines'. From early 1839 onwards convicts, soldiers and officials began

leaving Moreton Bay with the penal era coming to an end in May 1842. As the first phase of inter-action came to end, the next began, and this time the newcomers, who included squatters and their employees, came to stay not only permanently occupying 'mi-an-jin' but using it 'as a staging ground for the occupation of lands soon to become Queensland'.

Rod Fisher ('From depredation to degredation') is concerned with the Aboriginal experience of the years that followed. His interest aroused by the story of Kipper Billy convicted in 1862 of raping a white woman, Fisher decided to explore the context of the Kipper Billy incident. 'How common were cases of Aboriginal rape of white women?', he asks. 'Were they a sporadic or concentrated phenomenon of early settlement?'. 'What were the causes?'. 'Were they 'cultural', 'learned', 'retaliatory', 'moral', 'social', 'racist' or 'simply personal'? Drawing extensively on newspaper accounts he found that three features characterised relations between the races: first, racial conflict on the frontier, second, social tension in Brisbane and third, involvement of Aborigines in the town activity and economy. It is the second, increasing tension in Brisbane, to which Fisher turns to explain the attacks on white women and with which he becomes pre-occupied almost to the exclusion of any detailed analysis of evidence that could provide answers to the specific questions he raised (listed above). He notes that in the 1850s the earlier Aboriginal offences of raids on crops and dwellings gave way increasingly to cases of 'drunkenness, disorderliness and interpersonal violence between Aborigines'. While Aboriginal numbers were relatively small he points out that the white population numbered little more than 6,000 in 1861 and the Aborigines formed a 'most conspicuous and concentrated minority which expanded at certain times and clustered at particular locations'. Increasingly the population demanded firmer handling of the Aborigines expecting those who committed crimes to be dealt with by the 'most severe and summary punishment'. Second, there was demand for the presence of military and police personnel to intimidate and deal with the Aborigines. He concludes that the conviction, death and grave robbing of Kipper Billy in 1862 exemplifies 'that stage of punishment and repression whereby Aborigines were removed from Separation society in Brisbane'. The raping of white women occurred when 'tribal structures were deteriorating, town blacks were becoming increasingly deviant and white repression was on the ascendant'. These aspects, Fisher argues, indicate that the Aboriginal men who raped white women were really 'victims of social, economic and cultural change which was beyond their determination'.

The other four articles are shorter. Libby Connors ('The theatre of justice') deals with the carrying out of Aboriginal death sentences at Moreton Bay between 1839 and 1859. Her focus is on the white intentions expressed in the ritual of hanging and the Aboriginal responses to the 1841, 1855 and 1859 executions which she argues epitomize three distinct phases of Aboriginal-European legal relations. Her conclusion is that the Aboriginal response suggests a 'pattern of initial accommodation followed by contestation and rejection and finally powerless submission'. John Mackenzie-Smith writes of the Kilcoy poisonings of February 1842 in which up to 60 Aborigines were poisoned at an out-station of the Kilcoy run held by Evan and Colin Mackenzie, sons of Sir Colin Mackenzie. He traces the details of how a 'conspiracy of silence' ensured that to this day it is imposssible to know who was guilty of the crime. He defends the honour, however, of Evan Mackenzie who he believes has been wrongly blamed. In 'The snake in the grass' Denis Cryle examines the role of the local press in influencing public opinion and behaviour by using the press reaction to the murder by Aborigines of the squatter Andrew Gregor and his female servant on the 18 October 1846 at a North Pine property. The editor of the *Moreton Bay Courier*, 'a champion of the squatters', encouraged anti-Aboriginal feelings which led to attacks on the local clan camp at Yorks Hollow and some deaths. The 'snake in the grass'

is William Augustine Duncan who appalled by local behaviour exposes it in the Sydney newspapers using at first a pseudonym but later being openly critical of the goings on in Moreton Bay. Attacked by the *Courier* as someone who should be ostracised, he found friends in Sydney where the *Australian* commented that 'it betrays a bad spirit to call an anonymous correspondent who advocates the cause of the blacks "a snake in the grass"'.

Raymond Evans' 'Wanton outrage: Police and Aborigines at Breakfast Creek 1860' completes the volume. It is 'a contextual examination of an incident of conflict which ocurred between civil police' and approximately a hundred 'relatively sedentary Aborigines in Brisbane in late 1860'. The handling of the remaining local Aborigines had reached the stage where there was demand that they should live as far as possible from the city centre but be available to work in town if needed. Evans points out that even in the late 1870s 'mounted troops would ride about Brisbane "after 4 pm. cracking stockwhips" as a signal for Aborigines to leave town'.

Familiar with the history of race relations in the Portland Bay District, the southern most extremity of the colony of New South Wales, I found this account of race relations in the Moreton Bay District, the northern fringe of the same colony, fascinating. Similarities and differences between events in the north and the south quickly became evident. In the south there weren't two distinct periods of settlement as in the north where the earlier convict phase was followed by the arrival of pastoralists and their employees. In the south the pastoralists followed early whalers and sealers along the coast and ex-convicts came in from the beginning as their employees. In February 1842, at the time of the Kilcoy poisonings, there was a similar case (Muston's Creek massacre) on the southern pastoral frontier. A number of Aborigines sleeping in a tea tree scrub were shot by men on horseback. Here, also, there was an attempt to make it impossible to establish who had perpetrated the crime. It was not this which interested me so much as the different reaction of Governor Gipps to the events. Whereas in the south,where only five people were killed, he threatened to close the whole District to pastoral settlement and to make it an Aboriginal Reserve if the murderers were not discovered, his reaction to the more serious situation in the north, according to Mackenzie Smith, was merely to express exasperation at what he saw as something concocted to annoy him. How can one account for such a different response? Then there was also mention of attacks by Aboriginal men on white women which appeared to have occurred in considerable numbers yet in the Portland Bay District such events were so rare that one could almost declare them non-existent. This is true not only of the frontier period but also of the later period of the 1850s and 60s when, as in the north around Brisbane, Aborigines were dispossessed, and 'drunkenness', and 'drunk and disorderly' were the main offences. Again there is no equivalent of the Breakfast Creek massacre in which the civil police attacked without provocation Aboriginal camps not far from the centre of Brisbane some 20 years after white squatters began arriving in the area.

Brisbane: the Aboriginal Presence 1824-1860 is a fine example of scholarship presented in a way that is most accessible to the interested general public. I have only one criticism: a very minor one. Occasionally the three dots used to indicate words omitted from quotations became four.

Jan Critchett
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Handbook of Western Australian Aboriginal languages south of the Kimberley region. By Nicholas Thieberger. Pacific Linguistics Series C-124, Canberra 1993. Pp 408. $40.50

This work is a revised and updated version of the Handbook of WA languages produced as a draft in 1987 by the Institute of Applied Aboriginal Studies, Mount Lawley campus of WACAE, now Edith Cowan University. It is a most important reference book for anyone seeking information in this area. It lists 64 languages and for each of them it gives a complete list of all work that has been done on the following topics:
1. details of location, 2. the different names of the language and the different spellings that have been used, 3. the classification of the language and what are its closest relatives, 4. the present day numbers and distribution of speakers, 5. people who have worked intensively to record the language, 6. practical spelling system, 7 wordlists, 8. texts, 9 grammars or sketch grammars, 10 language program, 11 language learning materials, 12 literature in the language, 13 material available.

There is also an overall bibliography. It is clear that no trouble has been spared to find and list all the materials, even those found only in the most obscure places, field notes of overseas scholars or unpublished theses. For anyone wishing to undertake a study or even wishing to refer to data from this area the present book is of prime importance: it is a most valuable resource.

Luise Hercus
Australian National University

Our Heart is the Land: Aboriginal reminiscences from the western Lake Eyre Basin. By Bruce Shaw. Aboriginal Studies Press, Canberra 1995. Pp. 154. $22.95.

The eastern Lake Eyre Basin has received much attention, largely on account of the great mission at Killalpaninna and because of the romantic image of the Birdsville Track. The western area, however, has been relatively little studied and this is therefore a very welcome book. We need a history of the area, one that takes into account the influence of the railway and the telegraph line on Aboriginal people, and one that is based on documentation. While the present work does not aim to fulfil this need, it aims to record the views of Aboriginal people on various aspects of life in the area.

The introductory chapter and the section on Dreamings are the weakest part of the book. The following are just a few comments on controversial statements. The remarks on p.3 on the movement of people 22000 years ago are pure surmise. The important compiler Edward Curr is called a linguist (p. 10), and his list is used (p.49) to make deductions about fauna: all this while brilliant information on the Aboriginal use of fauna in the Lake Eyre Basin is available from the works of T. Harvey Johnston. Similarly Howitt is quoted as a source of information on the matrilines (p.23) rather than Elkin's important series of articles on kinship in the Lake Eyre Basin, not to mention the more recent work by Harold Scheffler.

As is the case with all Bruce Shaw's extensive works, this book is based on careful fieldwork, and through it we can hear the voices and the diverse views of the Aboriginal people who contributed. We would have a clearer perspective of these views if the speakers had been introduced: as it is, only their ancestry and date and place of birth are given. Had

we had further background we would be able to appreciate the differences in attitude and lifestyle reflected in the contribution of a person who has been a stockman all his working life and never had a chance to go to school, and that of a person who has not lived in the area for a long time and is a qualified electrician. It would explain why the latter would have views on the megafauna (p.88). One can see the author's reason for not including such background information on the Aboriginal people involved: he obviously wants them to speak for themselves; but with such short extracts on a varying series of topics they really do not have a chance to say much with any sense of continuity.

Many of the excellent black and white illustrations are close-up photos of the contributors. The work will be of greatest value and interest to two quite diverse sets of people; on the one hand to members of the Aboriginal community and people with a background knowledge of the area; and on the other hand to people who like to have a brief glimpse of the present day Aboriginal background to the Western Lake Eyre Basin.

Luise Hercus
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White Man's Dreaming: Killalpaninna Mission 1866-1915. By Christine Stevens. OUP Melbourne 1994.. Pp. 308. hb. $39.95.

The great Killalpaninna Mission on the lower Cooper in South Australia had a tremendous influence on the Aboriginal population of the Lake Eyre Basin. It is mentioned in every major work connected with the area and diverse value judgements, ranging from the view that the missionaries enabled the Aboriginal people and particularly the Diyari to survive, to the view that the missionaries killed Diyari culture have always tended to be passed. A thorough study of Killalpaninna Mission had never been made and this makes this book particularly welcome.

Christine Stevens is no newcomer to the area. She is the author of an excellent work on Afghans, *Tin Mosques and Ghantowns, a history of Afghan Cameldrivers in Australia* (OUP 1989). The present work is thorough and professional, based on extensive research of Lutheran archives, Government documents and other historical sources as well as Aboriginal reminiscences. Through her years of working on this book the author clearly has a personal empathy with her subject. Throughout the work the reader can feel the harshness of the natural environment which made practically every day a struggle for survival. We also get a sense of the hostility of the majority of the pastoralists, the idealism and determination of most of the missionaries and the dignity and personal integrity of the Aboriginal people. Despite this empathy with her work Christine Stevens does not get carried away and we do not find any rash condemnations or any other extremes. To take two examples: there is no question that both Bogner and Reidel were in their own separate ways disaster areas as far as the mission was concerned, yet it is made clear that they were not evil men but thoroughly poor appointments. Bogner was simply keen on making the place into a viable cattle station and Reidel was a theologian who could not cope with practicalities; both of them were authoritarian to boot and neither of them had the slightest understanding of the needs and aspirations of Aboriginal people.

In the chapter 'Reuther and the glorious 1890s' there is some justice done to the greatest and most dedicated of the missionaries, J.G. Reuther, to whom we owe so much in

the way of knowledge of the languages and traditions of the area. The author follows up this aspect of the subject in a later chapter 'Linguists and Ethnographers'. In these two sections there are some minor points that one could take issue with: the author is not really clear about the great diversity of the languages of the Lake Eyre Basin. Yandruwantha and Wangkangurru are called 'dialects' (p.118). One asks 'dialects of what?'- as they are in fact languages belonging to different sub-groups. The discussion of the Reuther manuscript (p. 217 onwards) is appreciative of the value and extent of this great work, but does not actually tell us the type of information that is contained in this work, how it is an assemblage of data collected over years where volumes cover certain topics, eg. one deals with personal names, another with place-names, and one volume supplements but does not necessarily agree with the others, because the data may come from different people and certainly were collected at a different time. The former aspect is however well brought out on p. 218: 'His main informants had been old Diyari men, but by the turn of the century he had Wangkangurru men ensconced on the floor of his study.' In the discussion of the work of J.W. Gregory (p.222) it is not made clear that quite a lot of the 1901 expedition was in Arabana country and on the lower Diamantina: the visit to Killalpaninna was important, but not exclusively so. The trait that comes across most in Reuther's actual work is his persistence, his dedication to documenting Aboriginal traditions even in the most adverse circumstances. The term 'obsessive' may perhaps be justified in describing his activities (p.218), but the term 'frenetic' (p.118) is not, it implies a sudden burst of enthusiasm, rather than a continuous preoccupation. Reuther was not frenetic, and he never failed to carry out his other duties.

The book is beautifully illustrated, the illustrations themselves are important historical documents; the book is also well presented. Oxford University Press and the author are to be complimented on publishing a work that may not be an immediate best-seller, but which is of great historical significance and will be appreciated for many years to come by a wide variety of people, not only historians, but numerous others who are generally interested in Aboriginal traditions and in Australia's past.

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Paper and Talk: a manual for reconstituting materials in Australian indigenous languages from historical sources. Ed. Nicholas Thieberger. Aboriginal Studies Press, Canberra 1995. Pp 189. $ 20.00

This book represents the proceedings from a workshop held in March 1993 at the Australian Institute of Aboriginal and Torres Strait Islander Studies on Aboriginal languages no longer in common use.

The work begins with a fine poem by Mary Duroux, a lament for the loss of Dyirringan, once spoken on the south coast of NSW. In his welcoming address the late Bill Reid talks about Gamilaraay, the language of his ancestors, and he concludes: 'I hope that we can get a lot out of this workshop'. This book certainly shows that it was a great success.

Jeanie Bell submitted a paper on her work with a dictionary of her grandmother's language, and she strikes at the heart of the problem when she states (p.6) 'We are not idealistic about our languages becoming fully spoken languages again, or that they might

replace the role of English for us, but they certainly will fill an enormous vacuum in our lives'.

There are excellent practical contributions to the book by Geraldine Triffitt, who gives advice on how to find the written and recorded sources, and by Nick Thieberger who is not only the general editor but also gives a clear and comprehensive lesson in transcription and furthermore illustrates the importance of using computers for data storage. Jaki Troy discusses the problems of handwritten material. Rob Amery shows ways and means of trying to revive an Aboriginal language, specifically Kaurna, once spoken in the Adelaide area. The longest of the contributions, a paper which forms the core of the book is that by Peter Austin and Terry Crowley: this is a classic account of how older sources can be correctly interpreted by means of internal comparisons, by general information on the sound-systems of Aboriginal languages and by data from closely related languages when this is available. Jane Simpson's paper is of quite outstanding importance: it dispels a common fallacy by stating (p.22) that 'learning a language is more than just learning how the words sound, and what the words mean'. Language is a highly structured means of communication. She shows ingenious ways by which one can work out some of the grammar and structure of a language even with meagre data.

It is to be hoped that this book will be widely used in those Aboriginal communities where the original languages are no longer used. It is an excellent introduction to the kind of problems that are encountered and it should inspire an understanding of the difficulties involved in interpreting written sources from the past. It is hoped that the book will also lead to more language work being conducted within Aboriginal communities.

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First in their field: Women and Australian Anthropology. By Julie Marcus (ed). Melbourne University Press, 1993, pp. 189. Black and white plates, bibliography, index. $24.95.

First in their field: Women and Australian Anthropology is the product of a conference held at the gulfside Adelaide suburb of Glenelg in 1990, plus a workshop in Canberra`s Academy of the Humanities the following year. In it are brought together six biographical accounts of women who made significant contributions to Australian anthropology during the first half of this century. Some names may be relatively unfamiliar to readers, such as Mary Ellen Murray-Prior (1845-1924) of whom Isabel McBryde writes, and Jane Ada Fletcher (1870-1956) whose life story is told by Miranda Morris. Others are well known figures: Daisy Bates (1859-1951) in Isobel White`s essay, Ursula McConnel (1888-1957) covered by Anne O`Gorman, Olive Pink (1889-1975) by Julie Marcus, and Phyllis Mary Kaberry (1910-1977) discussed by Christine Cheater.

As the title suggests, these are among the first women to work with Aboriginal people around the turn of the century, when anthropology was in its infancy and was the scarcely questioned prerogative of male researchers. Hence the collection has a feminist perspective, most evident in Marie de Lepervanche`s introductory chapter and to a lesser degree in the Preface by Julie Marcus. The other scholars in their contributions emphasise feminist issues less explicitly, assessing instead the importance of their subjects to anthropology. A final chapter containing two `letters from the field` written by Phyllis Kaberry to Elkin

functions as an appendix. Thirty-five illustrations help to bring the text to life, especially photographic portraits of the women concerned. *First in Their Field*, though a comparatively short book, is a useful resource for the critical study of anthropology itself as well as for Aboriginal history because it breaks ground in a relatively new area. I draw upon a fraction only of the issues raised in this volume.

The dedication of *First in Their Field* to Isobel (Sally) White is written by her long-time friend Isabel McBryde. Isobel White along with others such as Catherine Berndt, Marie Reay and Diane Barwick belongs to the generation who followed Phyllis Kaberry, Ursula McConnel and Olive Pink. Their work received recognition during the 1960s and 1970s, two decades of far-reaching change when for example this journal *Aboriginal History* was founded (in 1977). Together with several other women researchers, they successfully brought forward (to this day) the debate on Aboriginal women's status through a number of symposia and publications, notably *Women's Role in Aboriginal Society* (Gale, ed. 1974) whose contributors included Isobel White, Diane Barwick and Catherine Berndt.

First in Their Field has two prime objectives, to bring together biographical data on early women researchers, and to discuss that data within the context of their individual relationships with male mentors, whether knowledgeable administrators or heads of departments like A.P. Elkin and A.R. Radcliffe-Brown. This is a relatively novel approach in anthropological studies that shifts attention to European scholars rather than to the Aboriginal people who were their objects of study, although they too are of course mentioned. Each contribution follows what must be an editorial policy to address the same themes: a biographical sketch, relationships with male and female mentors, and the question whether these earlier researcher's ethnographic work justifies their acceptance into the ranks of anthropologists rather than those of gifted but non-professional amateurs.

Mary Ellen Murray-Prior, or Mary Bundock, had 'long-term direct contact with the people of one region, and ... their language' (p. 29) at a time when many other settler families of the Richmond District of the New England Tableland, NSW were embroiled in frontier violence. Her understanding and meticulous documentation of artefacts for the Australian Museum (see for instance her 'Notes on the Richmond Blacks' in McBryde, 1978:261-266) while working 'as an individual in her own right' (p. 37) was done at a businesslike level without direct contact with an individual male mentor. Isabel McBryde suggests that this was a disadvantage, for it meant that her work never had opportunity to develop along the academic lines of publication and recognition that it might have received. Murray-Prior was representative of her age in that it was usual for women of middle class background in Victorian society to pursue, often with great skill, interests in natural history and the collection of specimens (p. 35) in a social climate where women were pointedly excluded from scientific pursuits as the various disciplines became more formalised. She actively supported the inclusion of women students in Sydney University (p. 23). However, of greater importance, says McBryde, was her 'inheritance of concern' from a family background where Aboriginal attachment to land was respected.

The second nineteenth century woman discussed is Daisy Bates, a controversial figure whose field methods and ideas do not always find approval today. Isobel White treats her subject even-handedly and with compassion, pointing out that Bates was among the first enquirers to practice participant observation (p. 52), and that she recorded many details which might otherwise have been lost concerning Western Australian Aboriginal groups just beginning to feel the impact of European encroachment. She does not gloss over Bates's flaws however, for example that Bates sometimes posed as a supernatural being in order to be allowed access to secret knowledge, that she became prone to certain delusions (the most frequently cited being her claims for Aboriginal cannibalism, in my opinion a

fault of exaggeration since there are isolated mentions of the practice elsewhere in the literature, from Aboriginal sources), or that she did not sufficiently criticize the government of the day for its policy towards Aboriginal communities while being on the other hand `a model of the independent and liberated woman` (p. 62). White`s understanding of this `negative side` acknowledges that Bates was a product of the values and beliefs current in her time (p. 65). We should not always judge an earlier period by the standards of our own. Behind this chapter lies a larger body of work, Isobel White`s excellent treatment of the life and work of Daisy Bates (White, 1985). A reading of `Daisy Bates: Legend and Reality` in *First in Their Field* should recommend students to the larger work.

The chapter contributed by Miranda Morris discusses Jane Ada Fletcher as another researcher into Aboriginal life who was a product of her era. The children`s books Fletcher wrote helped to popularize some aspects of Aboriginal life while perpetuating several myths about it held at that time, for instance, that with the passing of Truganini Tasmanian Aboriginals not only became extinct but also that, as `Stone Age` people, their extinction was inevitable. Such ideas were widely held, as in the authoritative texts of the day to which Fletcher would have referred as a schoolteacher.

Anne O`Gorman`s chapter on Ursula McConnel is perhaps the most disturbing in the collection. She describes in some detail McConnel`s contributions, well ahead of her time, and the personal despair that followed in later life when professional recognition was not forthcoming. McConnel set out to portray Aboriginal culture in its diversity and richness, taking special interest in the religious and symbolic life and observing and recording that life systematically. She sought to understand within a psychological framework how a people`s system of knowledge might be constructed, looking especially at women`s initiation ceremonies and emphasising in that way the great importance of subjectivity.

McConnel flew in the face of much that belonged to the accepted canon of anthropological thought. For example, `[H]uman sympathies and understanding` were factors criticised by Radcliffe-Brown because according to him they impaired the validity of one`s work, which needed to be `objective` (p. 101). She ran foul of Radcliffe-Brown in her disagreement with this structural-functional viewpoint and, by inference, with A.P. Elkin for arguing that the family unit was paramount. (Elkin, as one of the chief architects of the policy of assimilation in the 1930s, espoused mission policies that broke up many Aboriginal families). McConnel`s achievement is even more remarkable when we note that she inherited from her parents and grandparents the usual `legacy of mid-nineteenth-century colonial attitudes ... characteristic of the upper-class squattocracy to which she belonged` (p. 103). On the other hand she might well have known Mary Bundock and been influenced by her more tolerant perspective. While O`Gorman recognises `[t]he inherited racism of [McConnel`s] early work` (p. 109), McConnel`s change to a relativistic stance later on is especially noteworthy, linked as it is to a popularisation of Aboriginal culture. This would not have gone down well in anthropological circles either, with their values of secrecy and mystification. McConnel instead depicted the lives of Aboriginal women as essentially the `same` as those of her women readers, arguing for the suspension of western beliefs and values and that Aboriginal values be appreciated in their own right, within their own social context (pp. 99-100). Cultural relativity, an American emphasis, might not have met with favour in Australian anthropological circles at the time because of the hegemony enjoyed by the British anthropological tradition.

Ursula McConnel paid dearly for her political incorrectness. Within her own lifetime she was snubbed by would-be mentors and peers. Around 1934 her Ph.D. degree was not conferred, ostensibly because she had insufficient publications. But she had criticised conditions on the Aurukun mission in 1927, displeasing Elkin, and though by 1929 her

`intellectual claims` on the area were strong her fellow student Donald Thomson in McConnel`s eyes took advantage of her exclusion from the mission to begin research in the area himself. The picture O`Gorman paints of contretemps between McConnel and her supervisors, and with at least one fellow student, are depressingly familiar. This lack of recognition, including the witholding of research funds, hurt her enormously. O`Gorman observes that the impossibility of intellectual fulfilment gave McConnel `a sense of loss and non-achievement` leading to despair (p. 107). On her death she was accorded no proper obituary by the anthropological establishment.

Julie Marcus`s account of Olive Pink is another tale of a woman researcher who sailed against the prevailing wind. Unlike Ursula McConnel however, Olive Pink dissociated herself from anthropologists after losing faith in their ability, and that of government administrators and missionaries, to be of assistance to Aboriginal people (p. 113). She recognised the importance in particular of Aboriginal secret religious life and could not condone it being revealed, for instance in one of Mountford`s films (p. 114). Consequently she withdrew from academic life and withheld her research material for half a century, using Alice Springs as a base from which she kept surveillance as far as possible on the activities of welfare officials (pp. 114-5).

Olive Pink`s ideas about Aboriginal affairs are still provocative. For example, `she developed an analysis of the ways in which settler culture worked to take over Aboriginal culture in the very act of valuing it, a process which remains very much a problem for Aboriginal people today` (p. 116); she drew attention to the breakdown of Aboriginal health and the marriage system brought about by `frontier sexual relations` (p. 118); she held that reserves should become places of respite offering Aboriginal communities `protection and time to think` (p. 119), and that there was a precedent for the use indeed of `women protectors` (p. 123); moreover, she `developed the idea that Aboriginal landowners should be granted communal mining rights to any minerals on their property so that they could become economically self-sufficient` (p. 134). Not surprisingly, she made enemies among influential anthropologists, principally it seems E.P. Elkin and T.H. Strehlow, though interestingly C. P. Mountford was among the very few who deigned to speak to her at a conference; Ursula McConnel and an unidentified New Zealander were the other two. She ended her days as a semi-recluse near Alice Springs where the Olive Pink Flora Reserve has now been established.

The final biography in the collection is that of Phyllis Kaberry. In Christine Cheater`s words Kaberry was, `the only woman to reconcile successfully the demands of her mentor and her own ideas on what she wanted to do;` not least because to both Elkin and Radcliffe-Brown women *were* valuable as anthropological researchers, provided their work could be channelled in what the mentors regarded as an appropriate direction: `The women did the donkey work, unearthing facts and cataloguing existing work, while the men built theories about the nature of human society` (p. 139). Paradoxically, Elkin is said to have valued women anthropologists similarly because of their `humanising` influence on the discipline (p. 143), yet in male anthropological ranks there was an aversion to that very same subjectivity.

Anthropology`s debt to Kaberry is well-known through her classic study *Aboriginal Woman: Sacred and Profane* (1939). In it she demolished one by one many commonly held myths about the sacred life of Aboriginal women, doing this by noting men`s and women`s interactions in the various spheres of their daily lives (p. 145). It was so difficult to shake male scepticism on that score that anthropological debate on Aboriginal women`s status continued into the 1970s under the question *to what degree* were women more or less sacred in relation to men (my emphasis). Kaberry also experienced difficulty in receiving

professional recognition, but ultimately she had more success than the others. After her Australian field work in the late 1920s she went to New Guinea (1939) until the outbreak of war forced her to return to Sydney University's anthropology department. She gained a Fellowship at Yale University soon after and wrote up/edited her mentor Bronislaw Malinowski's *The Dynamics of Culture Change* (1945) after his death. Later she worked in West Africa. She ended her years as reader in Anthropology with the University of London. Christine Cheater observes that of her contemporaries Phyllis Kaberry emphasised most the importance of 'women's business;' but at the same time she reserved privately her more critical views of official attitudes because she believed that 'anyone who engaged in practical anthropology was a fool as it constantly tore at the emotions' (p. 148, Cheater's words).

The task of tying together the work of these six women into a theoretical framework falls to Marie de Lepervanche in her introductory paper 'Women, men and anthropology.' De Lepervanche recognises elements that might well have been active in the relationships between some of the six women of the collection and their male mentors, notably the marginalisation of their work and concern over academic privilege in a patriarchy for whom power, mystification and secrecy were at stake. To this day some studies run the risk of being dubbed 'not proper anthropology' if they do not fit the accepted mould, such as migrant studies and work on racism. These in my opinion are two highly visible and acceptable fields of anthropological study, though de Lepervanche remarks that studies of white racism continue to be avoided in anthropology. Other sources of friction include disagreement with senior male anthropologists' pet theories, or the vexed question of objectivity *vis-a-vis* the stereotyping of woman's approaches as 'too emotional' or compounded of gossip.

While agreeing in general with this line of argument, I must note that coming up against secretiveness and mystification is not confined to women researchers. As a postgraduate student I too met that barrier. It seems more likely to be part of the discipline's mystique for all students irrespective of gender. And while de Lepervanche finds that interruptions in career and work patterns are very familiar to women researchers today (p. 7), it also seems to me that many men in anthropology face similar obstacles, both immediately upon completing their postgraduate studies and when they enter middle age. Some highly competent scholars early in their careers held tutorships for years before receiving a lectureship, and in my own experience I know that if one relinquishes a university position for a time it is virtually impossible to get back in. There are structural problems within academia which may not have much to do with gender bias.

Patronising remarks about one's research because it does not fit the prevailing fashion, *vide* the jibe about Margaret McArthur's Papua New Guinea findings (p. 9), are experienced by both women and men. I remember a fellow postgraduate student in the early 1970s who was doing editorial work on one of the first Aboriginal life histories to come into print. A male student delighted in asking frequently 'How's work going on Lummy-Lummy? - pointedly mispronouncing the name of the Aboriginal man (Lami Lami) whose life story she was editing. And, 'Bruce, it isn't anthropology!' from a woman anthropologist concerning the first life history I edited. Can we claim that one example is more gender specific than the other?

Present-day feminist criticism is often anecdotal in this way. The approach may not be merely the swapping of gossip but the exploration instead of a new path for social enquiry. Hence gossip and '"corridor talk" that never gets into the official accounts' (p. 3) has become part of the feminist arsenal. It has two forms of application. On the one hand when instances directed against women scholars are revealed, trivial though they may at first

appear, they serve to lay bare individual sterotyping in the patriarchal `old boy`s club.` De Lepervanche emphasises the power of bringing this into the open, `to undermine or question the mystique surrounding so much of the fieldwork experience` (ibid.), and by extension many other interpersonal matters between women and male researchers. There is room here for an element of ironic humour, for example `malestream` instead of `mainstream` in Julie Marcus`s Preface, another characteristic of present-day feminist criticism. A second application of anecdotal reporting, and I think one which goes beyond the feminist debate, is to acknowledge and use subjectivity to greater advantage, to humanize the social sciences. It is what Phyllis Kaberry, Ursula McConnel and Olive Pink tried to do when they drew attention to the importance of emotions and subjectivity in religious matters especially, and for which they received criticism from their male mentors.

Herein lies a good potential postgraduate thesis topic: an appraisal of the emotional, of subjectivity and of humanization in the discipline

It is a double pleasure to review this book, first because there was opportunity to act in a small way as host and chauffeur for Isobel White and Marie Reay during the Glenelg conference in 1990; secondly because the book itself is dedicated to Sally for whom I have great respect and affection.

LIST OF REFERENCES

Gale, Fay *ed. Women`s Role in Aboriginal Society,* Canberra, 1974.

McBryde, Isabel *ed. Records of Times Past: Ethnohistorical essays on the culture and ecology of the New England tribes.* Canberra, 1978.

White, Isobel *ed. Daisy Bates: The Native Tribes of Western Australia.* Canberra, 1985.

Bruce Shaw
Adelaide Hills

The essence of singing and the substance of song: Recent responses to the Aboriginal performing arts and other essays in honour of Catherine Ellis. Edited by Linda Barwick, Allan Marett and Guy Tunstill. Oceania Monograph 46, University of Sydney, 1995. 269 pp. ISSN 1030 6412, ISBN 0 86758 994 9

Catherine Ellis (née Caughie, 1935-1996) was born in Victoria of Scottish Australian parents. She obtained her first degree in music from the University of Melbourne and began work as a research assistant to T.G.H. Strehlow at the University of Adelaide. She obtained her PhD at the University of Glasgow in 1961 and returned to continue work with Strehlow, after which she was a postdoctoral fellow in the same department in 1963, then worked at the Elder Conservatorium of Music in Adelaide, attaining the rank of reader in 1984. In 1985 she became the inaugural Professor of Music at the University of New England, a position she held until her retirement in 1995 after being diagnosed with cancer, from which she died in late May 1996.

In 1991 she was made a Member of the Order of Australia for service to music education and ethnomusicology, particularly Aboriginal music, and on her retirement from the University of New England was awarded an Honorary Doctorate of Letters at that university for services to community music, the study of ethnomusicology, and research on Australian Aboriginal music. In Armidale both she and her husband Max played in local

orchestras and chamber music ensembles from time to time (she played both bassoon and piano, and he clarinet).

This collection of essays is a fitting tribute to her wide range of interests and sympathies. Always aware of the deep importance of music to individuals and society, even in mainstream society and educational institutions which did not consciously realise it, experience taught her that Aboriginal music and music making extended beyond the traditional into the present, with 'borrowed' music items from white Australia given their own significance and 'slant' by Aboriginal groups and individuals. Contributions in this volume reflect this wide range of interests. They range from those easily read by the non-expert in the field of ethnomusicology to ones presupposing more than a modicum of specialist knowledge in this field, linguistics, or dance ethnology.

The compilers, in inviting contributions to this volume from 'all scholars then working on Aboriginal music as well as a number of international colleagues of Ellis', commented:

Catherine Ellis's work on Aboriginal music ... has combined detailed analysis of notations with a sensitivity, as a trained performer and an experienced field worker, to the spiritual and social dimensions of music. ...

In this volume ..., we ask contributors to explore some of the ways in which songs and related cultural forms can be used as a departure point, or point of reference, for discussions of insight, creativity and power; of philosophy, politics and/or education. (p. 1)

In their own summary of the articles, they state:

All articles contributed focus on the specificity of particular performances: in some the discipline of primary orientation is linguistics (Tunstill, Donaldson), oral history (Somerville with Munro and Connors) or choreology (Morais) rather than musicology, while others combine musicological approaches with analysis of other performance modalities (Hercus and Koch, Marett and Page, Kaeppler). The eleven articles dealing with Australian Aboriginal performing arts make significant new contributions to our understanding in the area of research most closely associated with Ellis, while the three articles dealing with non-Aboriginal traditions (Kaeppler on Tongan music, Reeves Lawrence on Cook Islands music and McAllester on Native American music) give an international perspective on themes of performance analysis, ethics and cross-cultural understanding that have also been of major importance in Ellis's work. (p. 1-2)

Unlike many Festschrifts, this one was produced with awareness of its compilation by the one honoured, and includes a contribution from her raising important questions and acknowledging how the contributors have contributed to her own understanding. It is particularly fitting that the book appeared when it did last year. While her death this year was a great loss, reading this collection gives one the confidence that there are solid groups of ethnomusicologists and others who will continue and build on the legacy she has left. It is also fitting to note the tribute to Ellis from urban Aboriginal women at her memorial service in Adelaide, giving evidence of how their sense of self-worth and their sense of pride in their own urban musical and other traditions were fostered in Ellis's work through the Centre for Aboriginal Studies in Music (CASM).

As noted above, most of the contributions pertain to Australian Aboriginal music and dance making, but two pertain to work in the Pacific (the Cook Islands and Tonga) and one to mainland American Navajo music. Missed opportunities to record and interact by the outsider who did not know the local culture are reported (Reeves Lawrence in the Cook Islands), and problems raised by the impact of newcomers on the Australian landscape are described (Gummow and Somerville). Dance movements are notated in contributions by Morais and Kaeppler. Transcriptions of music and words occur in Anderson, Marett and

Page, Keogh, Tunstill (words only), Barwick (music only), Hercus and Koch, Gummow, Donaldson (words only), Kaeppler, and McAllester. Richard Moyle finds a correlation of the relative length of beats in the double beat rhythm in Central Australia and its correlation with the ker*thump* of the heart beat rhythm. Issues of the status of men and women in song and dance come under scrutiny in Barwick's interesting chapter on performance of women's songs.

Contributors and their chapters are listed below:

Greg Anderson. Striking a Balance: Limited Variability in Performances of a Clan Song series from Central Arnhem Land

Allan Marett and JoAnne Page. Interrelationships between Music and Dance in a *Wangga* from Northwest Australia

Ray Keogh. Process Models for the Analysis of *Nurlu* Songs from the Western Kimberleys (Keogh died before the volume was completed)

Richard Moyle. Singing from the Heart?

Guy Tunstill. Learning Pitjantjatjara Songs

Megan Morais. Antikirinya Women's Ceremonial Dance Structures: Manifestations of the Dreaming

Linda Barwick. Unison and 'Disagreement' in a Mixed Women's and Men's Performance (Ellis collection, Oodnadatta 1966)

Luise Hercus and Grace Koch. Song Styles from near Poeppel's Corner

Margaret Gummow. Songs and Sites/Moving Mountains: A Study of One Song from Northern NSW

Margaret Somerville, with Florrie Munro and Emily Connors. In Search of the Queen

Tamsin Donaldson. Mixes of English and Ancestral Language Words in Southeast Australian Aboriginal Songs of Traditional and Introduced Origin

Adrienne L. Kaeppler. The Paradise Theme in Modern Tongan Music

Helen Reeves Lawrence. Death of a Singer

David McAllester. Two Navajo Airplane Songs

Catherine Ellis. Whose Truth?

Linda Barwick. Catherine Ellis: Career History and List of Publications, Papers and Reports.

Linda Barwick and Allan Marett. Selected Audiography of Traditional Music

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Many of the chapters are built on earlier work, and the volume contains extensive compiled references in which such works may be found. References are not given after each chapter, a minor nuisance probably well offset by the saving of repetition. As a professional linguist but a mere amateur in the field of ethnomusicology, I find this volume a valuable addition, not only to my library, but in its widening of my awareness of the issues involved.

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Bridging Two Worlds: Aboriginal English and Crosscultural Understanding, By Jean Harkins, University of Queensland Press, 1994, pp xii, 228. ISBN 0 7022 2544 4. $29.95

This book is a very welcome addition to the writings on Aboriginal-White communication and mis-communication. Harkins is an experienced teacher who worked for some years (1984-1986) on research in partnership with the Yipirinya School in Alice Springs, an independent, Aboriginal-run school serving Aboriginal camps in the Alice Springs area. As the note on the jacket of the book states:

Aboriginal English is a unique language that uses the resources of English to express Aboriginal conceptual distinctions.

and

'Using a linguistic analysis of Aboriginal English and the local traditional languages, ... Jean Harkins describes the interdependence of language forms and meanings in their cultural context. ... Aboriginal English with its distinctive Aboriginal world view offers a rich perspective.'

Harkins is not the first linguist (or educationist) to carry out research in Alice Springs on Aboriginal English. An initial study was done by Sharpe in 1976, a study that was not nearly as well informed on sociolinguistic and crosscultural issues as Harkins's. Within a few years of that research, Richard Walker and his research team did a further study, using Hallidayan categories which Harkins successfully shows to have been limiting in what could be found and analysed. Brian Grey built on Walker's work, but in practical application to teaching at the school, and his methods in some ways circumvented limitations inherent in Walker's research. Harkins has criticisms of much of this earlier work, while acknowledging her debt to it. As in other research, new and more insightful methods and findings arise from less adequate earlier work, some of which could at least rule out certain sources as the 'reasons' for much mis-communication between Aboriginal and White. In my opinion, Harkins has been fair in acknowledging the earlier positive contributions and in her criticisms of them. However, although she takes issue with previous research which has quite often described varieties of non-standard English (including Aboriginal usages of English) by stating what is 'missing', she once - in a fairly minor instance - resorted to the same device. As she points out, to describe a variety of English as 'omitting' something present in standard English can encourage the reader (I would say the undiscerning reader) to conclude that the omission is a 'fault', and therefore that the non-standard form under discussion is 'inferior' to the standard. As a writer who (as Harkins notes) has used this method of description at times in the past - but not with intention to denigrate - I would suggest that its positive feature is in describing the unknown in terms of the known, and by so doing saving a lot of lengthy description. It is clear, however, that anyone using this method needs to differentiate clearly between 'omission' of *forms* and any semantic omission.

The great contribution Harkins has made to linguistic knowledge is in her analysis of grammar and semantics of the Aboriginal English of Alice Springs, in which she shows there are a number of distinctions made in this dialect which standard English fails to allow for. The speakers have combined the strengths of English and of their traditional languages to introduce further modal distinctions, number distinctions and other meaning distinctions. While she has focussed her work on English, at about the same time or a little earlier, David Wilkins did a similar study, using the same people and social settings, of Arrernte and the way it is used, and the two researchers have been able to profit from each other's insights and findings. Both researchers were working in and with the Yipirinya School, and were subject to the wishes of the Aboriginal communities involved in that school. In fact

the real advance that Harkins brings to study of Aboriginal English in Alice Springs is her placement which allowed real interaction and discussion with Aboriginal adults. She was not in the position of an outsider attempting to *guess* meanings of utterances just from situation and grammar, but was able to profit from the insights of the users of this form of English, much more than any predecessors (except Eades in Queensland) who worked mainly with children of an age where this type of awareness was rare.

The book contains a foreword by the Yipirinya School Council (to whom her research was subject), a Forward by Diana Eades (who did a major study of South East Queensland Aboriginal English, and has been involved in studies of Aboriginal English and the courts), followed by Acknowledgments, seven chapters, an Appendix, Texts, Bibliography and Index. Her chapters are: 'Why study Aboriginal English?', 'Aboriginal English in Alice Springs', Nouns and their Modifies', Verbal Expressions', Textual cohesion', 'Distinctive semantics in a language variety', and 'Conclusions: Aboriginal English and Crosscultural Communication'. My only substantial disappointment is that it lacks a key to Arrernte (Aranda) pronunciation, especially as all readers are not likely to be familiar with the modern orthography for this language. (The Arrernte orthography involves extensive use of the vowel symbol *e* , to symbolise a neutral vowel that shifts its quality according to neighbouring semivowels such as *w* or *y* etc.).

In her first chapter, Harkins discusses the principles informing her research, which include a strong component of consultation with, and learning from insights of, the Aboriginal people of the Yipirinya school and its communities. From these contexts six questions were posed, which she answers in the remainder of the study:

1. How much did adults and children use English, and for what purposes?
2. How much English were people exposed to, what kinds of English, and from what sources?
3. What were the characteristics of the English used by adults and children?
4. How different was their English from non-Aboriginal English? What was the exact nature and probable origin of such differences?
5. What sort of English teaching did people want, for children and for adults? What English language skills did they want to develop?
6. From the above, what would Yipirinya School need to take into account in developing an appropriate English curriculum for its students?

In Chapter 2 she discusses the sociolinguistic rules governing choice of language in any interaction involving Aboriginal people in the area. Languages are chosen according to language of speaker, language of interlocutors, and status of various participants. One of the rules is 'If all else fails, try English', and another 'Use code-switching to fine-tune the selected language, according to participants and topic'. Languages used include English, Arrernte (of various Arandic dialects, Luritja, Pitjatjantjara, and occasional others. Similar rules apply in multilingual communities anywhere in the world, although to monolingual English-speaking Australians this can be a new concept.

The chapters on Nouns and their Modifiers, Verbal Expressions, and Textual Cohesion are ones where Harkins's detailed work and analysis breaks valuable new ground, in that she has been able to analyse the options speakers have in their use of (what seems to the standard English speaker) random 'omissions' and variants on the patterns they are used to. These variants are in reality used to signal definiteness or indefiniteness of information in a way not always available in English. In addition, as Eades also found in Queensland, and some teacher awareness even in my time of work in Alice Springs in 1976 hinted at, Harkins found that so-called future forms like *gotta, gonna, wanna, will* do not necessarily

signal the same meanings as their White English counterparts, in part due to different cultural expectations, but in part due to different semantics.

Harkins analysis has also been informed by the work on semantic primitives by Anna Wierzbicka, and this method of analysis, while initially impressing those unfamiliar with it as over-pedantic, is a valuable tool in analysing subtle differences in the meaning of expressions both within one dialect or when comparing different dialects or languages.

The book does not cover phonological features except in passing, probably taking this as 'read' from earlier work. This is a minor disappointment to me; however to have done this would have added to the length of the book and probably added little to the overall findings.

The book should be read by all who are involved in crosscultural situations, especially between Australian Aboriginal and White. While written in a manner to satisfy linguists, general readers will not find it daunting; in fact they should find it very readable ont he whole.

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Between Worlds: Interpreters, Guides, and Survivors, Frances Karttunen, Rutgers University Press, New Brunswick, New Jersey, 1994. xiv, 364 pp. ISBN 0-8135-2030-4 (cloth)—ISBN 0-8135-2031-2 (pbk). Price $24.95

Using sources on people whose lives were lived between 1500 and the present, Frances Karttunen tells stories of
'sixteen men and women who served as interpreters and guides to conquerors, missionaries, explorers, soldiers, and anthropologists. These interpreters acted as uncomfortable bridges between two worlds' (from the book jacket)

I found this a compelling book, hard to put down. Yet one has to eat, sleep and give one's eyes a break from reading. Many of the accounts, too, brought me to tears or anger at some of the horrifying things that were done to indigenous peoples in the name of Western civilisation and religion and anthropological studies. Introduced diseases also took their toll. However Karttunen also looks critically and realistically at the traditional cultures, and shows inbuilt injustices and cruelties were not absent there either.

After the Acknowledgements and an introductory chapter, Karttunen groups her subject matter into six parts:

1. Three Guides
2. Three Civil Servants
3. Three Native Informants
4. More Lives, Familiar Stories
5. What Was Won and What It Cost

Epilogue: Their Children

The book also includes Notes (footnotes with sources of the information), a Bibliography, and an Index.

While to an Australian, the bulk of the content deals with people from the Americas (USA, Mexico and South American countries), the book includes a Finnish folk singer in Part 3, and in Part 4 two Dyirbal Aborigines from North Queensland, Africans, an Asian

Goldi from the Pacific maritime province north of Korea and east of Manchuria, and a woman from the Azores who moved to the USA (as well as two others from the Americas.

Karttunen set out on her work with an avowed feminist perspective, and with the desire to write on the lives of women used as cultural intermediaries, but quite quickly realised that the problems they faced were not peculiar to their sex, but applied more generally to those in such positions, and she quickly widened her field. In Parts 1 and 3, those she studies are all women, in Part 2 all men. The two Australians had been promised to each other in marriage, but chose other spouses; overall the balance of genders is slightly in the favour of the women. Parts 1-3 end with a perceptive summary of the similarities and differences in the work and situations of the three people studied. She gives most detail on the first nine subjects, and each of these sections would stand as booklet-sized biographies of her subjects. In many cases, her subjects suffered from inadequate financial support, and finished their lives in poverty.

In all, Karttunen's analysis is a perceptive and critical, yet compassionate and empathetic analysis of her subjects and their situations, with many thought-provoking insights. Especially in the first six cases, it becomes clear that the individuals studied were of exceptional intelligence, and more obviously for the women, would have not fitted easily into their own cultures. Some were taken as children from their ancestral lands and their families by other tribes, and having been thus uprooted, were more likely to become misfits in their traditional cultures. Karttunen suggests many of them took the roles assigned to them as a matter of personal survival: lacking support from their traditional cultures, they obtained it from the powerful intruders in their traditional worlds. These powerful intruders were, especially in the accounts from earlier times, insensitive to the human feelings - and to the common humanity - of their helpers, and in one account there is astonishment at the emotion of their hitherto impassive guide when she met her brother and relatives; unfortunately after a short time the relatives were suspicious of her and in effect rejected her. Like a good historian, Karttunen portrays the careers and the choices of those she presents as to a large extent determined by their circumstances, which included attitudes of those around them, and their own drive to survive.

Her first subject is Doña Marina, interpreter for Cortés, the next is Sacajawea who acted as guide to American explorers in the early 1800s. The three civil servants include one from Mexico and one from Peru; both these claimed to be of noble descent from their indigenous ancestors. Gaspar Antonio Chi, the first, was considered a traitor to his people in many ways, and a collaborator with the Spanish conquerors. Karttunen, successfully in my opinion, argues for such 'traitors' being left with little choice, given their basic instinct to survive.

The three native informants Karttunen studies are a Finnish folk singer, Larin Paraske, a Mexican woman, Doña Luz who was photographed and painted as a model by artists as typically native, and María Sabina, a Wisewoman of this century from Mexico. Particularly in María's case, her work with foreigners brought on distrust and reprisals from her own community: her house was burnt, and other items of property damaged or stolen.

The fourth section contains much briefer accounts of lives and situations of a number of other representatives of indigenous peoples, including those mentioned above and the last survivor of a Californian tribe, and Dayuma, a woman from the rain forests of Ecuador. Bob Dixon gave Karttunen accounts of his work with Chloe Grant and George Watson, two Dyirbal people from different dialects of this language. Both had white fathers. Chloe was considered too sassy - even as a child she tested out prohibitions. George was such a good worker authorities kept him at Palm Island for that alone. However, compared to the difficulties and tragedies many others of Karttunen's subjects faced, their lives have to be

considered relatively happy. In fact after a broad view of what was done to indigenous peoples in the Americas, especially in Latin America, I would feel that badly treated as they were, Australian Aborigines fared better in the cultural clash and devastation than did South and Central Americans.

Part 5 on what was won and what it cost is relatively short, about 20 pages; however her summaries at the ends of Parts 1-3 must be considered as part of this evaluation. The Epilogue is of interest, and perhaps takes a woman's viewpoint for it to be written. Many of Karttunen's subjects became alienated from their children, not always from external causes - some of the subject would have been difficult people to live with, and some gained surrogate 'children' in the foreigners who became their friends and were prepared to learn from them. Karttunen summarised what became of (or what is known about) the offspring of her subjects; some held traditional ways firmly, and others eschewed them for the Western ways.

I would class this as a fine account and analysis, to which one could return frequently for reference and consideration of the issues. Recommended.

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Polly Farmer: A Biography. By Steve Hawke. Fremantle Arts Centre Press 1994. $19.95.

This is a remarkable book about a remarkable man. As this book clearly demonstrates 'Polly' Graham Farmer was the 'Don Bradman' of Australian Rules football. While batting in cricket is a individual act in which it is easy for a star to stand out, Farmer's achievement is all the greater for he achieved it in a team game. Hawke shows in detail how in three separate phases of his career Farmer joined a team that was sitting around the middle of the competition and made it into a premiership team. As Hawke notes (p350) 'in each case he was universally recognised by his team mates as the reason for, and the critical factor behind this lift. He was a team maker'.

Farmer dominated club and interstate football for nearly two decades, from the early 1950s to his retirement in 1971. The impressive statistics of his career in Western Australia and Victoria include playing in ten grand finals, being his clubs best and fairest player in 10 of his 19 years of senior football and numerous awards for the best player in interstate football games and carnivals. But perhaps most significantly of all, as this book so thoroughly documents, he also revolutionised Australia's indigenous football code.

This highly readable book is the result of Hawke (a self confessed football fanatic) carrying out incredibly detailed research on Farmer. Farmer's football career is covered thoroughly, from the moment of his first senior football game in 1949 at the age of 14. Hawke's research has included detailed oral histories with Farmer, former team mates, opponents and coaches. A volume of written records that would make historians of less public figures green with envy exists on Farmer's football career. Hawke has made excellent use of reports from newspapers and the 'Football Budgets' that so thoroughly document every first grade game Farmer ever played. Hawke has also been able to dig up a number of historic gems like the 'faded, tattered exercise books' that his first coach has kept to record statistics and comments on every game.

As Hawke documents, Farmer revolutionised Australian Rules by being the first to start developing the fast flowing handball style now characteristic of game. Farmer has not

been given due credit for this innovation. Credit is usually given to Ron Barrassi's for his famous 'handball, handball, handball' instructions as coach to his apparently down and out Carlton side at half time in the 1970 VFL Grand final. However, as Hawke documents, as early as 1955 the twenty year old Farmer had worked out a distinctive style which used his extraordinary athletic abilities and strength to grab the ball in ruck duels and to fire out handballs to quick small players on the move at high speed towards goal. Until then all ruckmen had attempted to (much less accurately) palm the ball down to stationary smaller team-mates.

Hawke also documents how Farmer was way ahead of his time in sports science. Farmer, for example, studied how high jumpers and long jumpers maximised their leaps and developed his own exercises to get maximum speed and power in his first few strides off the mark. While such specialised training is common place today it was unheard of in the mid 1950s. Hawke also makes an interesting comparison between the young Farmer and a much better known story about the young Don Bradman. While Farmer spent his youth jumping up at any high object he could see when he walked the streets to try and get an extra inch of lift - Bradman spent his endlessly throwing a golf ball against a fence to hit it on the rebound with a stick to hone his eye and reflexes.

Likewise Farmer was a pioneer of what would now be called sports psychology. He developed a set of self motivation and focussing exercises that as opponents recalled made him uniquely difficult to play against. Focussed on nothing but the ball it was virtually impossible to throw him off his game with the tried and tested techniques of niggling and physical harassment. While Farmer does not mention it in this context, racial insults were obviously a major ploy tried by opposing teams to unsettle him. Clearly such methods only inspired Farmer to literally greater heights. One of the most revealing passages of the book is Polly's description (p121) of how he used 'every rotten experience of my life' to transform himself before every game 'into a person who's got the body of a man fighting for his life, but has got an intelligent capacity to handle it'. As Hawke notes, while such motivational techniques are now common place they were virtually unheard of in the 1950s and still relatively few competitors are able to develop their own methods without recourse to professional coaches or motivators. Farmer was also a trend setter by being the first in Australian football to organise himself a legal contract when he transferred from East Perth in the Western Australian Football League to Geelong in the Victorian Football League

I should stress that this is much more than a book about football. The book provides a sensitive analysis of the struggles a gifted and determined Aboriginal man faced growing up in post war Australia. Hawke does a great job setting the historical and cultural context and touches on, for example, the racism that Farmer encountered in all aspects of his life. It should be stressed, however, that racism is clearly not something that Polly focussed on in his discussions with Hawke. Indeed the only in depth comments from Farmer on racism come when he is discussing the racial vilification his two sons encountered when they played football. As Hawke stresses Farmer never became embittered towards those who tried racial taunts as a way of trying to put him of his game and that he rationalised racist remarks as an inevitable almost normal, facet of society. Farmer's methods of dealing with racism in sport no doubt were an extension of how he dealt with such matters in the rest of his life. In a revealing discussion about the abuse he and other Aboriginal children experienced Farmer notes (p25) 'If you got into a fight about every stupid comment that was made you would have four or five fights a day ... it just wasn't worth it'.

For me one of the most interesting aspects of this book is the comparison it allows one to make between Polly's career and times with that of contemporary Aboriginal Australian Rules players. It offers some fascinating insights into what has and what has not

changed for current Aboriginal players. One thing that clearly has not changed is racial taunts being common place at games. Witness, for example, the well publicised events in the last few years involving Collingwood players, supporters, and the club's then president. A very interesting contrast, however, exists between now and Polly's time in terms of the portrayment of the Aboriginality players.

After an extensive search through a vast library of newspaper clippings held by the West Australian Newspapers Hawke discovered (p130) that the words 'Aboriginal' or 'native' do not appear in connection with a piece written on Farmer until 1987. Even references to his early institutional upbringing only refer to an orphanage and not an institution for Aboriginal children. It is not surprising then that many football fans in the 1960s were unaware of Farmer's Aboriginality. The contrast is certainly stark when comparisons are made with more recent Aboriginal players. In the 1980s, for example, the Victorian Football League featured full page football action shots of the Krakouer brothers in advertisements in Melbourne papers with a caption encouraging people to come and see some Aboriginal art.

It is interesting to note that the last public appearance of Farmer noted in the book was at the 1993 Grand Final in the International Year of Indigenous People. The entertainment at half time on that day for the hundred thousand crowd and for the millions of TV viewers around Australia and the world was a spectacular celebration of Aboriginal Australia. Considering the important role model Farmer has been for subsequent Aboriginal players it was fitting that at the end of the game he presented the medal to the best player on the field to the outstanding Aboriginal player, Michael Long.

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Encyclopaedia of Aboriginal Australia CD-ROM. Australian Institute of Aboriginal Studies, Canberra, 1994. $2000.00.

The Encyclopaedia of Aboriginal Australia CD-ROM (hereafter, EAA) appeared soon after the award-winning two-volume book of the same name, and is the first CD-ROM published by Aboriginal Studies Press. We concentrate here on aspects of the CD-ROM that set it apart from the book version, rather than a general review of the content common to both. As the editors point out, each entry is necessarily a summary of the information available on the particular topic. The approach they have adopted to the range and structure of the encyclopaedia has shaped the way in which the CD-ROM version of EAA presents information. The EAA CD-ROM is derived from the book version, particularly its text, rather than designed from the outset for the newer interactive technology.

According to the publisher, EAA requires a Macintosh computer with at least 5 Mb of RAM and a 14 inch colour screen supporting at least 256 colours, running System 7.1, and with Sound Manager 3.0 and QuickTime 1.5 or later installed. The RAM indicated by 'Get Info' is Suggested 1050kb, Minimum 2500kb, Preferred 3000kb, and we found that the Macintosh should have at least 3.5 Mb of free RAM available to view the Encyclopaedia in thousands of colours. The EAA will not run on a Macintosh with a monochrome screen, nor on a Colour Classic (the program loads, but the user cannot then get past the completely black second screen). EAA is 'driven' by an application just over 1Mb in size

which at installation is copied to the Desktop of the Macintosh which uses the CD-ROM. Except for problems with sound channels, the EAA worked reasonably well, if sluggishly, on a Power Macintosh 7200/75, but worked better with Virtual Memory On (as against the operating instruction to switch it off). The Interactive Technology Unit, established at AIATSIS in July 1994, is said to be translating EAA 'to other platforms'.

The CD-ROM files were assembled immediately following the launch of the book version, in the period April to July 1994. Some omissions noted at the book launch have been addressed here, e.g. Lois O'Donoghue, but there is very little later material. For example, the *Native Title Act* (Cth), passed in December 1993 is not included.

The main data files are Hypercard stacks, but manipulated by a custom application, not HyperCard. The text of the book is here, and a number of maps and graphics (up to 994 pictures). The map for each of the 18 regions of the country (each requiring two graphics files), together with the graphic for each of the 22 encyclopaedia Main Subjects (Ancient History, Art, Culture, Economy, Education, Food, Health, History, Issues, Language, Literature, Media, Music, Politics, Recent History, Religion, Social Organisation, Society, Sport, Technology, Land Ownership, Law) account for most of the 66 Main Pictures of around 250kb each.

What the CD-ROM EAA can offer that no book can are moving pictures, and sound. In fact, dwarfing the textual information in storage terms, the ten largest files on the CD-ROM are movies of over 7 Mb each, the largest file being a 16 Mb file showing TV footage from the time of the 'Wave Hill walk-off'. There are 44 movie clips, from the earliest Haddon ethnocinematography to Warumpi Band, and the modern Warlpiri version of Sesame Street. The complete list of movie topics is: Bilingual, Boomerang, Bush medicine, Canoe, Djambidj, Fire Haddon, Gathering, Haddon, Manya-wana, Spear, Wave Hill, bush cooking, bush housing, stone tool; Bran Nue, Freedom Rides, Kuckles, NADOC, TV, Tent embassy, Treaty, Warumpi. Building on one of the strengths of the EAA text, the inclusion of individual Aborigines as people, there are as well movies showing these individuals: Bandler F, Bonner N, Bryant G, Burnum Burnum, Dingo E, Dodson P, Foley G, Gilbert K, Goolagong E, Mumbler P, Pemulwuy, Perkins C, Randall R, Rose L, Saunders R, Strehlow T, Tudawali R, Unaipon D, Whitlam E, Yirawala, Yunupingu G, Lingiari V. There are no animated graphics.

The availability of suitable material is presumably the reason this is biassed to people nationally famous in recent times (Pemulwuy, Tudawali and Unaipon being the exceptions). Space restrictions would have been the main reason for using older (monochrome) TV footage in many cases where more recent colour video would have been available and presumably have more impact. The images could have been more carefully selected in some cases, such as the clip on bilingual education, which neglects to show any bilingual education.

Apart from the movie sound tracks, there are another 230 sound bites: from some early wax cylinder recordings of song and speech, to snatches of songs, mainly from Alice Moyle's already available ethnomusicological recordings. Unfortunately, none of the linguistics or tribe/ language topic entries that we explored were linked to sound bites demonstrating Australian languages. A persistent error message ('Sound channel is empty') came up whenever we attempted to use the sound buttons on the Power Macintosh 7200/75 and while linking to new information screens.

The EAA CD-ROM can be positively compared to other products generally available on the CD-ROM educational market, for example *Compton's Interactive Encyclopaedia* which has seven pictures and one article relating to Australian Aboriginal people, and one sound grab, being of a didgeridoo, next to a picture of something only vaguely resembling

a didgeridoo. *Compton's* makes no mention of Torres Strait Islanders. As an educational or general research product in this context, the EAA is an outstanding contribution to the field of Australian Studies and would make a useful purchase for home, for school or for a university library. As a browsing tool, it offers a visually attractive and comprehensive summary scan of the information that is available on indigenous Australia, and it is not surprising it has won, for instance, the Australian Interactive Multimedia Industry Association award for the best multimedia work (reference section).

Having established such a benchmark in the field of Australian Studies, it is now a challenge for Aboriginal Studies Press to ensure that future editions achieve best practice standards in audio-visual technology, and to ensure that future editions fully use the capacity of the medium. For example, it is possible to use such technology to engagingly and interactively present simultaneously spoken or signed and written Australian language, or a sequence of graphics mapping the spread or retreat of some feature through the decades. An example of how this can be done is in Nick Thieberger's set of HyperCard stacks 'Australia's languages 1.0.1•', which has been available from AIATSIS on a Macintosh diskette.

Missing from EAA are the features the consumer has come to expect of multimedia products, features where the CD-ROM has advantage over a book. And, to be sure, the book has advantages: the pictures and graphics are of a higher quality, it can be read while travelling, and doesn't require expensive machinery. In common with the earliest informational CD-ROMs, EAA has no hypertext links, so that to follow up a cross-reference the reader is no better off than with the printed book version. Searches may be made on entry headwords (supplemented, for the Tribal/Language index, by a good and much-needed Soundex-like close-guess capability), but there is no general text search capability. There is no facility for exporting text, or to allow text to be pasted into another document. Nor is there any use of animation for illustrating concepts (such as say, kinship or land use). These could be built into future editions to ensure that industry standards and market expectations are met, without a reliance on the specific content as the major selling point.

Some useful features assist a users search for relevant entries. One is a list of recently visited entries and a 'Go Back' command, which function rather like bookmarks. However the list is not under user control, and is cleared each time the application is quit. A more powerful feature, which may be called up at any point, is a list of entries with content related the one being viewed. This however sometimes stretches the notion of what is related. For instance, Arrernte Enterprises links to a Hobart hot potato business. Bold type is used to indicate a link which can be followed by a mouse click (but bibliographic references also present author's name in bold and these prove not to be links). A future edition should include an indexing facility equivalent to *Compton's* topic tree, which would enable the reader to locate themselves and their topic quest in the information structure of the encyclopaedia as a whole. Without such an aid, readers tend to get lost at a low level of information and find it difficult to 'climb a hill and get your bearings'. Such features would assist the reader in using the CD-ROM according to its strengths. The EAA Time Line attempts an organisation of varying detail, but its information is only accessed at the finest level, and the 'Go Back' returns only to the main Time Line menu.

A future edition might also incorporate a facility for integrating local information in with the material in EAA: a feature with appeal especially in the setting of a local Aboriginal community, but with broader potential using the emerging multimedia capacity of Internet. The localisation ability would allow the suppression of material inappropriate

to the locality, such as images of the recently deceased and allow for more creative engagement with the information.

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The Land Still Speaks: Review of Aboriginal and Torres Strait Islander Language Maintenance and Development Needs and Activities. Compiled by Dr Graham McKay. Commissioned Report No. 44, National Board of Employment, Education and Training, Australian Government Publishing Service, Canberra, February 1996. xxvii + 290. ISBN 0 644 45945 X. Free on applicaton to Deetyd.

This review was conducted during 1994 to obtain an overview of the types of activities which were being carried out at that time to maintain and develop the languages of the indigenous people of Australia. It was hoped that by examining successful activities in Australia and overseas, a picture could be obtained of what factors contributed to that success, so that future intervention activities could be targeted more effectively. (p. xix)

After introductory matters – acknowledgments, project team and executive summary etc. (pp. iii-xxvii), there are six sections:

1. Background to the Review, discussing the loss of indigenous languages, and the history of language contact in Australia, creoles and Aboriginal English, other reports and language maintenance intervention in Australia.
2. A Study of Language Maintenance in Four Communities, these being Borroloola and Barkly Tableland, Northern Territory; Gumbaynggir People and Language near Kempsey, New South Wales; Jaru at Yaruman (Ringers Soak), East Kimberley, Western Australia; and Saibai Island and Torres Strait, Far North Queensland.
3. A Survey of Language Maintenance Activities in Australia and Overseas, covering briefly a number of other areas in Australia, organisations involved in language maintenance or teaching, translating and interpreting, etc., and language programs in New Zealand, in Canada on Mohawk and other languages, in Mexico the Oaxaca Native Literacy Project, and vernacular literacy programs in Papua New Guinea.
4. Literature and Discussion, covering selected literature on language maintenance in Australia and elsewhere.
5. Principles and Recommendations Arising from the Review.
6. Appendices, References, Index, including a list of persons consulted and a list of respondents to survey and enquiries.

The prospect of reading a government report can be daunting, but the main text of this one is eminently readable. It is even, for those interested in particular areas of Australia or elsewhere, eminently easy to dip into. Content is solid, but not inaccessible, with a wealth of information included. The cynic might wonder if the government, having put out the money to commission this report, will ever take up and apply the recommendations (and of course changes of government create further hiatuses). It is to be hoped that the report will engender the right sort of listening, action and funding by governments. I say listening, because it is firmly stressed in a number of places that all work of maintenance or revival of Aboriginal languages must be organised in conjunction with the speakers of, or owners

of such languages, i.e. with full co-operation of Aboriginal communities. This is not always accomplished, nor is it easily accomplished, given the past history of white intervention in Aboriginal families and communities to suppress (directly or indirectly) the use of Aboriginal languages.

Although such a report is not basically a history, it summarises the main features of Aboriginal-White interaction as it pertains to language use, language recording, and language maintenance or loss, and has an excellent overview of these supported by extensive references. While it is possible that some details do not apply in 1996, the broad sweep of the picture drawn is correct and makes a solid basis for the principles given and recommendations made.

The report defines various types of language maintenance activities, focussing mostly on language maintenance and language revival sub-types 1 and 2, as defined on p. 19:
Language maintenance: all generations full speakers
Language revival:
1. Language revitalisation: generation of (older) speakers left – children likely good passive knowledge
2. Language renewal: oral tradition but no full speakers – children likely little or no passive knowledge
3. Language reclamation: no speakers or partial speakers – relying on historical sources to provide knowledge of the language
Language awareness: non-speakers learning about the languages where it is not possible to learn and use the language – vestiges only, documentation poor
Language learning: non-speakers learning as L2.

Section 2 describes language maintenance activities in four communities, and Section 3 surveys language maintenance and development activities in Australia and overseas Together these sections give valuable information on a wide range of language maintenance activities, with a wealth of useful ideas which could be applied in specific circumstances. A number of these ideas are not so much dependent on funding as on community attitudes and activities. Very significant factors promoting language maintenance are relative cohesiveness and isolation of communities. A factor that weakens language maintenance is the common (but not quite universal) cultural trait in many Aboriginal communities of the use of the most widely understood language in a group with varied language background; this biases interaction towards either a creole or English, reducing the opportunities of using and promoting the traditional language of an area. Counteracting this in a few communities is a preference for the language belonging to the place; in some communities this has meant that Aborigines coming in from other areas abandon their original language in favour of the language that belongs to the particular country.

Section 4 on literature on language maintenance covers work by a dozen writers, equally divided between those with experience in Australia and those who have worked elsewhere, and raises a number of provocative issues. It is suggested that some factors applying in larger groups overseas are not those which may operate in Aboriginal groups. McKay draws the following conclusion (p. 219-220):

(A) language is not an object with independent existence. It exists as it is used in real contexts and situations by real speakers, who also speak or come in contact with other languages. A language 'dies' or 'is lost' when its speakers choose to abandon it for another language. Any consideration of language maintenance, then, must take into account the perceptions and needs of speakers, the situation they find themselves in, and the other languages they are using or in contact with, as well as their aims and intentions. ...

A language is maintained in the truest sense, only when it is used on a regular basis in interaction between members of various generations in the community. ... It is important to recognise that different language varieties must be learned in their various specific settings, ... and that languages are dynamic, adapting to new situations and changing if they are really 'alive'.

A language is maintained only where it is seen by its speakers to have (future-oriented) function and purpose and value. The language may function as a communication channel or barrier, as means of expressing social identity, or as a vehicle for cultural content.

Principles and recommendations are given at appropriate places in the various chapters, and also are given in sequence in Section 5. Amongst the points made in the volume is the point that even when a language revival program appears to fail to revive use of a language, the spin-offs in self-esteem and pride in culture, which lead to far better coping with the world of today, are worth the expenditure of effort and money.

It is to be hoped that the Government authorities have studied and will study this important, weighty but eminently readable document and will act on the recommendations made.

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Herb Wharton, *Cattle Camp. Murrie Drovers and Their Stories.* University of Queensland Press, St Lucia, 1994, pb, pp. 196
Rita Huggins and Jackie Huggins, *Auntie Rita,* Aboriginal Studies Press 1994, pp. x, 157; b&w photos. $19.95.

Herbie Wharton's *Cattle Camp* is a satisfying book of drovers' stories, not quite a history, more than a yarn, full of life, passion and adventure. Wharton writes in the terms of his achievements, an elder, an adventurer, a highly skilled worker, a mid century Aboriginal man bonded to the land, a fine yarn-spinner, a word craftsman.

Wharton interviewed (or yarned with) nine Queensland cattle people, - 'people' because three of the drovers are women. The narratives are sometimes in the first person, sometimes the third. Wharton's style is conversational but never trivial. He uses an apparently casual technique, one further refined by Jackie Huggins, of interpolating into the transcription , informative or reflective remarks of his own. His account of Alf Barton's story, for example, begins like a novel,
'What have you been doing all your life?', I asked Alfie Barton as we stood talking in the doorway of the Kalkadoon Tribal Museum...
A few lines later, Wharton assumes the role of narrator,
We watched the smoke rise from the huge smoke-stack at the rich copper and lead mines of the Isa, and as it drifted away I remarked how once there would have been only the smoke from cooking and hunting fires.
Then the microphone is handed to Alf Barton,
Since I've retired I've never stopped working, mapping and recording ancient Aboriginal sites, keeping our culture and history alive...
Later in the conversation Wharton adds an explanation,

It might be helpful to explain the differences between a drover and a stockman on the big and sheep and cattle stations...
The conversations, one to a chapter, turn on history, cultural revival, employment, racism, the cattle industry, the spiritual world. They never lose interest, Wharton's control of pace and direction is never less than sophisticated.

Evidently *Dreamtime Nightmares* was a model for the style of this book, although Wharton achieves a more relaxed integration of subject and author than did Rosser. Jackie Huggins in her biography of her mother, almost universally known as Auntie Rita, finds a less conventional and more innovatory solution to the problem of separating the voices in oral history transcriptions.

Huggins sets out to tell her mother's life from her own memories, in her own words. The narrative begins, in the first chapter,
I was only a a small child when we were taken from my born country.
and ends with the whimsical reflections of old age in the last,
When I think of my life now, although the lives of Aboriginal people have always been hard, I wouldn't change being Aboriginal for the world - except, as Ernie Dingo says, at four o'clock in the morning trying to hail a taxi in Brisbane.

This was the problem which Huggins faced as she spoke with her mother:
In our talking are reflected both the things we have in common and the differences that arise between two Aboriginal women a generation apart; one born in 1921 and raised on a mission, the other born 'free' in the 1950s.
The passage is in italics in the original because Huggins, pondering the problem of how to add her own reflections without detracting from her mother's narrative, hit upon the clever idea of italicising her own commentary about her mother's words. The idea is in essence simple, and has antecedents in other oral histories, but Huggins has made an important innovation in allowing herself to contribute, not extra editorial information addressed to the reader, but reflections addressed to her mother. She thus renders the printed oral history in a form acceptable to the speaker, while allowing herself a voice independent of the mere collector and editor. She writes in the introduction,
Now I am not speaking for my mother but to her, with her, and about her.

Huggins chooses the moments to step away from the taperecorder with care. Sometimes she is the pupil:
Returning to my mother's born country as she refers to it complemented my own sense of identity and belonging and my pride in this. ... I began to gain an insight into and understanding of her obvious attachment and relationship to her country...
Sometimes she she is the committed observer:
I will not force an entry but I have done my damndest to get inside her pain [of her mother's ill-treatment when a young woman at Cherbourg]
Sometimes Huggins' voice is of the middle generation. Referring to Auntie Rita's life as a single mother she reflects:
All I want to say to you is that it's okay. All your children and grandchildren love you, understand you and forgive you because being a single, Black and penniless pregnant woman in your time was your greatest test and punishment.

The innovatory methodology exactly suits Huggins' compassion for and understanding of her mother. It matches the narration of Rita's personal history, such as her return with her daugher to a station she worked on as a young woman. Through the 'double voice' Huggins can turn reminiscences about the One People of Australia League into a historical discussion; she can analyse, arguing with her mother, substantive isssues like Aboriginal education. Probably the collaborative technique developed here will work best when the two

people involved know each other well enough to speak plainly, but it should be a model for many a collaborative oral history of the future. *Auntie Rita* is an exciting, committed and loving book.

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Bruising the red earth: Ochre mining and ritual in Aboriginal Tasmania. edited by Antonio Sagona. Melbourne University Press, Melbourne, 1994. Pp.xviii+194, Black and white plates, colour plates, bibliography, index. $39.95 p.b.

Just as a histologist's stain makes it possible to examine otherwise invisible structures of organic tissues under a microscope, so the movement of goods in antiquity reveals dimensions of prehistoric societies that are difficult to reconstruct from the day-to-day refuse on occupation sites that is the usual fare of archaeologists. The prospect of being able to examine prehistoric trade, customary exchange systems, social boundaries and regional inter-connections has attracted some notable studies of the distribution and petrology of ground-edge axes and grindstones (Binns and McBryde 1972; McBryde 1987) and of pearl shell and baler shell (Akerman and Stanton 1994; Mulvaney 1976) in Australia and of obsidian in the south-west Pacific (e.g.. Ambrose 1975; Kirch 1988; Specht 1981). Of all the materials which lend themselves to such approaches in Australia, red ochre has had the least sustained attention though its potential has long been recognized by prehistorians (Clark 1976; David et al. 1993; Mulvaney 1976). Like grindstones and stone axes, red ochre is amenable to geochemical or petrological sourcing. And unlike these materials it is frequently found in archaeological excavations in dated contexts offering the promise of a time dimension to any study of spatial distribution. There is a great dearth of information however about the process of ochre mining, its social context, and geochemical and petrological signatures of the major sources. This is what makes this study by Antonio Sagona and colleagues so interesting and so important.

Bruising the red earth deals with the celebrated Toolumbunner ochre mine in the Gog Ranges of central northern Tasmania. The mine was recorded in use by ethnographer G. A. Robinson in 1828, amid the disruption and dislocation of Aboriginal society brought on by European settlement, and details of its location were lost over the next hundred years. In a splendid piece of detective work Lloyd Robson and Brian Plomley relocated the mine in 1982 and a modest program of excavation was initiated by Bill Culican, but all three died as the project got underway. Fortunately, Sagona (Culican's successor at the University of Melbourne) carried the study forward, resulting in this attractive book containing a collection of essays by different authors, edited by Sagona. These give an account of the rediscovery of the Toolumbunner mine and details of its geological and botanical setting, report on a series of archaeological excavations carried out there, and present an analysis of stone artefacts recovered during those excavations and on the geochemistry of Toolumbunner ochre. Two wider ranging essays by Sagona and by Sagona and John Webb summarise ethnographic evidence relating to use of the Toolumbunner source (all of it from the journals of Robinson), attempt to set the use of red ochre into its ritual and cognitive context and provide a useful review of the use of red ochre elsewhere in Australia and in the Old World. Sagona attempts to supplement the rather meagre information on Tasmania with a discussion of colour perception amongst humans and the symbolism of colour in

various parts of the world. Structuralists will find much to their taste in this section. Many archaeologists will find an extended section on the metaphysics of red ochre out of place here.

Detailed geological mapping by Webb of the Department of Geology at LaTrobe University shows the ochre deposit at Toolumbunner to be a bed of strongly ferruginised sandstone. Aboriginal women dug a series of long trenches and tunnels across these beds to extract the ochre and this was then processed nearby using distinctive large disc-shaped 'Ballywinne' stones to 'bruise' and pulverise the ochre. The archaeological investigations carried out by Culican and by Sagona focussed on the most recent of these cuttings and on the large spoil heap created by the processing of this material. Artefacts of green bottle glass were common through this spoil and it appears that, despite the prominence of Toolumbunner in the nineteenth century ethnography, the major period of use of the site was in the contact period. This is supported by petrological studies which show that Toolumbunner ochre is not amongst the red ochres found on prehistoric occupation sites in Tasmania. The authors suggest that the structure of the ceremonial exchange cycle and the status of Toolumbunner ochre may have changed in the contact period (there are echoes of D. F. Thomson's conclusions about exchange in Arnhem Land here). Use of the site however extends well before this period. Here Sagona and colleagues had the sort of luck that field archaeologists dream of. Buried by spoil from the most recent mining activity, they uncovered the sealed entrance to an earlier mining tunnel. Four radiocarbon dates on charcoal from the fill show that ochre mining at Toolumbunner was underway by 330-480 years BP (Readers will have to turn to the notes on page 166 to find the laboratory sample codes for the radiocarbon determinations).

Webb's section on the petrology and geochemistry of the Toolumbunner ochres is a landmark study. He provides what as far as I am aware is the only overview of the diagenesis of red ochre deposits currently available. He distinguishes three types of red ochre in Tasmania: specular vein haematite, beds of ferruginised sandstone, and ochres that originate in laterite. He takes a conventional approach to this, beginning with petrology and then - at least for Toolumbunner - analysing the geochemical composition of the ochre[1] . A petrological examination of ochres in the collections of the Queen Victoria Museum, Launceston, provides the basis for a first order statement on the distribution of ochre from the various Tasmanian sources, showing that specular haematite from the Mt Housetop/Penguin Creek source was exchanged over distances of 140-200 km into northeastern and central Tasmania. Unfortunately none of the specimens held in the QVM collections are identifiable as Toolumbunner ochre. The authors did not extend their analysis to include ochre excavated from sites such as Warragarra, on the upper Mersey, or sites in southwestern Tasmania. There is great unrealised potential here to add time depth to the distribution patterns outlined by Webb, and also to test the proposition that the major phase of use of Toolumbunner is in the contact period. It is also a pity to leave the Toolumbunner study in isolation from LaTrobe University's *Southern Forests Archaeological Project*, one of the most ambitious and coordinated programmes of archaeological investigation carried out anywhere in the country.

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1 Appendix 1 gives major and minor oxide composition and trace element data for the Toolumbunner ochre. It is not stated what analytical method was employed here, though the presentation of the results suggests that it was X-Ray fluorescence. Presumably these details are in the companion volume that we learn is to be published separately, at the request of MUP, as a *Research Monograph* of the Department of History, University of Melbourne. This was unavailable at the time this review was written. It does MUP no credit to divide a study in this fashion.

The editing and production of this volume leave much to be desired, something one does not normally expect from a quality press such as MUP. The work is sprinkled with typographic and typesetting errors (e.g.. flinders Island, flinders Ranges, Devenport) and some bibliographic entries are incomplete (e.g.. year of publication is omitted for Stern). The stratigraphic plans could have been much clearer. Figure 29.2 is just about the worst artefact illustration I have ever seen. I must admit I am also puzzled at the lack of any reference to the work of G. Culican (1986) (Bill Culican's son) on the Toolumbunner material.

Notwithstanding this, *Bruising the Red Earth* is a very interesting book. Sagona and colleagues have made a good start in investigating the structure and chronology of a celebrated ethnographic ochre mine. Along the way they present a very useful review of the world literature on red ochre, an excellent study of the diagenesis and distribution of Tasmanian ochres, and as detailed an account of the operation of the Toolumbunner mine as we are likely to get unless more documentary evidence is hidden away in contemporary historical records somewhere. The monograph provides a solid basis for future research on Aboriginal trade and exchange in Tasmania and will be of value to anyone interested in prehistoric mining, exchange systems and the archaeology of red ochre.

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Language and culture in Aboriginal Australia, edited by Michael Walsh and Colin Yallop. Aboriginal Studies Press, Canberra, 1993, pp.xvii, 226. References, $24.95pb.

This book addresses a major resource gap in Australian Aboriginal studies: the urgent need for accessible, up-to-date information about Aboriginal languages and language issues for non-specialist readers, attractively and intelligently presented. The gap is too large for just one volume to fill, but this collection of fifteen well-chosen papers provides an excellent starting point.

A sad legacy of the relatively brief but extreme period of monolingual English dominance in Australia is the way many people feel intimidated both by the multiplicity and complexity of Aboriginal languages, and by the specialised knowledge and terminology of linguistics. Yet many speakers of Aboriginal languages and many linguists want to help a much wider range of people get to know and understand more about these important matters. All of the selections in this book are by language specialists, whose genuine desire to present their work in an open and non-intimidating way produces a refreshing clarity of style and organisation. Each selection is followed by discussion questions and suggestions for further reading; while these naturally reflect the particular interests of each author, they considerably enhance the book's usefulness as a teaching resource.

Chapter 1 (Walsh) gives a necessarily brief but comprehensive overview of the situation of Australian Aboriginal languages and current issues surrounding them, covering most of the initial questions and misconceptions that newcomers to this field often have. Chapter 2 (Yallop) introduces the structure and grammatical characteristics of these languages in a non-technical but illuminating way. These two chapters with their discussion questions should be useful across a wide range of educational applications in Aboriginal studies and language skills courses at tertiary and even upper secondary levels; they cover material without which no Australian's education should be considered complete.

The next three chapters appropriately deal with some of the harsh realities of language loss and its social and political contexts. Chapter 3 (Troy) portrays early communication between colonisers and indigenous people of the Sydney area, and Chapter 4 (Crowley) covers with commendable thoroughness what is known about Tasmanian languages in the past, and the language situation of Aboriginal Tasmanians now. Chapter 5 (Sharpe) discusses the survival of the Bundjalung language in New South Wales, and issues related to teaching and learning it.

Many Aboriginal communities are still actively using their traditional languages, in ways that express and promote distinctive aspects of their social and cultural life. Chapter 6 (Bavin) describes how young children learn about important parts of Warlpiri life through the Warlpiri language. Highly specialised forms of several languages, including 'respect' languages, initiation speech, and sign languages, are introduced in Chapter 7 (Alpher). Chapter 8 (Walsh) covers in an accessible way another intellectually challenging aspect of Aboriginal languages: how their grammatical systems classify things, and what this can tell us about how their speakers view the world.

An urgent concern of many Aboriginal language groups is the production of good dictionaries for their languages, and Chapter 9 (Simpson) is a thorough and well-organised coverage of different kinds of dictionaries and how they are put together. This chapter will

interest many general readers and prospective linguistic fieldworkers, and may be a helpful resource in courses for Aboriginal language workers.

The multifarious and often violent impact of English and its speakers is an unavoidable part of the Aboriginal language situation today, and the next four chapters deal with several different aspects of this. Chapter 9 (Harris) provides a general introduction to pidgins and creoles that would be useful in a variety of educational settings. This necessarily simple account is complemented by Chapter 10 (Rhydwen), which articulates some of the complex political and ethical issues involved in creole literacy programs. Chapter 11 (Christie) explores the non-Aboriginal uses of English to support and promote racist violence; the importance of examining the use of language by dominant groups to vilify and oppress others is being recognised internationally, and has been highlighted in Australia by Fesl (1988, 1994).

Chapter 12 (Eades) takes the innovative form of a semi-fictional case study of crosscultural miscommunication resulting in an Aboriginal woman's being convicted and fined for a crime she did not commit. This case study, a useful educational tool for anyone teaching or studying intercultural communication, encourages readers to match specific examples of miscommunication in the story with ethnographic information about Aboriginal interaction patterns in the following section.

The final two chapters provide an appropriate conclusion to the volume. Chapter 14 (Rumsey) concisely explains the complex links between land, language, and group identity, and why these relationships have been so difficult for non-Aboriginal people to understand. Chapter 15 (Black) is a lively and positive account of language and cultural maintenance activities in changing times, with a thoughtful presentation of relevant issues; this chapter should also be widely used in teaching about Aboriginal languages today.

The editors' long experience in the Aboriginal languages field has enabled them to assemble an extensive and varied range of contributions from other leading specialists, none of whom avoid difficult issues. The result is a timely and thought-provoking collection that should be of interest to professionals in linguistics and Aboriginal studies as well as to students and general readers whose needs it seeks to address. Obviously, such a volume cannot include everything, and most readers will think of topics they would like to see included. At the top of this reviewer's wish list would be contributions from Aboriginal linguists and language workers, since non-specialists could read this book without realising how much important language work is being done by Aboriginal people themselves in all parts of the country. Its usefulness would also be enhanced by an index, too often considered unnecessary for collections of this kind.

The attractive format and careful presentation reflect well on the editors and Aboriginal Studies Press; the sturdiness and very reasonable price of the paperback should find favour with students and teachers. The book is highly recommended as an indispensable resource

for a wide range of people teaching or studying Aboriginal studies or introductory Australian linguistics; and as accessible and stimulating reading for anyone interested in language and culture in contemporary Australian life.

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Oodgeroo. By Kathie Cochrane, with a contribution by Judith Wright. UQP. Brisbane, 1994, pp.233. Drawings by Ron Hurley and black and white plates. $16.95 p.b.

Kathie Cochrane's *Oodgeroo* has received considerable critical attention in the review columns. More often than not the point of view expressed told us more about the reviewer than the reviewed. Perhaps this is always to be expected but it seems to have been accentuated in this instance - the first telling of the story of a not inconsiderable person, Kath Walker who later became Oodgeroo of the Tribe Noonuccal, Custodian of the land Minjerribah. So, rather than make further comment I decided to talk to the author, Kathie Cochrane.

JC - Kathie, one of your reviewers described the work as a 'Testament of Friendship'. How do you react to that?

KC - Well, I think it is the only way it could be described. The book wouldn't have been written if it had been anything else. I wouldn't have undertaken it on any other terms.

JC - Does that mean then that it was to prove a limiting factor?

KC - I don't know what you mean by a 'limiting factor'.

JC - I simply mean that if you're friendly with someone you will treat only selected parts rather than the whole.

KC - I tried not to do that. I think I know what you mean, Did I deliberately leave things out? No, I did not do that. I did, however, try to be tactful. I tried not to say a lot about things that were painful to her.

JC - When Billy Marshall-Stoneking did that review in Overland was he correct when he says, in commenting on the lack of personal detail, drama and anger in your book,

> Perhaps this is another kind of world we are looking in on; a world where it would have been improper or impolite to pry too much beneath the surface of the poet's life.

Are we looking in on a very different world?

KC - I think that's being a bit hard on me. I did skate over a few things and I did omit the worst of Denis's behaviour out of a feeling of friendship. Remember, she was alive when I was writing.

JC - An important point which a lot of people have forgotten or chosen to forget.

KC - I suppose they have. She was reading it as I was writing and I think she was a little hurt at some of the things I put in.

JC - I was going to ask you what her comments were when she read the first complete draft.

KC - There were one or two things where she said, 'Do you have to put this in?' 'Yes,' I said, 'I have to. You asked me to write it and I have to say these things.' Honestly, I do have to admit that I did not put in a lot of things that would have ben very hurtful, but I didn't leave out anything that would distort the picture.

JC - So the vital things were in but some of the elements were omitted.

KC - For example, I told the readers how Denis joined the Black Panther movement and became violent. But, I didn't tell them how he broke a beer bottle on the back of his bike and went for somebody ... That's the sort of omission I confess to.

JC - So, do you think it is this sort of omission that some of the reviewers have been looking for? They're saying, and I think Jim Griffin and perhaps Rodney Hall, both mentioned that the anger and drama surrounding Kath/Oodgeroo didn't seem to appear in your book. Are they really perhaps saying that you have provided us with a sanitised version?

KC - I suppose it was a sanitised version. Rodney hasn't made any direct criticism of the book as far as I know. I'm a bit inclined to argue about the 'drama' bit because her whole life was a drama and I think that comes out in he book. Her life is a remarkable and very dramatic story and I think most people will realise that.

JC - Let's go back to that bit in the Preface where you say that Oodgeroo pointed to Vivian's notes and said, 'These will help you write a biography.' Why do you think she wanted you to write it?

KC - I don't think she particularly wanted me to write it. This came about because at that particular time in her life she was visiting us a lot. She was coming to Brisbane for ATSIC meetings and she stayed with us when she was on her way to Sydney working on materials for teachers at the University of New South Wales. She was with us more often than she had been for some time and one day she happened to say, 'I don't suppose anyone will write my biography now.'

[The 'now' referred to Vivian's death. He had been a great collector of papers and he had taken over when others had given up the task in despair. Julie Anne Schwenke had done the spadework for a Ph.D but had become frustrated and most of the papers had been deposited in the Fryer Library.]

She said this with a sort of sadness in her voice and rather foolishly I said, 'Perhaps, I could have a go.' That's all I said. She didn't respond at all but the next time we went down to Cleveland to pick her up from the Stadbroke Water taxi she had this manilla folder full of Vivian's notes. She laid them on my lap and said, 'There you are. See what you can do with that lot!' This was quite something for me to think about. She really did want someone to have a go and my few foolish words had turned that someone into me. I knew I didn't have too much difficulty in putting pen to paper but I seriously wondered whether I could really serve her needs by telling her story. I knew that we (that is my husband Bob and I) had known her for a very long time and that we had worked closely together in the Civil Rights Movement but I didn't think I could do anything about the poetry so I decided to write to Judith to ask if she would be happy to write a chapter. That was the beginning of the affair. It didn't originate from my desire to do it. In fact, I was a very reluctant author.

JC - You might have been reluctant but you could see point in doing it for more than reasons of friendship?

KC - She wanted someone to do it. I simply wondered if I dare be the instrument.

JC - How do you think it turned out in the end? Was it the sort of thing you wanted it to be?

KC - Pretty much. She didn't want a long, scholarly treatise so she told me and I'm sure she meant it. Kath wanted a book to be readily available especially to young aboriginal people and to young white people.

JC - I can remember her talking to me abut it and saying, 'I want it at a reasonable price because the young buggers can't afford an expensive one!'

KC - She certainly wanted that and I think it has turned out to be reasonable not only because of its size but because UQP got some grants which helped to subsidise it. Kath would have approved of the reasonable price and she would have approved of its length too.

JC -How did you react to the editorial additions to the manuscript?

KC - Margaret (Kennedy) worked very hard on the book. She asked and got many rewrites. She kept saying to me, very properly, 'It's your book', so I never felt she overdid things. What I appreciated most was the energy she put into the lay-out and appearance of the book. I was astonished that so many photos were used with such good design effect. It was Margaret who agreed to the use of Aboriginal motifs by Ron Hurley. I didn't dare to ask for the reproduction of Kath's poems throughout the text. I thought it would cost too much.

JC - But remember that while it did cost a good deal, most of that cost went back to Oodgeroo' estate via other publishers. What about the collection of her prose?

KC - You mean her speeches? That was entirely Margaret's idea and it involved a hell of a lot of extra work in chasing them down. We had a funny incident over the final one - the very last public speech Kath made - which was given at the Sydney Opera House on 6 June 93. I wrote and rang and beseeched the ABC for details; I even wrote to David Hill. Margaret chased them too but all we got was a runaround. Then Margaret had the bright idea of ringing the Opera House Trust. They responded straightaway, 'Yes. We can help. We've got a video but we're afraid it will cost you $10!'

JC - When did you first hear Kath's poetry? Did you hear it before it was published?

KC - I heard some of it way back when she was struggling to be a poet and although I knew little, I recognised that she needed help because she was inclined to write in the style of Paterson or Lawson! She didn't seem to be getting much help from the Realist Writers. They might have ben telling her the right sort of things but they weren't really making themselves understood. Once she got into contact with James Devaney there seemed to be a blossoming of her talent because he made her understand that she wasn't restricted by either content or style.

JC - And how did she feel - can you remember the situation - when the first volumes, *We are going and the Dawn is at Hand*, appeared?

KC - She never said this is going to change the world.

JC - Well, do you think that she realised that words were going to be her strongest weapons?

KC - She realised that long before the poems were ever published and I still think that was shy she had such a desperate desire to be a poet. I think she saw poetry as the one way she could use words to really get to people. She knew she could talk. She only had to get on a platform and away she went, never lost for a word. But that's a very different thing from getting to a wider community and she obviously saw poetry as a way to do this. That was a clear purpose of hers when we first met back in the fifties.

JC - How about her relationship with Judith Wright?

KC - That came much later. She met Judith after the publication of *We are going* in '64. As time went by her relationship with Judith became extremely warm. I'd describe it as a beautiful friendship.

JC - We were talking about Bobbi Sykes earlier. She wrote you a most appreciative note on behalf of her organisation when you handed over to her all your royalties from the book. Bobbi has said, 'Oodgeroo was very canny about knowing how far she was allowed to go, then drawing her bead on that line and waiting until the line slackened a bit so she could push for a little bit more.' Is this the way you saw Oodgeroo operating?

KC - I wouldn't have thought she was quite as calculating as that. I would have said she was more impulse than plan. Over the years she learned how to be diplomatic. She was certainly impulsive when she was younger. Being diplomatic was a necessary part of her equipment. Perhaps that's what Bobbi meant. She would walk in here and say, T've got to ring that rotten bastard up. Do you mind if I use the phone?' She'd then pick up the phone and be as nice as could be. You couldn't be politic and stay irritated.

JC - Your association with Kath and then Oodgeroo has been a long one. Has it been a steady one?

KC - No. It has varied a good deal. We were very close when we were in the Civil Rights movement and when the Tribal Council was being established - when she had the bad experience of being told that she was no longer wanted. She was pretty sure this had started with Denis and she was very upset about it. After she retired to Moongalba that closeness disappeared. We kept in touch by phone. She had a way of ringing when she was troubled. She could also ring when it seemed that she had some important decision to make. I used to get quite annoyed at this. She would ring and say, 'I've got an invitation to go to America ... Do you think I ought to go?' I would say, 'It depends on you. Do you want to go? I can't tell you whether you should or shouldn't.'

JC - Then after that period, did you get to knew her again?

KC - I wouldn't say I got to knew her again. I simply got to see her more frequently. I never felt I had stopped knowing her and I don't think she ever felt as if she had stopped knowing me.

JC - What would you say was her greatest contribution to the Aboriginal Freedom Movement?

KC - I'd say it was her total involvement; her willingness to forgo her comfort, to give her time and energy, to fulfil all kinds of quite unreasonable demands that were placed on her. She seemed to have a compulsion to do things people asked her to do, almost as if every occasion was an opportunity she could not afford to miss. She'd go to outback schools and halls and very rarely get her proper expenses.

JC - Was there a converse to all of this? I can remember her saying, 'Everyone seems to want a part of me'.

KC - Everyone did want a part of her; I don't think that is an unrealistic perception at all. She was unsparing often to her own detriment. I spent many an hour trying to dissuade her from agreeing to the excessive demands but I never succeeded.

JC - In the early days when the boys were young how did she manage?

KC - I'll tell you. She managed much better than she made out in later years. She said things like, 'They grew up behind my back. I didn't do enough for them when they were kids.' But I was with her at the time and that's just not true. She was a bloody good mother and she did everything possible for those two sons. She and Denis were always at Loggerheads, right from the earliest days. Kath tried desperately to get him into the Merchant Navy, probably to protect them both. With Vivian there was never a problem. He was so easy to get on with. No, she did not neglect her children. I think that was one of her little fantasies in later years.

JC - After all this time how does someone like you who has been so involved in the Aboriginal movements compare the situation today, after Mabo, with the situation as you and Bob came to know it in the fifties?

KC - In the last years when Kathy was here, coming and going to ATSIC meetings and the University of New South Wales, she used to say to me, 'We never dreamt it would be like this, did we?' We would look back and think that we had come a long way. Once we looked back we could see how absolutely terrible it had been. There have been so many disappointments and there'll be plenty more to come. But it was the decade of the sixties that really pleased Kath. In those early days she used to say, 'I have to walk away from my people'. Now this is the mark of how perceptive this woman was. She saw that then the only people who were able to do something positive for aboriginal rights were whites and she felt that she had to join them. She was all too conscious of the fact that she was being criticised and talked about by her people. 'What are you doing going with the whites?' they would say and although she felt hurt she remained resolute. By the end of that decade the way QCAATSI and more particularly FCAATSI, developed and more aboriginals moved into mainstream action, she became perceived as being at the apex of the movement. That was a source of enormous satisfaction to her in spite of all the divisiveness that went with it.

JC - At this stage Kathie what do you think of ATSIC?

KC - Not much.

JC - Is that the polite other generation talking?

KC - No. I'll elaborate. It's not what we hoped for when we were working for the treaty but as she said, 'It is something and we have to try everything. A half a loaf is better than none'.

Kath always had a seed of optimism that was indestructible. She believed that being organised in the groups represented by ATSIC - the regions - that there would be the chance of retaining some of the communal skills and developing them further. That was her hope but it wasn't the actual because ATSIC soon became dominated by white bureaucrats. I don't want you to think that people like Lois O'Donoughe and others like her aren't doing a good job but they are working under the same old handicaps. They have not got control of what is supposed to be their organisation.

So although disappointments continue and Black Australia is still given short change on opportunity and a lesser rung on the ladder than almost all other migrant groups, the optimism of Kath Walker/Oodgeroo remains and is now available to a much wider audience through an almost inadvertent Testament of Friendship.

John Collins
in conversation with author Kathie Cochrane, June 1995

Stars of Tagai: the Torres Strait Islanders. By Nonie Sharp. Aboriginal Studies Press, Canberra, 1993, pp.xix + 321. Maps, line drawings, black and white plates, bibliography, glossary, index. $24.95 p.b.

Stars of Tagai is a product of anthropologist Nonie Sharp's fifteen-year engagement with the cultural, political and spiritual life of Torres Strait. The book represents a continuation of her earlier research on cultural renewal among the indigenous peoples of our region, to

which Sharp has long been committed. She is a founding member of the journal, *Arena*, a forum for intellectuals seeking alternatives to the commodification of relationships within modern capitalism, perhaps in the reciprocal exchange relationships characteristic of indigenous societies.

Stars of Tagai, a revised and shortened version of Sharp's 1984 La Trobe Ph.D thesis, is a deeply thoughtful book and a controversial one. It is based on the oral life histories of selected Torres Strait Islander leaders (among them Eddie Koike Mabo) and on written sources, which provide a social and historical context for the life histories. Thus, the author's intellectual and political concerns and re-readings of the historical and ethnographic record situate the book among recent ethnohistories of the Pacific by Dening, Neumann and Thomas, and others.

The central theme is the 'creation and re-creation of a Torres Strait Islander identity and its expression in self-awareness as a unique sea culture' (p.5), for which the Tagai myth serves as metaphor. Implicit is the view that a society's medium of exchange creates its social relationships. In Torres Strait, acts of reciprocal exchange are identified as creating a 'unity' which continues to carry its complementary oppositions within it (p.6). Most Europeans (but not Pacific Islanders), who entered into early relationships with Torres Strait Islanders, failed to understand the nature of reciprocity, proving themselves truly 'other'.

Sharp argues for the post-contact continuity of Islander life-ways and meaning systems despite the surface appearance of change. The visual metaphor for this process of 'continuity-in-change' is the spiral, with its many manifestations in nature, which occur throughout the book. Sharp's 1984 thesis, which argued that the old had not died with the creation of the new, was a courageous academic (and political) act pre-Mabo, since it ran counter to the observations of earlier anthropologists, eager to salvage and record the cultural remnants of a virginal pre-contact period.

The introduction stresses the commonalities of traditional Torres Strait life - a primary relationship with the sea, for some a gardening culture, the seasonal voyaging, the myths, including that of Tagai, the constellation that 'usher[s] in seasonal changes and [is] a guide to voyaging and cultivating' (p.xi) and whose every appearance, like the 'serpentine' path of the sun, signals renewal. These shared categories of Islander life are crucial to Sharp's understanding and construction of the past, but to my mind they were less salient and emphasised than the cultural differences among island groups, alluded to briefly on p.31. There is little linguistic or ethnographic evidence for an environmentally-shaped pan-Islander consciousness: Eastern and Western Islanders originated from different regions and had largely different histories, traditions, religious beliefs and stories; they shared no common language nor did they intermarry; the former laid great emphasis on gardening skill, disparaging the fishing skill which provided most of the Western Islanders' food supply. Although there was curiosity and some knowledge about the inhabitants of distant islands, pre-contact Islanders in their daily lives, inasmuch as one can retrieve them, paid little heed to other Islanders with whom they were not at war and did not consider themselves the same people. A self-conscious, shared identity as Torres Strait Islanders developed only this century in response to the Queensland Government's increasingly paternalistic control and a common experience in the fisheries. On the other hand, the potential conditions for shaping a pan-Islander identity always existed and Sharp rightly claims that there were always 'persons with the special understanding and originality to act as mediating or bridging people' (p.5). In the past, these were traders in goods; today they are traders in ideas.

The book has ten chapters, including an introduction and epilogue, comprising four main parts:

Part 1 introduces the main themes of the nineteenth-century 'encounter' among competing world views and cultural norms, focussing on the experience of the Murray Islanders. Here Sharp establishes the fundamental importance of reciprocity, 'the key principle in the creation and re-creation of identities as diversities-in-unity' (p.xi);

Part elucidates the ordering of the Murray Islanders' world within cosmic cycles of movement: the repetitions of seasons, winds, stars, tides, planting and harvestings; and their social correlates in clan identities and exchange voyages. Here we learn how certain gifted individuals, 'persons of originality', 'liv[e] the old and the new' (p.79);

Part 3 discusses the major forces for change and renewal in Torres Strait: the arrival of Christianity; government schooling; the placing of Islanders 'under the [Aboriginals Protection and Restriction of the Sale of Opium] Act[s]'; increasing segregation; and work on the 'Company boats';

Part 4 re-examines five events as significant expressions in the quest for an autonomous contemporary Torres Strait Islander identity. Sharp has already published accounts of each of these, but here they assume a greater effect through cumulation: the maritime strike of 1936, which led to the legal recognition of Islanders as a separate group; World War II, in which over 700 Islanders joined the Australian army (at low rates of pay) and for the first time lived and worked alongside Europeans; the 1970s border dispute between Australia and Papua New Guinea, which wa adroitly exploited by senior Islander politicians for their own and their people's benefit; the 1980s political sovereignty movement, (which has since reappeared in a number of different guises); and the extraordinary 1992 High Court Mabo decision, in which Sharp herself played an important advisory role for the Murray Island plaintiffs.

Sharp was particularly struck by the continuity of *Malora Celar* 'Malo's Law' within Murray Islanders' Christianity. The sacred Law of Malo-Bomai, the great Miriam culture heroes, laid down precepts for the regulation of Miriam social conduct but was thought to have disappeared. Descriptions of how this 'imperative of Meriam life' (p.49) became incorporated into Christian practice recur as Sharp's primary example of 'continuity-in-change'.

Sharp has deliberately focussed on selected aspects of Islander culture to display to a predominantly non-Islander audience. Here are recounted the life narratives of ten Torres Strait 'speculative philosophers' (p.11), spiritual and cultural leaders who successfully integrated the modern with the traditional and transmitted their vision to others. Uncovering and explaining to non-Islanders the spiritual nature of their vision demands a metaphorical and metaphysical vocabulary which has apparently made some anthropologists and sociologists uneasy. As Sharp admits, her study 'departs from the mainstream of cross-cultural studies in both its substance and its form' (p.xii).

I have a number of problems with the book. Clearly, many aspects of the old have continued, though under different guises, as the anthropologist Judith Fitzpatrick demonstrated with respect to mortuary practices in her 1980 Ph.D thesis, for example. Indeed, an analogue of the Islander's syncretic culture is their creolised *lingua franca*, which expresses an Islander worldview through lexicon borrowed mainly from English. I also applaud Sharp's decision to present the admirable and successful in Islander culture, although it is a partial view, as Sharp herself implicitly acknowledges. While a minority of gifted people have found 'an integrative balance between the old and the new under conditions of rapid and enforced culture change' (p.xvi) and serve as exemplars, they remain a small minority.

Some claims appear to me to be unsubstantiated: for example, that *em* refers to 'the undivided power of the eye of the storm' (p.xxii) or 'the stored up energies of the "other side" ' (p.6) or 'the singular, non-reciprocal, the wild, the "other condition" ' 9p. 301). *Em* is simply the Torres Strait Creole third person singular pronoun, which in the eastern dialect has only animate or pseudo-animate reference. It therefore appears out of place among the traditional language lexicon of the sacred (p.85-87). A comparison of the eastern and western variants of the myth of Tagai indicates that it probably originated in the west, as did most shared lexicon, legend and custom. The claim that the Giar Pit people of Dauar were the original owners of the myth (p.3) is therefore puzzling, unless we are to accept an entirely Miriam focus.

A recurring question for me was the extent to which the Murray Island focus can be generalised to the rest of the Strait. The implication of the subtitle is that it can. Yet Sharp herself states that the Murray Islanders 'were an especially cohesive group in pre-contact times' (p.42), whereas there was no comparable locus of Western or Central Islander culture. Mer, the most remote eastern island, is not Torres Strait. In many ways, in fact, it is atypical and recognised as such by Islanders: the Miriam resisted outsiders, preserved and protected their language and *tonar* 'traditional custom' long after the Islanders of other eastern, central and near western islands. It was purely an accident of history that the latter became the sites of beche-de-mer and pearling fisheries, and locus of removal or transfer of other Islanders, and home to large immigrant populations; and that they were unable to rid themselves of the immigrants, as the Miriam managed to do in 1885. An analysis of the cultural practices and beliefs of the non-Miriam might yield a quite different perspective. Nonetheless, it is true that reciprocal exchange was a fundamental organising principle of Islander society.

Stars of Tagai is itself the sum of countless acts of reciprocal exchange. It is essential reading for anyone interested in Torres Strait Islander history, culture and religion; in the background to the Mabo decision; and in the writing of a foliated social history, reconciling oral and written narratives from indigenous and European perspectives.

Anna Shnukal
The University of Queensland

Knowledge and Secrecy in an Aboriginal Religion: Yolngu of North-East Arnhem Land. By Ian Keen. Clarendon Press, Oxford, 1994, pp.347. Line drawings, maps, figures, tables, glossary, bibliography, index. $85.

This regional ethnography, carefully crafted and of considerable refinement, offers a subtle texture of description and a degree of sophistication of analysis which are often lacking in this genre and which especially in the past of Aboriginal studies have rarely been found. The author unfolds a minute picture of the exercise of religious knowledge, its control, secrecy and dissemination from among the Yolngu. The description is constructed with an eye to subtle detail drawing on a host of minutiae someone else might easily have overlooked or put aside as redundant. Correspondingly, the author's extrapolations beyond the wealth of his own data are cautious and generalisations are virtually non-existent.

The book basically is structured into three major areas of analysis termed 'ambiguity', 'variation' and 'change'. The first section addresses some important issues: the constitution

of culture through shared meaning and how the recognition of the contestability of meaning puts this notion into jeopardy. The negotiability and indeterminacy of structure and doctrine, the shifting grounds of discursive strategies - weaving the webs of meaning in which some move adroitly and others are caught (to paraphrase Geertz and Stolte) - all that is dealt with clearly and plausibly. (One may wonder though how on this unstable and shifting basis control of religious substance and power is exercised and how successful it can be. This problem is not so clearly addressed by the book, although Keen is aware of its existence; see e.g. p.293). In the second section Keen discusses restrictions on access to religious knowledge according to age, gender etc. and the important question of secrecy. (With a bow towards political correctness, the reader is assured that no secret substance has been revealed). The third section deals with the development of universalistic forms to engender relationships involving wider social networks which transcend traditional formations.

Keen professes to be a follower of Foucault's (though, surprisingly, the bibliography refers only to two relevant works). It appears to have led him to see power as 'located in the social nexus' and in interactive modalities, a kind of amorphous power being exercised ubiquitously, continuously and multi-directionally, rather than as a clearly discernible thrust underpinned by ideological activity. He dismisses the concept of ideology as inappropriate since it presumes the existence of specific power relations and entails more or less clearly noticeable conditions of domination. He discards the question altogether whether an ideological component can be attributed to religion. However, then he goes on to see something analytically useful in 'ideology' and 'hegemony' after all (p.20) and subsequently refers to numerous incidents and conditions which rather support the (if only heuristic) validity of these concepts (e.g. p.85, 98, 99, 295, 301). This is no reflection on his analytical competence, but, I think, stems rather from the complexity of the issue and the difficulty of sticking to theoretical purity in the context of an ethnographic description as fine-grained as his.

The author is a minimalist. He keeps references to other, related works from other regions of Australia (on religious change, knowledge control, the politics of knowledge dissemination, etc.) and from overseas (e.g. Keesing's studies on the social uses of knowledge among the Kwaio) to the barest minimum. It is not clear whether this is so because of his 'isolationist' tendencies (i.e., a belief that all Aboriginal 'tribal societies' are quite distinct entities making generalisations suspect and rendering comparisons largely superfluous) or because of his reluctance to acknowledge the contributions of other anthropologists in this and related fields of study, thus avoiding the (imaginary) risk of appearing somewhat less unique or pioneering. He need not have worried as doing so would hardly have detracted from the obvious merit of the book.

Erich Kolig
University of Otago

A Death in the Tiwi Islands: Conflict, ritual and social life in an Australian Aboriginal community. By Eric Venbrux. Cambridge University Press, Cambridge, 1995, pp.xvii + 269. Maps, glossary, references, index. A$29.95. p.b.

The book arose out of a traumatic field experience in the year 1988 in Pularumpi on Melville Island: a Tiwi man who had befriended the author was suddenly murdered, two

months into the fieldwork, his battered body being found one fine morning lying in the dust of the settlement. Venbrux did not shrug off this event or try and escape it emotionally. He made it the point of entry to an understanding of Tiwi society. Turning this sad event to good use, he made it the tack to hang his ethnography on. Economy of enterprise, grasping a golden opportunity or a way of settling the ghost? Who knows. In any case, what came out of it is an absorbing story: a mixture of social drama, detective story and ethnography. Inspired by Geertz's idea of 'thick description' and processual anthropology Venbrux wove a tale which is not only eminently readable, but was successful enough as his Ph.D dissertation in the Katholieke Unviersiteit of Nijmegen (titled 'Under the Mango Trees: a case of homicide in an Australian Aboriginal Society', unpubl.diss. 1993).

The book is a fine example that culture can be accessed in the form of a living social drama, whose description renders a rich narrative tapestry which is both entertaining and illuminating. I found it refreshing also that Venbrux does not think much of attributing blame and guilt to the degradation of Aboriginal society due to the pernicious western impact. Violence and the homicidal settlement of grievances (over women, paybacks etc.) are given a different explanation in his inquiry. The cultural revival in today's Tiwi society, as the author notes (e.g. p.17), is going hand in hand with the re-emergence of killing by direct means. The Pax Australiana had previously been instrumental in suppressing traditional methods of settling grievances by violent means, and the long arm of the law, mission and government authorities rigorously enforced it. As the pride in the cultural heritage grows once again and cultural independence is asserted by the Tiwi, traditionally motivated and legitimated murder (the traditional 'sneak attack') crops up again - though the perpetrators do not declare themselves openly as was traditionally done and somewhat different methods are employed nowadays.

The author starts with the homicidal event, proceeds to explore the post-contact transformation of Tiwi society, then looks at the life stories of the victim and his father (the father's career as a 'murderman' may have been the reason for the killing), and then goes on to describe the various ritual occasions following the incident: the funerary ritual, ritual purification and others.

The book's descriptive factuality heavily outweighs wider interpretation and abstraction (there are, for instance, only scant references to Maurice Bloch's (p.146) and Durkheim's ideas (p.195) on ritual. The book is so very focussed on description as to be perhaps disappointing in some respects: it avoids embedding specific events in discussions of greater generality: for instance, ritual in Aboriginal society in relation to settling violence, notions of legality and ethics in homicide, or the impact of missionisation on such issues, etc., etc. These are missed opportunities. But perhaps that does not matter too much. There is a great deal that can still be gleaned from this interesting and well-written story. And, not least of all, it is a joy to read it.

Erich Kolig
University of Otago

Eye of the Eagle. By Ron Bunney. Fremantle Arts Centre Press, 1995. Paperback $9.95.

A great little book. It is an easy read aimed at a younger audience and as such would be a welcome addition to any educational library shelves. The story is set in the early nineteenth century and revolves around a young Aboriginal boy and girl, highlighting the tragedy and terror they are forced to confront when they and their people come into contact with white colonists. The book gives examples and explanation of aspects of traditional Aboriginal life, highlighting Aboriginal belief and their connection and concern for their land. It gives insight into how they lived and the beauty of their lifestyle. As a basis for understanding what has taken place in this country over the last two centuries this book is a good starting point for young students it not only illustrates Aboriginal life but also highlights the tragic and terrifying realities of the impact of white intrusion. If there is any failing in this book it is probably that the author has tried to cram in too much knowledge and insight into Aboriginal lifestyle into such a small book. That however does not detract from the authors fine attempt at a disturbing subject.

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Aboriginal Autonomy: Issues and Strategies. By H.C. Coombs. Cambridge University Press, Cambridge, 1994. Pp xvi + 251, appendix, references, index, select bibliography of Coombs' publications on Aboriginal issues. pb $25.00.

Aboriginal Autonomy can be read in a number of ways - as an incisive and reflective overview of the 'state of play' in indigenous affairs today, as a series of polemical and tendentious essays designed to buttress and reinforce indigenous interests and influence policy development into the medium term and beyond, or as the culmination of Coombs' considerable intellectual contribution to understanding the complex interplay of two worldviews in the development of the Australian nation.

Aboriginal Autonomy continues the broad themes Coombs explored in Coombs' 1978 book *Kulinma: Listening to Aboriginal Australians*, but with a sharper edge. The indigenous worldview, relationships with the land, indigenous lifestyles, health, education and work, issues relating to law and the role of the state, the impact of resource development on indigenous societies, and the implications of the Mabo decision are all addressed.

Cut down to its core elements, Coombs' broad argument can be expressed in the following propositions:

- Personal autonomy, the responsibility to nurture others, and the ongoing negotiation of social relations are key determinants of the Aboriginal worldview. This worldview is as legitimate - and arguably more appropriate - than the dominant society's emphasis on acceding to the imperatives of the economic system.
- Colonisation has substantially compromised the capacity of indigenous societies to exercise autonomy and their nurturing responsibilities, with serious consequences for indigenous social cohesion, health and economic status, and self-esteem.

- The Australian nation has much to gain from encouraging indigenous initiatives to re-assert social, political and economic autonomy. Implicit in such a change in approach would be the recognition of indigenous rights in a range of realms (from health and education to land rights and resource development).
- Indigenous interests have been pro-active in asserting their autonomy through a variety of specific initiatives - the homelands movement, indigenous education, and the development of indigenous political organisations and a concomitant political agenda are instanced.

These arguments flow into a concluding chapter which is articulated as a plea for recognition by mainstream Australia of the Aboriginal desire for autonomy. Coombs suggests there is a need for a moratorium on legislation affecting Aborigines, a national 'pause for reflection', while key political and legal rights are clarified by the courts. These include the possible existence of a Crown fiduciary duty, the inherent rights embedded in the common law concept of native title including whether the Crown has an unfettered right to extinguish native title, and the allocation of Australian sovereignty between indigenous and non-indigenous institutions.

In the longer term, Coombs argues for a 'deeper act of recognition' by mainstream Australia of indigenous rights to autonomy and self-determination, reflected in an Act of Self-determination 'in a form recognised by the United Nations and [which is] binding on future Australian Commonwealth and State governments'. The process of arranging such an Act must be, in Coombs' view, an exercise in participatory democracy, based on 'bottom-up' processes which he sees as characteristic of Aboriginal political processes. Coombs has in mind regionally based negotiations which might in some cases lead to the adjustment of institutional frameworks to allow the creation of new jurisdictions within the Australian nation with sovereign powers and responsibilities. The recently negotiated arrangements in relation to the Malay residents of the territory of Cocos Island are specifically cited as one way forward.

This is indeed an ambitious agenda. Assessed in terms of its current political feasibility, it fails comprehensively (though Coombs, I suspect somewhat disingenuously, gives no hint of this). However, I would argue that the strength of Coombs' analysis and argument lies in his capacity to lay down a number of important and prescient conceptual benchmarks for both indigenous and mainstream Australia. The extent to which these concepts are utilised will determine the structure of the relationship between indigenous and other Australians over the next 20 to 50 years, and in a very real sense determine the type of nation we will become.

For indigenous Australians, Coombs points to the importance of the courts in developing the constitutional principles inherent in the belated recognition of native title, and suggests clearly that 'indigenous sovereignty' ought to be pursued through a re-allocation of the existing elements and sources of national sovereign power. Implicitly, he is rejecting any notion of separate sovereign status. For mainstream interests, he points to the importance of recognising the reality of the ongoing development of international human rights law, he emphasises the need for indigenous interests to be given space to develop their own positions in a constantly changing political and policy environment, and most importantly, he identifies the imperative of negotiation as the only way to progress toward mutually acceptable institutional arrangements (the reconciliation objective) within the Australian polity.

There is a deep wisdom in these ideas, and much else in this book. There is also much to disagree with. In acknowledging the manifest injustices suffered by indigenous people since colonisation, Coombs' analysis recalls Voltaire's Doctor Pangloss in its implicit

assumption that somehow 'right will ut'. Indigenous expectations may therefore be raised unduly. The reality is that Coombs has mapped out an agenda for the next two or three generations of Australians, but that the achievement of such a vision will require coherent and practical strategies, a great deal of hard work, the ability to withstand setbacks, and perhaps even a degree of luck.

Coombs' analysis does not really extend to the strategies which will be necessary. The suggestion that there should be a legislative moratorium in relation to indigenous issues is pie in the sky and ignores the reality that the ferment of interest group advocacy in our increasingly complex and pluralist society will not cease. Accordingly, indigenous strategies will need to combine both short and long term political realities and perspectives. Notwithstanding the book's sub-title, Coombs gives no real assistance to indigenous leaders and others on how to cope effectively with these exigencies.

Coombs gives little attention to the issues of increasing globalisation which will inevitably impact on the elements of national sovereignty which he and other indigenous interests appear to covet. The complex issue of indigenous identity receives no attention, yet is a crucial element in the indigenous affairs policy environment. Coombs tends to over-emphasise the scale and impact of indigenous initiatives, particularly when viewed against the backdrop of the massive change underway in virtually every part of Australian society. In terms of movement towards a new political framework for indigenous-mainstream relations, the indigenous initiatives Coombs points to have strong re-active as well as pro-active elements. Indeed, if a widely accepted and coherent pro-active strategy were in place, Combs' book would be superfluous!

Overall, *Aboriginal Autonomy* has much to say to all Australians. It is imbued with the intelligence, the intellectual courage, the deep optimism, the respect for humanity, indigenous cultures and the environment which make Coombs the most extraordinary Australian of the 20th century. Like Coombs himself, his book poses more questions than it answers - but this is its great value and contribution.

M.C. Dillon

The Cover

Several copies of the Treaty of Waitangi were made apart from the major copy first signed at Waitangi on the 6th February 1840. Other copies were taken over the following months to all parts of Aotearoa and the signatures of the local chiefs obtained. One of these copies was carried by *HMS Herald* commanded by Captain Nias and carrying Major Thomas Bunbury of the 80th Regiment deputed by Hobson to seek signatures of chiefs to the south. A portion of this copy is shown on the front cover.

In a voyage to both islands from 28th April to 2 July 1840 Major Bunbury aboard the *Herald* obtained the signatures of chiefs in the Coromandel Peninsula, Mercury Bay, Akaroa, Foveaux Straits, Otago, Cloudy Bay, Kapiti Island and Hawkes Bay. The portion of the treaty shown carries the marks of Maori leaders from Cloudy Bay, Kapiti (Capiti) Island and Hawkes Bay. These marks were often the same as part of their *moko* or face tattoos. Notably, the sixth and seventh signatures obtained at Capiti (Kapiti) are those of Te Rauparaha and Te Rangihaetea, two of the most famous warriors of Ngati Toa. The signature of Willian Hobson the Governor and the witnesses to the signatures of the chiefs - Major Bunbury, William Stewart (a sealer, whaler and trader who acted as pilot to *HMS Herald*) and Edward Williams (the interpreter) can be seen.

Cover design by Richard Barwick - the section of the treaty is reproduced from his copy of the photolithography facsimile *The Treaty of Waitangi* published by the New Zealand Government Printer in 1877.

INFORMATION FOR AUTHORS

Typescripts must be double-spaced and with ample margins to allow for editorial marking. Footnotes should be typed on a separate sheet and numbered consecutively throughout the paper. The List of References should also be typed on a separate page. Tables, figures and maps should be submitted in final form (except for size), on separate sheets, numbered on the back, and accompanied by a list of captions and photographic credits. Submit two hard copies and keep one. Once manuscripts are accepted, authors may wish to submit final versions on computer disks, preferably unformatted and preferably using Microsoft Word (Version 3.02 or any later version) for Macintosh computers.

Authors should follow the usage of *Style Manual for Authors, Editors and Printers*, 4th edn (Australian Government Publishing Service, Canberra, 1988). The only exception is in the referencing system, where a modified version of the author-date (Harvard) system should be used. References to sources should be placed in footnotes, but these footnotes should follow the format employed in the Harvard system. Full details of archival and manuscript sources should be given unless they can be abbreviated in such a way as to allow the full reference to be found in the List of References. Where possible give identifying numbers for archival material. For example:

1 Rowley 1971, p. 107; see also Barwick 1981.
2 Fisher to Hassall, 20 July 1824, Hassall Correspondence, vol. 3, MS, Mitchell Library, Sydney.
3 Fison & Howitt 1880, p. 96.
4 See Cox 1821.
5 Cf. Curr 1886-87, vol. 2, pp. 126-7.
6 Bemdt & Berndt 1965, p. xiv.
7 Riddett 1988, p. 6.
8 Victoria River Downs Manager to Administrator of the Northern Territory, 13 August 1953, Australian Archives (NT): CRS FI; 52/758.

The List of References should follow the form given in the *Style Manual* for lists of references in the Harvard system. Where full details of archival sources have been given in the footnotes they need not be listed in the List of References. Journal titles must be given in full. For book and journal titles maximal capitalisation must be used; that is, capitalisation of the first letter of every word except articles, prepositions and conjunctions. For the titles of journal articles and of articles of chapters in books use minimal capitalisation (capitalisation only of the first letter of the first words of the title and subtitle and **of words that normally have an** initial **capital). Details of authors' names** must be given as on the title page; do not abbreviate. For example:

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