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Self-Determination as Self-Transformation

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TIM ROWSE, MAY 16 2014

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Let me begin with two propositions.

First, that Indigenous self-determination is both backward-looking and forward-looking; it is not only conservative and restorative, but also exploratory of progressive change. Self-determination necessitates a politics of cultural revision and adaptation in which Indigenous people cannot avoid debating among themselves what elements of their traditions they wish to preserve and what they would give up for the sake of adaptive innovation. Unavoidably, such debate among Indigenous people takes place in a context shaped by non-Indigenous political authorities and by global structures of economic opportunity and exploitation; self-determining Indigenous peoples have not chosen these contexts, nor can they ignore them.

Second, in each country where "Indigenous self-determination" is to be tried, its operational form will be determined by the geography and legal-political heritage of that country. Notwithstanding the discourse of global Indigenism (a useful discourse, but necessarily abstracted from place and time), there is no universal "Indigenous vision": aspirations are always emplaced and historically specific.

I want to illustrate these two propositions by telling a story about how Indigenous rights to land – surely a core feature of "self-determination" – have been configured in Australia.

Rights to land (and to sea) are both cherished by Indigenous peoples and problematic for them. In Australia, Indigenous landownership is extensive and increasing: in 2013, 0.715 million square kilometres was under native title (exclusive possession) and 0.682 million square kilometres was under native title (non-exclusive possession) – 18.2 per cent of the Australian land mass. The incidents of native title vary from land portion to land portion, and some titles fall short of the aspirations of the native titleholders. As well – and generally more satisfactory to the traditional owners – there are 0.981 million square kilometres (13 per cent of Australia) under various forms of "land rights." The Indigenous estate thus amounts to 31 per cent of the continent (2.379 million square kilometres), and it is growing because of a perpetual land acquisition fund (established in 1995) and because "native title" claims continue to be heard under statutory processes established in the 1990s. Indigenous Australians – at least, the minority of the Indigenous population living on these lands – are land-rich but income-poor. How does having such an estate contribute to their self-determination?

In Australia, there are no uncontentious answers to the post-colonial question: what should Indigenous people do with their territories (land and sea) once they have secured their rights to them?

That self-determination is a contentious process of innovation in land use is only implicit in the 2007*United Nations Declaration on the Rights of Indigenous Peoples* due its understandable emphasis on preserving and defending what European imperialism has threatened to destroy. Because Indigenous people have been dispossessed, there are Articles about securing land and sea rights, to protect the Indigenous estate as lawful property. Thus, Article 8 of the *Declaration* says that "States shall provide effective mechanisms for prevention of, and redress" for "(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources." Article 10 says that "Indigenous peoples shall not be forcibly removed from their lands or territories." Other Articles intend to secure cultural traditions, and several times the *Declaration* uses the word "revitalize" when referring to such cultural continuity (see Articles 11(1) and 13(1), for example).

Can practices and beliefs be "revitalized" without changing them? A politics of innovation and adaptation are implicit in the preamble:

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development *in accordance with their aspirations and needs*.

The italics are mine: these words refer to phenomena that are not static, but dynamic. Indigenous "aspirations and needs" are in the process of historical formation. Here are some other examples of the open-ended nature of "self-determination." Article 21 says that

Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

The phrase "other economic activities" points to a field of options that may not be "traditional." Article 22 says that

Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.

Such "training and retraining" implies cultural change, most importantly the acquisition of literacy. Article 18 is a reminder that change is to be guided by the international human rights regime of which "indigenous rights" are a subset. That is, when empowered Indigenous people employ each other in their companies and other organisations, such relationships should be governed by norms (that may be new to them) "established under international labour law and national labour legislation."

Colonised people have always adapted – more or less successfully and under varying degrees of coercion. In this respect, the era of "Indigenous rights to self-determination" is continuous with the colonial past. The difference that "Indigenous rights" (such as those stated in the *Declaration*) can make is that Indigenous people may now innovate and adapt with more resources – material, legal, political, cultural – than were at their disposal when the colonising vision of their future was limited to exterminating them or assimilating them. One of the most important of these new resources – rights to territory – is also among the more potent provocations to change, to reconsider what "tradition" is worth. Land and sea, once secured, become "resources" in the service of new aspirations, and when Australian governments have recognised and granted rights to land and sea, they have positioned Indigenous Australians as subjects of self-transformation. In the rest of this article, I will compare the nineteenth century and twentieth century record.

Agriculture in the Temperate Zone

At first, land was conceded to Aborigines on the condition that they use it in certain ways that were new to them. In the earliest attempt by British authorities to reconstitute the Aboriginal relationship to land, the Lieutenant-Governor of New South Wales, Lachlan Macquarie, on 4 May 1816, made a peace gesture. He offered land tenure as an incentive for Aboriginal people to lay down their arms and to comply with colonial law. They would be granted land as long as they would develop it as farms, with government support in the form of six months food supply, agricultural tools, seed, and clothing. The only Aborigines who could enjoy such a benefit, Macquarie made clear, were those "really inclined and fully resolved to become a settler" (Watson 1914: 143-144). By contemporary standards, we could not characterise Macquarie's conditional concession of land as the British Crown's recognition of an Indigenous "right" to land. There is too much manipulation in Macquarie's policy; his ambition was "social engineering," prescribing a way of life that neutralised resistance to occupation.

However, other policies flowed from the view – found in some nineteenth century writings by British colonists – that Aboriginal tribes resided on land that was their collective "property" (Keen 2010).[1] While British-Australian legal doctrine explicitly set aside Aborigines' customary notions of property as irrelevant, the idea remained influential that it would be humane – an act of grace and conscience by the Crown – to limit dispossession.[2] Nineteenth century colonial authority, under the influence of this idea, came up with two devices that must be included in a history of Indigenous land rights: the conditional pastoral lease and the reserve.

To regulate colonial occupation, British authorities created a tenure known as the pastoral lease. Prompted by the Colonial Office in London, the New South Wales governor, in April 1850, proclaimed that pastoral leases could set limitations on the pastoralists' rights. The competing interests that the government had in mind were those of miners and Aborigines. The Colonial Office made its intentions to safeguard Aboriginal interests clearer when setting up land legislation in Western Australia in 1850 and in South Australia in 1850 and 1851. In the resulting stream of pastoral tenure law and policy, lessees were obliged to allow Aborigines to roam their properties, getting food and water as they had long done. The way that Aboriginal interests were imagined in this legislative tradition was prescriptive, but, in contrast with Macquarie's policy, it confined Aborigines to the pre-colonial past. They could access waters, animals, and plants on pastoral leases only in ways that continued their hunting and gathering traditions: they could kill a kangaroo, but not a sheep (leaseholder's property); they could harvest pre-colonial flora, but not the leaseholders' plantings.

In fact, the government's prescriptive power again proved weak. Aborigines residing on their ancestral country under pastoral lease-hold became a cheap labour force for the wool and beef industries, increasingly dependent on rations – later monetised as wages – and on welfare benefits, paid in kind or as cash. This adapted and exploited Aboriginal economy allowed many to maintain associations with their ancestral estates until the 1960s. In northern and central Australia, such pastoral coexistence was Aborigines' most significant adjustment to colonial authority.

The other nineteenth century device for limiting dispossession was the "reserve." From the colonists' point of view, it was an act of charity to set aside certain land portions for Aboriginal residents. However, historical research has recovered the agency of the Aborigines. Historian Heather Goodall has described an Aboriginal "land rights campaign" in New South Wales in the final quarter of the nineteenth century. In the 1870s, and up to 1884, twenty-nine Aboriginal reserves were created, and Aboriginal initiative can be found in twenty-five of them. By 1895, another eighty-five reserves had been created in New South Wales, and in forty-seven of them Goodall has traced Aboriginal initiative:

Aborigines began to re-occupy their land. They "squatted" on small areas, built shelters, planted crops and then demanded that the government give them secure tenure… They wanted it, not just for economic reasons, but also to secure their access to areas that were within their traditional country… Aborigines were asking for full freehold and independent ownership, although they sometimes pointed out that they did not want the power to sell the land (Goodall 1988: 183).

Again, prescription accompanied recognition of an Aboriginal land interest. According to Goodall, these grantees "were told that the reserves would be secure as long as they continued to live there and farm the land" (Goodall 1988: 184). However, such prescription was, by now, less coercive and more aligned with the stated aspirations of

Aborigines, for the colonised people in the southern agricultural zones of Australia were now presenting themselves as farmers. At Coranderrk (a Victorian government settlement established in 1861), Maloga (a Christian mission in New South Wales founded in 1874), and Poonindie (a farming community established in 1851 and managed by the Anglican church in South Australia until 1895), Aboriginal people were developing skills in agriculture and re-establishing their community and their attachment to land as people who sowed crops and managed herds – for themselves and sometimes as labourers for neighbouring colonists. While this change was made necessary, undoubtedly, by the collapse of their hunting and gathering economy in the face of colonial occupation of their land, we should not assume that this circumstance weakened their capacity to find self-respect and security in farming. Their petitions to government, when their aspirations were not met, proclaim their newfound identity as (what Macquarie had called) "settlers" – industrious, Christian, and aspiring to self-support.

For example, on 5 September 1881, the Coranderrk community compared their current manager (Mr. Strickland) unfavourably with his predecessor (Mr. Green). Mr Strickland "has no idea of tilling the ground or making any improvements on the station… We are all sure if we had Mr. Green back the station would self-support itself" (Attwood and Markus 1999: 46).[3] When the government legislated restrictions on who could reside at Coranderrk in 1886, the community's response linked their freedom of movement and residence with their participation in the region's market for agricultural labour. That is, they wished for "freedom to go away shearing and harvesting, and to come home when we wish, and also to go for the good of our health when we need it" (Attwood and Markus 1999: 50).[4] At around the same time, the Moira and Ulupna people, a few hundred kilometres to the north of Coranderrk, petitioned the Governor of New South Wales for land "to cultivate and raise stock." "We more confidently ask this favour of a grant of land," the petition continued, "as our fellow natives in other colonies have proved capable of supporting themselves where suitable land has been reserved for them" (Attwood and Markus 1999: 51).[5] At Poonindie, residents were dismayed in 1894-5 to hear that their land was to be subdivided as lots for unemployed colonists. Their petition asked for other land as a substitute: "we propose to live on it and cultivate and work the land among ourselves. With this and what we can earn by shearing fishing and getting guano, we can support ourselves and our families" (Attwood and Markus 1999: 55).[6] These late nineteenth century petitions from Aboriginal Australia make it clear that Aborigines who survived the frontier killings adapted, within a couple of generations, to the constraints and opportunities of the imposed economic order – if only colonial authority would encourage them with land security.[7]

Twentieth Century Gains and Losses in Remote Australia

Limitation of dispossession continued to be a strand of Australian colonial policy in the twentieth century. As the occupying authorities spread into the less arable interior zones (arid desert and lightly forested) and northern maritime zones (tropical savannah with pockets of rainforest), it proved more difficult to make money from these regions, as they yielded neither gold nor wool (the export staples that had enriched the six Colonies of Australia hitherto) in significant quantities. As well, humanitarian influence on policy had strengthened a determination to delay or prevent, in "remote" Australia, the catastrophic collapse of Indigenous economies and populations that had disgraced the British-Australian record in the southern, temperate, and arable regions where the immigrant population concentrated. Large tracts were conceded to Aborigines' continuing occupation, creating an enormous "reserve" estate, watched over by a light sprinkling of missionaries and officials. By the time global human rights norms produced the concept of tribal right to reserves (as in ILO Convention 107 1957), there was a large quantity of land whose significance to Indigenous futures was open to debate.

The putative Aboriginal estate at the end of the 1970s – when three jurisdictions had already legislated land rights and debate in others was raging – was 0.719 million square kilometres, or 9.3 per cent of the Australian land mass. Nearly all of that land was in remote regions, within four jurisdictions: the Northern Territory (0.382 million). Western Australia (0.220 million), South Australia (0.088 million), and Queensland (0.029 million). Most of these areas had been set aside as reserves in the forty years between the end of World War One and the late 1950s.[8]

It is important to note that the creation of this massive "welfare" estate was one of two major strands of twentieth century policy towards Aborigines. The other was the comprehensive inclusion of the Aboriginal population in a welfare system that guaranteed them supervised material sustenance (if they were not employed). Such provision

was initially in kind – rations – but it was monetised between 1940 and 1975, as Aboriginal people were admitted, step-by-step, to full citizenship. Indigenous participants in the land rights debate had thus learned to value things in cash, and the prospective monetary value of once "worthless" reserve lands had increased as the continent had been mapped geologically. That miners now coveted the Indigenous estate provoked a politically effective mobilisation of the idea of land rights *against* mining, while awakening Indigenous perception of mining as an opportunity to escape poverty. The increasing immersion of Indigenous Australians in a culture of commercial valuation motivated, in part, their defence of the estate that had been conceded to them (Rowley 1972: 176). This perspective has not necessarily displaced their pre-colonial cosmology that links land and people in terms that the colonists recognised as "spiritual."

Sympathetic appraisal of Indigenous aspirations in the 1970s and 1980s captured this duality of Indigenous vision for their land. To offer but one example: "Almost all the Aboriginal submissions" received by Paul Seaman's 1984 inquiry into land rights in Western Australia, "reflect a strong anxiety to say whether or not granted land should be mined, but equally [they] do not oppose mining away from sacred sites, provided that its impact on their lives and lands can be controlled by them should they decide to permit exploration" (Seaman 1984: 38). Seaman appreciated that "Aboriginal people in nearly every part of the State are poor, that their organisations have pressing financial needs and that mining negotiations may be the only opportunity which they have to redress an almost complete lack of economic power" (Seaman 1984: 43).

Imagined Indigenous Futures

Thus, the imagined Indigenous futures have changed over the course of Australian history. In the land concessions of nineteenth century temperate Australia, they were expected either to participate in agriculture or to continue, somehow, hunting and gathering in the interstices of pastoral occupation; in the first half of the twentieth century, the benign vision was their indefinitely prolonged hunting and gathering in the remote regions, until Aborigines (somehow) gravitated to (some kind of) waged employment; in the period of "land rights" and "self-determination" (since the 1960s and in "remote" Australia), the most vigorously promoted Indigenous future has been some association with the mining industry: employment in it, licensing land to its use, for royalties, or even holding equity in it, for profit. Four other Indigenous "industries" have emerged (and whether and how each is compatible with mining is much debated): artistic production, for a domestic and global market; hosting tourists; land-management services to areas protected within Australia's vast terrestrial and marine "conservation estate"; and public administration. Some remote Indigenous Australians now participate in more than one of these.[9]

Recent changes in Australia's common law and statutes have vastly expanded the estate that grounds these five possible Indigenous economic adaptations. In June 1992, the High Court of Australia recognised "native title," ruling that it continued wherever lawful action by the state had not extinguished it.[10] A huge area of "unallocated Crown land" – mostly in Western Australia – suddenly became putative "native title" land. Governments, private resource corporations, and Indigenous leaders have spent the last twenty years adjusting their visions and behaviours to this radical remapping of Australian real estate, and I have summarised the quantitative results earlier in this essay.

Native title and "land rights" are encoded in statutes that solicit more than one kind of Indigenous self-representation. One route to rights in land encourages "claimants" to prove their unmitigated fidelity to pre-contact culture: their economic adaptations count against them, as the descendants of the would-be farmers of late nineteenth-century Victoria and New South Wales (the Yorta Yorta) found to their immense disappointment in a definitive Native Title judgment and High Court sequel in 1998-2002.[11] However, in 1998, another route to economically rewarding land security was opened by amendments to the 1993 *Native Title Act* that empowered those asserting "native title" to negotiate with others who would use their land, without having to submit to the kinds of tests of authenticity that frustrated the Yorta Yorta. David Martin, a consultant anthropologist, argues that this second avenue is "part of a repertoire of social technologies which facilitate a move for the Indigenous people concerned to a more individuated and 'modernist' identity" (Martin 2012: 357-358).

Indigenous strategies of adaptation began the moment that colonial authority disturbed their way of life. "Self-determination" refers to a new phase of adaptation, in which Indigenous people demand (and hopefully get) new

resources for self-transformation (more commonly known as "development"). What "development" "self-determination" will enable will vary according to the historical determinations and geographical features of the nation-states where it is attempted. After reviewing the successes and dilemmas of Indigenous mobilisation in the Americas, Karen Engle has warned of "the unpredictability of strategy – the inability of social movements ever to know that they are on the right long-term path – and the dangers of insisting that there is only one proper path" (Engle 2010: 274). Historical self-awareness of the paths taken in the past helps to minimise that danger, I suggest. When Australian governments awoke sufficiently to their colonial responsibilities to frame land rights and native title statutes that secured the large and growing Indigenous estate, they tended to recognise and legitimise the "spiritual" significance of "country" to Indigenous people, and Indigenous Australians certainly welcomed – as long overdue – this public affirmation of their ancestral culture as the basis of a pre-colonial sovereign right. In this respect they took part in a global trend in which Indigenous rights were framed, by Indigenous and non-Indigenous actors, as cultural rights. As Engle has argued, "increased cultural rights have sometimes lead [sic] to decreased opportunities for autonomy and development" (Engle 2010: 2). The question of culture is better posed, I have argued in this article, if we understand Indigenous self-determination as a self-transforming and open-ended project of political economy.

Notes

[1] As Keen points out, there were also observers, influenced by John Locke, who denied that the Aboriginal relationship to land could be called "owning," because these nomadic hunters and gatherers did not improve the land by mixing their labour with the soil.

[2] That Aboriginal custom (at least in matters of proprietorship in land) is a source of Australian law was not recognised until 1992, when the High Court of Australia repudiated the doctrine "terra nullius" and proclaimed the concept "native title."

[3] A petition was signed by 15 named persons on 5 September.

[4] As reported in the *Herald* (Melbourne) on 21 September 1886.

[5] "Maloga Petition 1881," which had 42 signatories.

[6] "Poonindie Petition 2 February 1894."

[7] That the colonial governments of Victoria and New South Wales neglected this opportunity is the theme of Barwick (1972).

[8] Peterson (1981: 2) defines "Aboriginal land" to include freehold, leasehold, reserves, and missions' portions.

[9] For a celebration of mining's opportunities see Langton (2013) and Langton and Webster (2012). For a survey of the tensions among the options facing the owners of the Indigenous estate, see Altman (2012).

[10] *Mabo v. Queensland no.2* (1992) 1975 CLR 1.

[11] *Members of the Yorta Yorta Aboriginal Community v. Victoria and Others* (2002) 214 CLR 422.

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