

John Hyde

ABORIGINAL LAND RIGHTS*Republished
30-3-84*

The argument over Aboriginal land rights is one of the saddest political passages in recent years. The issue has added to racial tensions which were never far below the surface. Among whites I have heard more wild accusation and hatred by both sides than on any issue since the Whitlam dismissal.

The issue and the Aborigines are exploited on the one hand by ideologues wedded to proving the idyllic existence of noble savages or obstructing capitalist mining companies, and on the other hand by racial bigots and politicians trying to capitalise on bigotry. In the middle are men and women who would exhibit goodwill if information were less coloured by hatred and opportunism.

There could be ~~some~~ ground within which to strike bargains. Aborigines, miners and pastoralists don't want exactly the same things so it is possible for all sides to get most of what they want by horse trading. Like any bargaining, the threat of getting nothing will be the assurance of goodwill and compromise.

It should be recognised by now that several principle spokesmen don't want an optimal solution - their interest is in the fight itself. To some extent people must ~~may~~ be judged by the fruit they bear.

My purpose is not to design the optimal solution to the impasse. That can only be done by those with direct interests - each conceding those points which for them are least important and holding to those which are most important. What I want to do is to suggest the room for compromise, and question attitudes which harm a gentle people and important industries.

Here goes: My first proposition is that Aborigines are a conquered people who feel aggrieved and that conquerors who are generous to those whom they have defeated save themselves a lot of trouble. The Abs. deserve more respect than is usually accorded them by Whites. Had we not stopped the Japanese on the Kokoda Trail and in the Coral Sea, I can't say how I would have behaved but I like to think that I would have been a reluctant collaborator.

72-2
Aborigines lived in genetic isolation for thousands of years and it would be surprising if their genetic distinction did not go beyond skin colour and nose shape to include aptitudes. This does not make them superior to Caucasians or inferior; just different. The relevance of this point is that it may be very difficult for them to slot into a society which is Caucasian to its boot straps. Their failure to cope with European ways argues for experimentation with other ways.

Although Europeans of our great-grandparents' generation may have treated Aborigines badly, particularly when assessed by today's standards, that is not a reason for us to feel guilty or pay reparations to different Aborigines. The case for granting land to Aborigines rests on the grounds of humanity and practicality, not history.

Australian governments grant special rights to many classes of people; all at some cost to the rest of the community. The aged and invalids have pensions, the unemployed and students have benefits, uncompetitive industries get subsidies and tariffs, trade unionists are immune from certain legal proceedings, and so far women have not been conscripted in time of military crisis. Although life would be fairer without many of these laws, we should recognise that most laws discriminate between classes of people. To discriminate by race is no less reasonable than sex, age, health, unionisation, employment status or industry. At least in the case of land rights discrimination transfers benefits fairly consistently from strong to weak.

Australian law already recognises many types of property right including several differing land titles. Australian society is capable of dealing with one or several more. However it cannot cope well with uncertain titles.

Since the granting of land rights to Northern Territory Aborigines, even on non-land-right crown land mineral exploration has almost stopped.

Were it not to be resumed, it is likely that the loss to all Australians, including most Aborigines who don't have land, would be great. There seem to be two problems. One is the fear that an Aboriginal claim will emerge wherever a mineral strike is made, and the other is the extent of the opportunity for delaying tactics. Interest rates of 14 percent will kill even quite good prospects if several years are interposed between outlays and first returns.

In that it leaves too much in the air, Northern Territory land right law is not ideal. One person's property rights inevitably affect others' rights but as Territory Aborigines can claim crown land by reference to the vague criterion of traditional community affiliation nobody can know where he stands. Geographical limits should be set. If later parliaments wish to change them they can, paying full compensation to the losing party.

Finally there is the nature of the titles themselves. A form of easement giving Aborigines access, living rights, and the right to make certain rules concerning matters like alcohol and wildlife, will give Aborigines what they need from vast tracts of land. At the other extreme, for clearly defined sacred sites perpetual ownership vested in a class of people is reasonable; in other cases freehold; in yet others crown lease and so on.

Mineral rights can rest either with the Aborigines or the Crown, and the right can be full or qualified, but it must be clear. (I find it hard to believe that in the long run the Abs. will be harder to get along with than governments.) Consider the way Bass Strait oil has been taxed, the retrospective loss of Hancock Prospecting's iron ore find, or present treatment of uranium deposits.

Aboriginal land rights are being extended to most States. I think they should be, but on a more workable basis than in the Northern Territory. It is time the expression "unacceptable" was dropped in favour of some hard headed horse trading.