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CONFLICTING VIEWS ON LAND RIGHTS :  
TOWARDS AN UNDERSTANDING OF THE ISSUES

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With the Bicentennial on our doorstep, it is crucial that teachers possess some understanding of the issue of land rights and the debate which will undoubtedly occur throughout 1988. Such debate may at best become an issue raised in classroom discussion or at worst jeopardise Aboriginal-white relations in their own schools. This paper seeks to highlight some of the critical points necessary for an understanding of the basic issues involved in land rights in the specific context of Aboriginal-white relations.

According to most non-Aboriginal Australians, the problem with Aboriginal-white relations is most easily summed up as 'the problem with Aborigines'. Aboriginal people are perceived as drunk, lazy, dirty, immoral, irresponsible, untrustworthy and incapable of making use of those opportunities offered to them by white society. In essence, the problem with Aborigines is that they have refused to live like white people (Office of the Commissioner for Community Relations, 1980). On the other hand, Aborigines see the problem of Aboriginal-white relations largely in terms of the discriminatory acts which have been continually perpetrated against them by white society since 1788. The initial act of white invasion and the ensuing illegal appropriation of Aboriginal land is central to an understanding of this discrimination. Problems inherent in Aboriginal-white relations are thus the subject of two vastly different interpretations, and any discussion of land rights reflects this. 'Land rights' indeed means different things to Aboriginal and non-Aboriginal Australians.

For non-Aboriginal Australians, the question of land rights simply forms one of a range of problems with Aboriginal Australians, such as their poor health standards and educational achievements. As each represents a different problem, individuals should set about the task of solving each problem through their relevant institutions. Simply put, each problem is different and all therefore require different solutions. The question of land rights itself is thus

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constrained within parameters related to land, and is essentially limited by non-Aboriginal Australia to questions of land ownership. Ownership of land under Anglo-European law is merely the exercise of property rights of the land-owning class; land is only real estate or property held in private possession, over which individuals have nearly absolute rights to do as they please. Visible indicators of permanent occupancy, such as fences, demonstrate private ownership. Consistent with this philosophy of individual ownership, land is perceived almost exclusively in economic and instrumental terms (Carne, 1980). Reporting on a National Opinion Poll conducted in 1985, one journalist concluded that non-Aboriginal Australians indeed view land rights in terms of these Anglo-European values and, more importantly, that these values determine an entire lifestyle based on the acquisition of land:

Land is seen as individual property, the owning of which is a privilege earned by hard work. The whole white mythology of becoming independent, settling down, marrying and having a family, getting a bank loan, is enmeshed in the white view of land and it is entirely on these views that black land rights is judged.

(Graham, Why the Government Backed off Land Rights. *The National Times*, 18-24/4/1986:19)

Land Rights legislation in Australia, such as the 1983 NSW Aboriginal Land Rights Act and its complementary Crown Lands (Validation of Revocation) Act, define land rights similarly in economic terms. However, this legislation fails to provide complete Aboriginal ownership of land, even by Anglo-European standards. For example, mining can occur at any time without the owner's consent, land-use proposals are subject to local government and Department of Planning and Environment oversight, funding may be abolished at any time, and the Acts may be repealed at any time (Wilkie, 1985).

Current Land Rights legislation throughout Australia can therefore be accused of offering only half-hearted measures which fail, by its own standards, to fulfil even the most fundamental criteria of ownership. Even if such legislation did ensure Aboriginal ownership of land in the fullest Anglo-European sense, this white definition of land rights remains inadequate as a solution to problems with Aboriginal-white relations in Australia. It is difficult to see how the provision of land in this manner could possibly begin to remedy the multitude of other problems confronting Aboriginal Australians such as high imprisonment and infant mortality rates (Wilson & Scandia, 1987; Bonner, 1986). Indeed, defining land rights in this way helps to keep the focus

of the problem with Aboriginal-white relations firmly located with Aboriginal Australians, and absolves non-Aboriginal Australians from looking at themselves for possible reasons for existing problems.

More importantly, however, the white definition of land rights remains inadequate in comparison with the Aboriginal definition of land rights. False beliefs held within the non-Aboriginal community about Aboriginal culture and land use impede discourse and obstruct a clear understanding of Aboriginal needs and wishes about land. This is partly due to white assumptions and interpretations of what constitutes land use and ownership, as discussed previously. But it is also due to a reticence on the part of non-Aboriginal Australians to attempt some understanding of Aboriginal perceptions of the purpose and use of land.

Aboriginal land boundaries follow natural ecological patterns and remain unseen to Anglo-Europeans and, as such, do not comply with the Anglo-European concept of land ownership. Nevertheless, Aboriginal communities have rights and responsibilities to that particular land within their own boundary. A community's right to that land is expressed through the sacred rites of the community. Within Aboriginal Australian culture, land is therefore communally 'owned' (Lippmann, 1981).

While definable tracts of land identify a particular community, land is also the source of individual Aboriginal identity. At this individual level, each person has an intimate spiritual association with specific land which dates back to the Dreamtime and involves their past and present ancestors through the Dreaming. These associations also involve special rights and duties towards the land at the individual level, in addition to those at the communal level. The spiritual link between an Aborigine and the land also means that the country is inalienable. Contrary to non-Aboriginal attitudes to the land, within Aboriginal culture, land is not something to be bought, sold or traded. The Ernabella Children's Choir has expressed this relationship clearly in the Pitjantjatjara Land Rights Song:

Listen to us:  
Our country is full and beautiful.  
It is our grandfathers' country  
and our grandmothers' country  
from a long time ago.  
It is the sacred plan of the Dreamtime -  
Why do you never understand.

I always speak like this:  
don't take our country or we will die.  
How can you buy my grandfather?

Land was also the 'economic' base of Aboriginal Australian society before it was appropriated by non-Aboriginals, providing them with the means for their physical sustenance (Berndt, 1983). Unlike the distinct white Australian tendency to exploit and ecologically misuse land and its resources, Aboriginal Australians are concerned to maintain a harmonious ecological balance between the human, spiritual and physical aspects of the land. These divergent views of the land and its use have led Aboriginal people to conclude that the relationship of non-Aboriginal Australians with land and its resources is fundamentally destructive to both Aboriginal Australians and Australia itself. As Les Collins, an Aboriginal singer, has much more briefly but succinctly stated:

Two hundred hears of torture and hunger  
Drivin' people away from the land -  
A land full of beauty and wonder  
is being raped by the whiteman's brigand.

Clearly Aboriginal Australians have a very different perception of land from that of non-Aboriginal Australians - one which is intricately constructed through a complex fabric of personal, community, social, spiritual and economic threads. Aboriginal demands for land rights have therefore never been for individual ownership of land; the aim has always been to gain communal and inalienable rights (Middleton, 1977).

One of the thrusts of Aboriginal arguments about land rights is, therefore, to preserve land which remains occupied by traditionally-oriented groups, so that the fabric of that community's society may continue as undisturbed by white influence as possible. But many Aboriginal Australians are no longer able to live in a pre-contact mode of society, and arguments pertaining to them indicate another dimension of the Aboriginal perceptions of land rights. For these people, land is of central importance to the re-establishment of links with the land which have been broken over the past 200 years, as well as a means of reforging past independence, identity and dignity.

Many Aboriginal Australians have argued that the appropriation of their land has not only torn the very fabric of their society, but that this rending has led to most of the problems currently existing within Aboriginal communities and between Aboriginal and non-Aboriginal Australians. Strategies involving genocide, rape, child abduction and disease, for example, went hand-in-hand with

acts of appropriation of Aboriginal land throughout both the nineteenth and twentieth centuries (Reynolds, 1982; Gale, 1983). Not only has this meant the detribalisation, deskilling and dehumanisation of Aboriginal people, but it has meant that non-Aboriginal Australians are reluctant to face the fact that their forebears committed these acts and are thus essentially responsible for problems with Aboriginal-white relations today.

Woven through this pattern is the little recognition non-Aboriginal Australians have given to the Aboriginal perspective of land rights. It has indeed been much more convenient to continue to believe that Australian Aborigines have no culture and were nomadic wanderers with no sense of land ownership (Lippmann, 1981). Such false beliefs about Aboriginal culture are expressed within the political, economic, and cultural ideology of non-Aboriginal Australians as racism (Carne, 1980). Racism in Australia extends from the textbooks and classrooms of our schools through to employment and the white-constructed industrial relations system (Office of the Commissioner for Community Relations, 1979; Stevens, 1980; Folds, 1986). Racist attitudes and practices help to keep Aboriginal-white relations locked into a condition of Aboriginal oppression and white ignorance.

The ignorance and prejudice of non-Aboriginal Australians towards Aboriginal Australians has, in fact, lead to much misunderstanding about and has caused opposition to the issue of land rights itself (Graham, 1986 ). So has the fact that since 1788, the comparatively high standard of living of non-Aboriginal Australians has been based on the appropriation of Aboriginal land. A desire to keep appropriated Aboriginal land, together with the ideology and practice of racism, has informed many policies and practices designed by white Australia to solve "the Aboriginal problem". All of these have had white control of land as one of the fundamental issues. Policies of genocide, protection and dispersal made white control of land possible, while policies of assimilation and integration sought to maintain control of land already appropriated. The more recent policy of multiculturalism, of particular relevance to schools, seeks to do the same. By locating Aborigines with ethnic groups, the usurpation of their land is denied, Aboriginal uniqueness is trivialised, and their particular claims for social justice are more easily repudiated (Victorian Department of Education, 1986).

The history of Australia over the last 200 years is also, in part, the history of Aboriginal resistance to the appropriation of their land (Reynolds, 1982; Willmott, 1987). The historic

Aboriginal struggle for land rights does not only include the return of land, but emerges from and reflects the complete Aboriginal view of land. The land rights struggle is therefore essentially a struggle for compensation, cultural freedom and self-determination. Aboriginal communities who have set their own goals and are encouraged to implement them without interference are indeed establishing pre-contact oriented organisations and support networks, and are beginning to remedy some of the social problems for Aboriginal people which non-Aborigines began to create 200 years ago. Without land, or geographical and cultural space, such self-determination is inevitably limited. The largesse of Aboriginal individuals and communities is also demonstrated through their willingness to begin to seek resolutions to problems within Aboriginal-white relations; problems which have usually occurred as a consequence of Anglo-European cultural arrogance. Aboriginal moves to educate non-Aboriginal Australians about Aboriginal culture and their perceptions of Australian history is one of the most powerful strategies being used for this today.

Notwithstanding such efforts on the part of Aboriginal Australians, Land Rights Acts fail to fulfil the requirements for either compensation, cultural freedom or self-determination and thus impede those efforts currently being made. More specifically, Land Rights Acts fail to fulfil the following criteria:

- The financial provisions of the Act do not compensate Aborigines for the loss of their land;
- The Act does not guarantee the return of pre-contact territory or of sacred and significant sites;
- The Act does not recognise rights that flow from pre-contact Aboriginal ownership of land; for example, hunting, fishing and gathering activities are restricted; and
- The Act does not encourage the development of self-governing Aboriginal communities.

(Wilkie, 1985).

By defining land rights in an Anglo-European economic sense, State Governments clearly avoid the Aboriginal perspective on land rights and place many constraints on the effective establishment and operation of self-governing Aboriginal communities. By refusing to consider the cultural, economic and social needs of Aborigines as defined by Aboriginal Australians themselves, land rights quite understandably remains a major bone of contention in Aboriginal-white relations.

Aboriginal Australians have argued that a treaty included in the Australian Constitution is the best first step and the only long-term solution to Aboriginal-white problems. To date, this issue has not been fully addressed at either the State or Federal level and is a much wider issue than current State legislation on land rights allows for. Such a treaty would recognise that the Anglo-European colonisation of Australia was not a peaceful settlement of an empty continent and that there was armed resistance by Aboriginal Australians who did not, and still do not, accept the Anglo-European invasion as legitimate. It would also recognise that the land was stolen from Aboriginal Australians, that they have both a legal and moral right to their own land, and their right to self-determination. Compensation for damage done to their land and their culture would have to be another major negotiating point of any treaty. The signing of such a treaty would also be a formal admission that the British claim to Australia as "*terra nullius*" ('land belonging to no one') was not only historically incorrect but has been unjustly and continually upheld at law. It would also invalidate Britain's original claim to sovereignty and recognise that the indigenous population of Australia had, and has, its own cultural, social and legal rights based within a complex and sophisticated society (Human Rights Commission, 1986). In this context then, negotiations for the return of Aboriginal land under a Constitutional treaty would enable the conditions for compensation, cultural freedom and self-determination for Aboriginal Australians to be established for the first time in 200 years.

Recently, the Prime Minister of Australia has voiced concern about the need for a treaty, or "compact of understanding", between black and white Australia. Aboriginal Australian leaders and activists have stated that the Prime Minister's proposal seems to be a badly-concealed attempt to silence Aboriginal people and, more explicitly, to avoid the potential embarrassment Aboriginal Australians pose for the Bicentennial celebrations. Further, they have stated that, unless there were serious discussions about Aboriginal sovereignty and unless any treaty agreements were firmly based in the Constitution to prevent future governments altering or disposing of it, Hawke's treaty will fail to gain Aboriginal endorsement (*Sydney Morning Herald*, 3/9/87:1 and 4/9/87:2).

From 1788, the invasion and increased settlement of Anglo-Europeans has meant a corresponding unsettlement of Aboriginal Australians, to the extent that Aboriginal Australians are now outcasts in their own land. With a minimal stretch of the

imagination, it is easy to see why the Bicentennial celebrations are offensive to many of them. As Norm Newlin (1987) has so eloquently suggested:

If someone burnt down your home,  
murdered your family,  
raped the women as well.

Then put on a party  
and asked you to come.  
Would you be partners in this,

Well that's what happened in  
'88 - nearly two hundred years ago.  
And that party is not long off.

So don't sell our souls  
for the whiteman's gold  
Let him eat alone.

The provision of land rights within the Aboriginal definition of the term should thus be viewed as the first step in the bettering of relations between Aboriginal and non-Aboriginal Australians. A treaty to the absolute satisfaction of Australian Aboriginal communities would come very close to bridging the gap now existing in Aboriginal-white relations. An understanding by non-Aboriginal Australians of the issues involved would undeniably facilitate the closing of this gap. But unless non-Aboriginal Australians begin to address their own ignorance and racism, and the factors that reinforce it, the gap in Aboriginal-white relations will become even wider in 1988.

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