

## **EMERGING ENVIRONMENTAL ISSUES FOR INDIGENOUS PEOPLES IN NORTHERN AUSTRALIA**

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### **1. Introduction**

The quest for environmental justice for Australian indigenous people requires, among other things, a critical examination of historical assumptions, which shape arguments concerning the role of Aboriginal people and their traditional environmental knowledge in the management of their cultural and physical landscapes. This paper surveys some recent literature and indigenous conservation developments that provide evidence of the re-implication of Aboriginal people in the management of tropical northern Australia.

For 205 years the legal fiction of *terra nullius* rendered native title, Aboriginal Land Law And Aboriginal Persons As Land Owners Under That Law, invisible at Australian law, the fiction only rejected in the High Court decision in the Mabo case [See Bibliography, Commentary by Richard H Bartlett and the full text of the decision in Mabo and others v State of Queensland, see also Gibbs, Sir H., former CJ of Australia in his Foreword to Mabo, A Judicial Revolution: “Brennan, in the leading Judgment, found however, that *terra nullius* is not a concept of the common law, and it had never been referred to in any case prior to Mabo as justifying a denial of native title. All members of the High Court concluded that, in respect of the analogous doctrine of territory acquired by settlement, Australia irrespective of the original presence of the Aboriginal people was a territory acquired by settlement. Although indigenous people hailed the Mabo decision as the rejection of the concept of *terra nullius*,” Bartlett

(1993) points out, “that the concept is essentially irrelevant to native title at common law, and that the concept is not rejected in any sense of denying Australian sovereignty. The real question before the court, and the question the court decided, was whether or not native title was part of the common law of a settled territory such as Australia”.

This notion of an “empty continent” assumed that there was no one to conquer. We were vanquished, yet not vanquished. Now that *terra nullius* has been dismissed from the paradigm of colonial relations in the Mabo case, indigenous people are expectant that other relations are possible, relations, which will write indigenous people fully into the modern history of the state. Indigenous people, by the stroke of a judicial pen, reappeared as persons with law and proprietary—or at least possessor rights—rights.] I suggest that Aboriginal people and their land management traditions have also been rendered invisible in their post-colonial landscapes, not by only by legal but also by “science fictions”.

One “science fiction” concerns the widely held assumption that the Northern Aboriginal and Torres Strait Islander terrestrial, and marine domains should be categorized as “wilderness” on the basis that no economic development or introduction of technological infrastructure has occurred in these areas. In categorizing Aboriginal land as “wilderness,” environmental planners and scholars target these areas as eligible for inclusion into the Reserve system, or “a national wilderness system, which gives legislative protection to wilderness areas”. There is a widely held assumption that there is not, and will not be, any development on Aboriginal land, and that the Aboriginal owners do not desire development on their land, or that their wishes are irrelevant.

Recent attempts to redefine the term “wilderness” indicate shifts in scientific and policy thinking towards explicitly recognizing the patchwork of multiple land uses [“Multiple use” is a management principle now being challenged by the ecosystem model, which is based on the principle that all parts of the ecosystem, including humans, non-human species, and natural process, such as fire, are inter-related. Lawrence contrasts the multiple use model with the ecosystem model, as used in the UN Biosphere program, the former being inward or static, self-maintaining, and enclosed, while the latter is open and accounts for external pressures] within the Aboriginal domain, both customary and non-customary, and the value of integrating scientific, and indigenous systems of knowledge for responsible land management regimes. This is a welcome development as will be shown in Section 5 of this paper where I discuss important collaborative work between researchers and Aboriginal landowners, which demonstrates the potential benefits of fully acknowledging Aboriginal responsibilities for, and traditional environmental knowledge of, particular landscapes.

The past pervades the present, in the Aboriginal domain, as elsewhere, and thus our growing knowledge of pre-settlement Aboriginal life from a range of disciplines, such as archaeology, paleo-ecology, and plant biology, should inform our responses to the environment, which we have inherited from that history. The re-implication of Aboriginal people in landscape is an unavoidable conclusion of that work. But how Aboriginal people are re-implicated is a critical and contentious issue in the literature on the use of fire as a tool in the management and use of land, ecosystems and fauna and flora. A vigorous, and as yet unresolved, debate, concerning the impact of early and

modern Aboriginal populations on fauna and flora has ensued.

Another “science fiction” is the fundamental error in many of the arguments concerning Aboriginal use of fire. That error is the conflation of early human populations of the Pleistocene period and present day Aboriginal populations in arguments concerning the impact of fire on the Australian landscape. Proponents of the thesis that “Aboriginal” people were responsible for the extinction of the prehistoric mega fauna and the destruction of the rainforests rely on highly contentious evidence. Yet, despite this, some writers rely on this “science fiction” in attempting to argue further that present-day Aboriginal populations, now less than one per cent of the national population after the frontier period, have had more impact on their environments than the settler populations, and that these environments can be manipulated into a more desirable state, purportedly for conservation purposes, by suppressing Aboriginal land uses, and land management practices, such as burning.

Indigenous interests in terrestrial and marine environments are substantial and complex in northern Australia. Thus critical analysis of the fundamental ideas, which inform environmental planning and policy, is essential, so that indigenous people, as the permanently resident stakeholders, can fulfill their responsibilities and aspirations in the management of their traditional domain. [I use the term “stakeholders” in the ordinary sense as used in planning processes, and have qualified its use here by referring to Aboriginal stakeholders as permanently resident in a traditional domain to distinguish them from the largely itinerant non-indigenous population in the area covered by this paper. Noni Sharpe (1997), writing about Aboriginal concerns about this term in the Gulf of Carpentaria region, makes the point “Whatever the appropriate term, in affirming primary right to, and responsibility for, country, Aboriginal people are rejecting the notion that they are just one ‘user group’ among a range of stakeholders in the area”. This is a view widely held by Aboriginal people.] This is discussed with reference to the predicted Aboriginal population explosion, and the intensifying pressure on Aboriginal people to develop commercial enterprises, including pastoral leases, on their land.

Three brief case studies from Arnhem Land in the Northern Territory are discussed with reference to the work of Aboriginal traditional landowners and Aboriginal organizations, involved in local land, and seascape management, and developing approaches to wildlife utilization and management. They provide examples of the contribution, and relevance of indigenous knowledge—and resource management knowledge and practices—to current Australian bio-diversity conservation objectives.

## **2. Science Fictions**

### **2.1. Wilderness**

Until recently, most popular usage of the term “wilderness” in Australia has had the effect of denying the imprint of millennia of Aboriginal impacts on, and relationships with, species and ecologies in Australian environmental history. The term, while perhaps not wittingly used to infer that this continent was devoid of human habitation and governance as meant by the pre-Mabo legal fiction of *terra nullius*. There was

Aboriginal protestation at the official use of this term as thousands of hectares of Aboriginal land were arbitrarily classified under the IUCN category of “Wilderness Area” by officials and academics on the other side of the continent and across the seas. I wrote, for instance, “Just as *terra nullius* was a lie, so was this European fantasy of wilderness. There is no wilderness, but there are cultural landscapes, those of the environmentalists who depict a theological version of nature in posters, and those of Aboriginal people, present and past, whose relationships with the environment shaped even the reproductive mechanisms of forests”.

One astonishing example of the arbitrary classification of Aboriginal land for conservation purposes is set out in Hall’s, *From Wasteland To World Heritage*, (see Bibliography) in which he shows all Aboriginal land, including all of Arnhem Land, as “minor wilderness”. He also places, incorrectly, the Tanami Desert in Northwest Queensland.

While Government persists in using the term “wilderness,” [The 1997–98 Commonwealth Budget defines Wilderness and Wild Rivers as: “Wilderness areas are large areas in which ecological processes continue with minimal change caused by modern development. Wild rivers are those whose biological, hydrological, and geomorphological processes have been little disturbed by modern development. Indigenous custodianship and customary practices have been, and in many places continue to be, significant factors in creating what non-indigenous people refer to as wilderness and wild areas”. The National Forest Policy Statement defines Wilderness as: “Land that, together with its plant and animal communities, is in a state that has not been substantially modified by, and is remote from, the influences of European settlement or is capable of being restored to such a state; is of sufficient size to make its maintenance in such a state feasible; and is capable of providing opportunities for solitude and self-reliant recreation”.] The Australian Heritage Commission has responded to this issue, discussed at length at a workshop of indigenous experts, by adopting a policy reaffirming that its use of the term “wilderness”:

- Acknowledges and respects Aboriginal and Torres Strait Islander peoples’ rights to maintain and strengthen their distinctive spiritual and cultural relationships with the land, sea, and other resources, which they have owned or otherwise occupied or used.
- Acknowledge and respect the rights of indigenous peoples to uphold their responsibilities to future generations.
- Acknowledges that many places considered part of the “natural environment” by non-indigenous Australians are of cultural and spiritual significance to Aboriginal, and Torres Strait Islander communities. [Policy Statement on “Wilderness” and Indigenous Issues, adopted by the Australian Heritage Commission at its meeting AHC 120 on 20 September 1996.]

Just as long-settled assumptions about pre-existing native title rights have been upturned by the discovery at common law of native title by the High Court, so too have notions of “the natural environment” been fundamentally altered by the re-implication of

indigenous people in their own ancient habitats. This may seem self-evident. But the trails of “science fictions,” which arise from the *terra nullius* fiction are insidious and sometimes subtle.

It is impossible, in reviewing developments in this area, to avoid the subtext of the history of racialised scientific endeavor in Australia and the persistence of certain ideas to do with the concept of “race”. In the last two hundred years, urbanization, agriculture, pastoralism, and other development have worked radical changes to the distinctively Australian environment. These changes were based on the conquest of Aboriginal peoples on the frontiers. The fate of Aboriginal peoples, construed as “the vanishing race” in this gruesome history, is a core idea in visions of the Australian past.

From earliest colonial times, ideas and notions about Aboriginal people have been the most consistent and prized of Australia’s intellectual exports. They were fundamental in the development of sociological and anthropological ideas emanating from Europe, with the publication of, for instance, Durkheim’s earliest work [See Durkheim, from *The Elementary Forms* (see Bibliography): “Conceptual thought is coeval with humanity itself. There is no period in history when men have lived in chronic confusion and contradiction”. This idea, amongst others, was his most profound contribution to the developing school of cultural relativism which rejected the ideas of the British ethnologists and Levy-Bruhl, who posited a “savage mind”] in 1897.

Other key thinkers also used reports from Australia about Aborigines to develop sociological notions that are still part of the repertoire of analytical tools of the social sciences. For example, collections of Aboriginal skeletal material, whole bodies, and body parts (still preserved in formaldehyde) in various institutions in Australia, and elsewhere, are a grisly reminder of the importance of “race” theories in the history of science.

[Since Crick and Watson’s ground-breaking work on DNA, the rapid accumulation of evidence concerning the genetic variation in and between human populations has led to the recognition that there are likely to be more similarities between people of different groups, traditionally called “races,” than between the members of these “races”. The evidence from the disciplines working in genetic research has exposed the criteria for the division of the world’s population into “races”—skin, hair, and eye color, and a few other physiological characteristics, which were associated, without any scientific evidence, with social characteristics—as a minuscule range of the thousands of characteristics, which are encoded in the gene files of humanity. The “racial” characteristics are so limited in comparison to all of the identified genetically inherited features and their actual, rather than perceived distribution, as to be considered superficial clines or statistically likely pools of a tiny number of adaptive responses to the environment. The distribution of human blood types, for instance, bears no similarity to, or coincidence with, the perceived distribution of “races”. Nor do patterns of distribution of genetically inherited diseases. The proposition is also advanced that Aborigines should be grateful to pre-historians for pushing back the earliest date of Aboriginal occupation of the continent to 60 000 years, because they have provided verifiable evidence supporting moral claims to land rights. The contra argument to this weak proposition is the legal one advanced both by the Australian Law Reform

Commission in its reference on the recognition of Aboriginal customary law: Traditions do not have to be ancient, but merely acceded to by the members of the group concerned, to qualify as a tradition. And in any case, what is the difference for the ordinary imagination between 20 000 years and 60 000 years in making moral claims based on antiquity]?

These collections of Australian human remains, ancient and recent, are imbued with imperial history. [The principal scientific aim in the quest for Aboriginal body parts was to complete the cataloguing of all species and human types in an evolutionary teleology. In an interview with Professor Gareth Jones and Robyn Harris, published in an article the journal *Nature* last March, the sordid “scientific” background of this practice emerged: “Their remains frequently ended up in the hands of collectors, often nineteenth century scientists, keen to prove their notions of the relative advancement of different “races”. The obsession with fitting people into racial categories led to a huge increase in the collection of skulls, especially those of Australian Aborigines, who were thought to be an evolutionary link between humans and apes. The desecration of graves was commonplace and Aboriginal people were murdered in this cause”.]

The remains of deceased Aboriginal persons in these collections continue to inspire a key metaphor of Western scientific culture: the triumphalist framing of European thought at the pinnacle of an evolutionist hierarchy of human endeavor. Consequently, it is not difficult to understand why Aboriginal knowledge systems and Aboriginal practices, which affect plant, and animal communities on land or in water are ignored, trivialized, or significantly, dismissed in the expanding legal possession and control of the “natural world” by the full range of Australian legal jurisdictions. These aspects of the history of ideas about Aborigines also explain why Aboriginal land can be arbitrarily categorized as “wilderness”: there is a continuing colonial assumption this land is not really inhabited and governed, or at least not competently. The popularly held view of Aboriginal society in the remote areas of Australia as a fossilized remnant of the Paleolithic is a powerful idea in the history of policy and administration of Aboriginal affairs, and currently holds sway in crucial government circles. Publicly accessible information, which contradicts this easy colonial assumption, despite its widespread publication, has not as yet dissuaded policy-makers of the error of treating Aboriginal land, for instance, as *tabula rasa*, for the purposes of sustainable ecological management.

## **2.2. The Nature of Aboriginal Land**

Indigenous interests in terrestrial and marine environments are substantial. In the Northern Territory alone 41.62 per cent of indigenous people under various titles and agreements under the *Aboriginal Land Rights (NT) Act 1976*, with another 10.79 per cent of land the subject of outstanding land claims. [NT Department of Lands, Planning, and Environment, Aboriginal Land Branch, *Summary Of Claims Lodged Under The Aboriginal Rights (NT) Act 22 September 1997.*] Almost 85 per cent of the coastline to the low water mark is under Aboriginal title. The principal form of title is Aboriginal freehold under the *Aboriginal Land Rights Act (NT) 1976*. It is mistaken to regard these regions as simply “reserve” land in the sense of the term meant by conservation classification systems.

It is commonly believed, and even proclaimed on tourist road maps, that Aboriginal land is “reserve” land. This is not so. Most of it, including much of Kakadu National Park is held in inalienable freehold title by an Aboriginal Land Trust, under the terms of the *Aboriginal Land Rights (Northern Territory) Act 1976*. Such a title falls within the range of titles that imply a concept of private property. They are not public lands, except to the extent that the Kakadu National Park Lease Agreement (between the Commonwealth and the Northern Land Council on behalf of the traditional owners), for example, permits public use.

It is true that areas such as Arnhem Land, in which my three case studies (below) are located, were, until 1980, Aboriginal Reserves, or “land reserved by the Crown for the use of Aborigines,” the Arnhem Land Reserve being gazetted in 1931. These Aboriginal reserves were created under the policy of protecting Aborigines from the corrupting influences of opium, sexual promiscuity and other features of frontier life, including the rampant violence against Aborigines. However, with the proclamation of the *Aboriginal Land Rights (Northern Territory) Act 1976*, all Aboriginal Reserves were transferred by gazettal to Aboriginal Land Trusts established under that Act. These Trusts hold the land on behalf of the Aboriginal traditional owners and for their benefit. The land is deeded to benefit Aboriginal people entitled by Aboriginal tradition to its use or occupation. Aboriginal people may pursue, on that land, if they wish, traditional lives including, amongst other things, the observance and administration of Aboriginal laws applicable to that area.

In this context, then, of special legislative and administrative measures recognizing customary land tenure systems in the recent history of the Northern Territory, and in other jurisdictions in northern Australia, it is important to understand the impediments to the development of useful, and appropriate environmental policy and strategies in the Aboriginal domain. Such an impediment is the persuasive, but false, conceptual framework of oppositions by which indigenous relationships to the environment, and to natural resources, are perceived and analyzed. For instance, in relation to the distinction made between Reserve and non-Reserve areas in environmental planning and reporting, despite the abundance of evidence to the contrary, some experts persist in categorizing indigenous land interests as within the Reserve domain; and non-indigenous land interests as within the non-Reserve domain. There is a widely held assumption that the northern Aboriginal and Torres Strait Islander terrestrial and marine domains should be categorized as “wilderness” on the basis of a false assumption that no economic development or introduction of technological infrastructure has occurred in these areas.

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### **Biographical Sketch**

**Marcia Langton**, an anthropologist, is one of Australia's leading authorities on contemporary social issues in Aboriginal affairs. She has been appointed Foundation Professor of Australian Indigenous Studies at the University of Melbourne. She has many years' experience as an anthropologist working in indigenous affairs with land councils, the Queensland government, commissions and universities. She has been a member of the Council for Aboriginal Reconciliation, serving on the Legal and Cultural Issues Sub-Committee, Director of the Centre for Indigenous Natural and Cultural Resource Management and has acted as a consultant to the Northern Land Council and the Australian Film Commission. Her work in anthropology and the advocacy of Aboriginal rights was recognized in 1993 when she was made a Member of the Order of Australia. Her current teaching commitment in the School of Anthropology includes three undergraduate Geography subjects: Place and Possession, Native Title and Garma Fieldtrip, and an interdisciplinary postgraduate subject: Cultural Resource Management.

Langton has published extensively on Aboriginal affairs issues including land, resource and social impact issues, indigenous dispute processing, policing and substance abuse, gender, identity processing, art, film and cultural studies. Marcia Langton's major titles include: *Aborigines, Land and Land Rights* (edited with Nicolas Peterson, 1983); *Burning Questions: Emerging Environmental Issues for Indigenous Peoples in Northern Australia* (1998); *The Little Red, Yellow and Black (and Green and Blue and White) Book: a Short Guide to Indigenous Australia* (co-authored with Bill Jonas, 1994); *Valuing Cultures: Recognizing Indigenous Cultures as a Valued Part of Australian Heritage* (1994); and her wisely acclaimed *Well, I Heard it on the Radio and I Saw it on the Television* (1993). Her film activities include: *Jardiwarmpa, a Warlpiri Fire* (with Ned Lander and Rachel Perkins); and *Night Cries, a Rural Tragedy* (with Tracey Moffatt and Penny McDonald).