Citizenship in Australian indigenous politics

—— between assimilation and self-determination

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Abstract

Since the late 1990s, there has been renewed interest in the concept of citizenship as it applies to minorities, driven largely by the human rights revolution, the increased mobility of the age of globalization, and the consequent perceived weakening of the nation-state. This essay examines the historical and contemporary strategic use of citizenship-related concepts in the indigenous struggle for rights in Australia. It begins by reconstructing the history of Australian settlement from the perspective of indigenous struggles for rights, focusing especially on the ambiguity of the policy of assimilation, which functioned both as a means of justifying colonial appropriation of the Australian continent and as a means of providing indigenous peoples with a path to Australian citizenship. Examining claims to specific indigenous rights, it argues that indigenous citizenship rights, and particularly land rights, established after years of struggle, are now in the process of being eroded through government attempts to encourage more individualist approaches to citizenship.

Keywords : Australia, citizenship, indigenous rights, land, colonialism

1. Introduction —— Citizenship and indigenous citizens

In the modern nation-state system, the ethical importance of abstract principles such as equality and freedom is virtually universally accepted. But even though almost all will admit to the importance of these ideas, these qualities have never been equally distributed among populations. One major reason for this has been that the *complete* enjoyment of equalities and freedoms in the real world has been guaranteed by nation-states only to *full* citizens, of whom states required loyalty and service in return. And full citizenship, whether in ancient Athens or in revolutionary Paris, has tended to be granted in ways that reflect existing structural

inequalities. Thus in the case of the French Revolution, for example, the 'Universal Declaration of the Rights of Man and the Citizen' was quickly re-interpreted with a stress on the rights of *men*. Actually unequal gender relations saw the citizenship rights of women circumscribed, as were indeed those of children and foreigners too. The translation of the abstract idea of equality into reality has invariably been accompanied by the traducing, to some degree, of the original ideal. Nonetheless, the importance of abstract principles is demonstrated by the modern history of minority struggles in modern nation-states, whether of women or of ethnic, racial or of sexual minorities, which records how those excluded from full citizenship in nation-state formations have set about realizing the principle of equality.

Any examination of the history of such struggles for citizenship rights reveals that there is a constant debate over the means and the ends of equality. Should minority group members aim to gain the same rights and obligations as members of majority groups through some form of assimilation program in which they attempt to become just like the majority? Or should their minority status instead be claimed as grounds for the allocation of special privileges and dispensations to relieve the effects of institutionalized inequality? How much difference can be maintained within the framework of liberal states, in which citizenship rights, in principle, are supposed to be the same for all citizens?[2)]

Seyla Benhabib suggests that citizenship is often taken to consist of three integral elements: a collective identity of some bounded political entity, privileges of political membership such as self-government and participation in decision-making, and social rights and claims. Looking at the rights and benefits of citizenship in more detail, Benhabib details firstly civil rights: to life, liberty, property, freedom of conscience, freedom to contract, freedom of marriage and so forth. In the political domain, rights include self-determination, the rights to vote and to be elected to office, the rights to free speech, association, and conscience, etc. The principal social rights include for example those to unionize, to health, to work, to pensions, housing, and education.[3)] To present Benhabib's proposals in a slightly different format, citizenship of a particular political entity confers the right to participate in how that entity is governed. In order to ensure that people's capacity to participate is maximized and that certain people or groups are not excluded, it is necessary to guarantee minimum rights with regard to education, housing, work, as well as to ensure that people enjoy a broad range of freedoms. At first glance, it appears clear that it would be a good thing for everybody to enjoy these rights, in equal amounts. Indeed, that everybody should receive the same social goods and services seems, at

first glance, to be a good non-discriminatory principle upon which to operate.

To return to the real world, however, the guarantee of formal equality and the same treatment and services to all, while contributing on a symbolic level to the redressing of existing inequalities and oppressions, as well as on a practical level by encouraging movements for social change, is clearly insufficient, as shown by the cases of women, indigenous peoples, migrants, and so on. The institution of some simple and unvariegated equality within competitive systems tends to allow those actually possessing the greatest amount of power to consolidate their gains, and thus reinforce actually existing inequalities, for they have the greatest capacity to act. Thus in political philosophy, it is commonly accepted that special cases will require special treatment in the interests of justice.

Pragmatics, as Nancy Fraser has noted, states that different marginalized people need different things. Some, such as the working poor, may need economic redistribution, while others, such as stigmatized sexual minorities, may need cultural recognition, still others, for example women, may need a combination of these, together with political empowerment. There is no single model, she argues, that fits all groups.[4] As Iris Marion Young has noted with reference to the case of Native American peoples, justice for them required the grant of special rights in recognition of special needs. In particular, to achieve full social participation and inclusion, while they had specific political, legal and collective rights as tribe members, they also possessed universal civil and political rights that were identical to those of other US citizens. Turning this point into a more general statement about minority rights, Young argues that a combination of general and particular rights is necessary for many oppressed and disadvantaged groups to enjoy equality.[5] Extending such ideas to indigenous groups, Will Kymlicka has proposed with regard to political equality that they require more self-government, as well as more representation in national and regional parliaments. Towards increasing their economic situation, he indicates a need for more land rights, as well as more consultation over land use programs.[6]

Overall, the advanced liberal states of today are moving towards the construction of special legal regimes for indigenous peoples within the framework of existing states. Banting *et alia* have noted with regard to Canada, Australia, New Zealand, Scandinavia, Greenland and the United States that, 'all of these countries accept, at least in principle, the idea that indigenous peoples will exist into the indefinite future as distinct societies within the larger country, and that they must have the land claims, cultural rights (often including recognition of

customary law), and self-government rights needed to sustain themselves as distinct societies."[7] This is clearly a major turnaround from policies of indiscriminate murder, which were still practiced in remote Australia, for example, less than a century ago, or even from the forcible assimilation practices that continued at least up until the 1970s in most countries. And yet it is perhaps a less progressive development in practice than it might appear.

In the context of the Australian debate on citizenship and indigenous peoples, there is general academic agreement on the point that such groups require variegated citizenship that is partly universal, in that its content is identical to that of other Australians, and yet also particular, in that such citizenship must also be considerate of the specific history and culture of indigenous Australians, as well as of the institutional and structural disadvantages that they face. In brief, the main particular citizenship rights that are claimed refer to land rights, cultural development and indigenous law, while the main universal citizenship rights that are claimed refer to human rights, education, development, health, political participation, life and so on.

In this paper, I review the history of Aboriginal citizenship rights, focusing on the transition from a universalist conception of citizenship according to which indigenous peoples needed to assimilate in order to gain rights, to a more variegated model of citizenship, in which indigenous people held the same rights as other Australians, and also possessed a range of particular indigenous rights. Reconstructing this history, my aim is to draw attention to how recent indigenous policy is attempting to bring about a merger between indigenous citizenship rights and universal citizenship rights as they pertain to land. For whereas indigenous land title has been granted as both *inalienable* and as *communal* by Australian courts in recognition of customary ownership and usage patterns, the recent Howard government, the succeeding Rudd government, and also prominent figures in indigenous politics are pressuring for a shift from communal to *individual* land ownership, in order to encourage more entrepreneurship and economic development. This situation gives rise to a dilemma: on the one hand, individualized land ownership would mean the success of assimilation, at least with regard to indigenous land practices, and probably with regard to customary law and other land-based practices too. And yet it is hardly possible to deny what is a universal citizenship right of all Australians, namely, to own land as individuals, in order to ensure the continuation of specific indigenous land-related practices, without acting in a highly illiberal fashion.

2. Post-settlement indigenous — settler relations

One starting point for narrating the history of Britain's colonization of Australia is 1788, when the First Fleet arrived in what became known as Sydney Harbor carrying some of the excess population made redundant by technological developments associated with industrial capitalism — what Bauman has termed 'wasted people'[8] — together with prison guards to manage them. This motley crew 'settled' Australia, according to the subsequently dominant narrative of Australian history, claiming first all of eastern Australia and then later the whole continent for the British Crown.

According to international law of the time, Australia could simply have been claimed as British based on the fact that Britain had invaded the continent and conquered its people. In this case, the indigenous population would then have become British subjects, with all the rights to land, for example, that this status entailed. Another option was to gain land through treaties with the indigenous inhabitants, but the early colonizers deemed this to be impracticable, for the arriving colonialists considered that the local Aborigines showed no signs of having an organized government, were not settled in any one place, and were thus insufficiently civilized to be capable of drawing up treaties or giving their consent to land transfers.[9] Consequently, a fateful third option was taken, with the British settlers determining that in legal terms, Australia was a *terra nullius,* a land that prior to their arrival had not belonged to anyone. This notion was largely based on the representations to British parliament made by Joseph Banks, who on his brief acquaintance with Australia gained in James Cook's voyage to Australia in 1770, had thought that the population of Aboriginal people was very small and coastal. In his view, the continent was virtually a *terra nullius,* and what few residents there were would quickly cede the ground to the colonizers.[10] Based on the suggestions of Banks, the British had made the land theirs through the principle of discovery. They simply took over the land, and where their invasion met with indigenous protest, the protestors were driven off with violence.[11] Thereafter, British claims to the land were cemented through settlement and development.[12]

That this was a legal fiction was no secret. The British Colonial Office and the colonizers in Australia engaged in constant communication concerning the 'native presence'. The Colonial Office tended to call for indigenous consent to colonization as well as their protection from the depredations of settlers, while the authorities in Australia showed no inclination to deal with

settler violence against the natives, which increased steadily in scale and intensity as the colonial population expanded. As though determined to make the claim of *terra nullius* true by eradicating the indigenous population altogether, the settlers took the best land, killed the men, and sexually exploited the young women. European illnesses against which the indigenous population had no immunity took a large toll, assisted by malnourishment related to the destruction of traditional livelihood systems.[13)]

A few humanitarians in Australia made protests to London, but their actions had consequences mainly in London. In 1837, the House of Commons Select Committee on Aborigines noted that the colonizers had engaged in 'many deeds of murder and violence', and the Secretary of State for the Colonies wrote to the Governor of New South Wales that 'all natives must be considered as subjects of the Queen', and to afford them protection consonant with that position.[14)] The following year in 1838, the Aborigines Protection Society was established in London, while in 1842, Earl Grey, the British Secretary of State, instructed Australian Governors to spend up to fifteen percent of land-revenue 'for the benefit, civilization and protection of the Aborigines', as well as to set aside reserves for them. In 1846 Grey again directed the authorities in Australia to set aside land for the Aborigines, and to allow the coexistence of pastoral leases with traditional hunting and gathering practices, stating that pastoral leases 'are not intended to deprive the natives of their former right to hunt over these districts, or to wander over them in search of sustenance . . except over land actually cultivated or fenced in for that purpose'.[15)] But such instructions concerning the need for benevolent treatment of the original inhabitants were but distant rumblings in the frontier regions. In Australian settler society through the nineteenth century, the idea that the development of Australia was well worth the destruction of Aboriginal society was dominant, and subsequent to the publication of Darwin's *The origin of the species* in 1859, the idea of evolution was used to legitimize colonization in Australia, and to excuse extermination of the indigenous peoples. Colonization was defended as an example of social evolution, of survival of the fittest.[16)]

Towards the mid-nineteenth century, immigration from Britain increased rapidly, with free migrants joining the almost 150,000 convicts who had been transported to Australia by 1852. In that year, the white population was something over 400,000, and rose to 1.1 million by 1860 due to the effects of the gold rushes of the 1850s. Aboriginal numbers at this time fell to around 180,000, in comparison to the estimated population of around 500,000 at the time of colonization.[17)] *Terra nullius* was almost becoming a reality, and public policy was re-designed

so as to achieve this end completely. During the late-nineteenth century, indigenous people determined by the authorities to be of 'pure blood' were increasingly segregated on government-controlled reserves, where it was envisaged that they would die out over the course of a few generations as a result of their alleged genetic inferiority.[18] As for the increasingly numerous 'half-castes', as they were termed in the official terminology, they were to be separated from their families and communities, to be placed either in church or government institutions that would raise them as white people, or placed with white families that would perform the same function.

This policy was begun in 1881 in Victoria.[19] The Victorian policy of assimilation, note Chesterman and Galligan, in which half-castes were accorded treatment as 'free and equal citizens of the colony', in stark contrast to their full-blood counterparts, 'was an important precursor to national citizenship practices'[20], as the other states were soon to adopt similar measures (Queensland in 1897, New South Wales in 1910, etc.). Colonial policy, in other words, operated to grant citizenship rights only to half-castes seen to be capable of assimilating, while full-bloods were seen to be doomed, and were targeted for segregation. After federation, the policy was little changed, and assimilation policies aimed at half-castes and segregation policies aimed at full-bloods continued to be endorsed as humane practice well into the middle of the twentieth century, even after anthropological work especially of the 1930s that focused on indigenous Australians had thoroughly discredited such notions of racial hierarchy.

3. Assimilation as progress

In 1937, the indigenous affairs bureaucracy, at the Canberra Conference of Chief Protectors and Aboriginal Protection Boards, affirmed that 'the destiny of the natives of aboriginal origin, but not of the full blood, lies in their ultimate absorption by the people of the Commonwealth.'[21] To this end the authorities continued to strive, removing children from parents, and segregating those perceived as doomed full bloods in reserves. As J. McEwen, the Commonwealth Minister charged with Aboriginal policy stated in 1939, the aim of Aboriginal policy was to achieve 'the raising of their status so as to entitle them by right and by qualification to the ordinary rights of citizenship.' In his view, this was to take generations.[22] If we take such ideas at face value, then assimilation, even as it aimed for the eradication of Aboriginal difference, still constituted a form of progress, albeit one that was limited to those perceived as being of mixed descent.

In the 1950s, the status of full-blood Aboriginal people took a turn for the better, as Aboriginal policy came under the responsibility of Paul Hasluck, who was the Commonwealth Minister for Territories from 1951 to 1963. Hasluck held that indigenous Australians were citizens from birth, as according to Australian law. However, not all enjoyed full citizenship rights, at least, not yet, because some were still to become fully capable of exercising these rights. However, such restrictions needed to be continually monitored, and lifted as indigenous persons gained the ability to live as other Australians did. Basically, Hasluck 'did not see indigenous Australians as disabled by virtue of their race or their genes; rather, their "incapacities" were cultural and historical and were therefore open to correction by education. In his view, some indigenous Australians acquired more quickly than others the capacities to conduct their lives without special regulations.'[23] In the background of this shift in policy, we can locate global changes regarding the universal disapproval directed at the racist tenets of Nazism, as well as the rise of decolonization. For these reasons, overt racism was no longer a policy option for Australia. There was no longer an option to keep full-blooded Aboriginal people outside of Australian society; the only solution that the government perceived was to absorb surviving indigenous families and individuals, whether of mixed descent or so-called full-bloods, into 'the Australian way of life'.

The colonial violence of assimilation policy has been comprehensively critiqued. That is, assimilation envisaged that Aboriginal people would gradually assimilate as individuals. This process entailed that they would exit the Aboriginal groups in which they had grown up, and through education and work in Australian society, be liberated from traditional structures and practices and be incorporated into the national Australian community. While this did provide a direct path to citizenship rights, this path envisaged the extinction of Australian aboriginal groups *per se*. Assimilation was at once a means for Aboriginal people to improve their socio-economic and political positions, and also for Australian settler society to resolve the 'Aboriginal issue' for once and for all via the disappearance of Australian Aborigines as a distinct group.

Recognizing this colonial intent to obscure historical violence through assimilation policy, it still needs to be recognized that assimilation did allow Aborigines to gain some benefits, even as it denied particular indigenous rights to land, for example, and involved the continuation of the policy of removing mixed blood children from their families for adoption into white families or their raising as white in state institutions. The major benefit was that assimilation policy

required that policies that discriminated against Aboriginal peoples on racial grounds be eliminated, or be limited by sunset clauses.[24] Assimilation was to lead to full citizenship rights for Aborigines, albeit in the undetermined future.

The Commonwealth and State ministers who constituted the Native Welfare Conference summed up this policy shift in a statement entitled *'The policy of assimilation'*, of January 1961:

> 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. Thus, any special measures taken for aborigines and part-aborigines are regarded as temporary measures not based on colour but intended to meet their need for special care and assistance to protect them from any ill effects of sudden change and to assist them to make the transition from one stage to another in such a way as will be favourable to their future social, economic and political advancement.[25]

Thus assimilation was to be a measure against discrimination and towards the full inclusion of indigenous peoples into the Australian mainstream. Undermining racial determinism and shifting the locus of difference onto morals, lifestyle, culture and so on that were amenable to change, assimilation, 'understood as an assault on discrimination, was a popular and progressive cause.'[26] Admittedly, the onus for change was put on the minority. But such official pronouncements did reveal a political will to develop indigenous capacities such that the grant of full citizenship rights could be made.

During the 1960s, however, the Conference adapted its viewpoint, and in an important shift, declared in 1965 that Aborigines 'will choose' to attain a similar manner and standard of living as other Australians. This relaxation of policy in the 1960s, suggests Broome, was influenced greatly by international trends such as the movement against South African apartheid policy, as well as the decolonization movement supported by the United Nations.[27] Henceforth, the dissolving of indigenous society into the mainstream would be less unilaterally driven; implicitly, there was to be more negotiation concerning how assimilation policy would be conducted.

4. Early separatism and the international context

The indigenous assimilation policy unfolded alongside various movements to grant Aboriginal peoples more rights. These were led both by whites and by indigenous peoples, and some early proposals are notable for their radical nature. In a 1927 petition to the federal government, a certain Colonel J.C. Genders, a committee member of the Aborigines' Friends' Association of South Australia, which had been founded in 1858, made a proposal concerning the future of indigenous people. In his view, Arnhem Land in the far north of Australia should be turned into a state reserved for Aboriginal people. If this first experiment succeeded, then other Aboriginal states might also be created where traditional lifestyles still survived. Territory should be granted also to the detribalized Aborigines alienated from their traditional lands, he stated. Aboriginal peoples, Genders argued, needed to have self-government within these proposed states, and also special representation in parliament. In this program for the resolution of the Aboriginal issue, indigenous peoples were to be incorporated into the federal system of Australia *with their own state*. In a manner somewhat reminiscent of the Wilsonian principle that peoples had the right to self-determination, they were to enjoy self-rule, presumably to develop in directions of their own choosing. Failing to obtain AFA backing for his proposal, Genders had established the Aborigines Protection League of South Australia in 1925, and presented the plan to the government as coming from this organization. At the time, it gained some support from the Aboriginal Advancement Association, as well as from the anthropologist and politician Herbert Basedow.[28)]

The Communist Party of Australia put forward similar ideas. Roughly in line with the position of the Communist International on colonized peoples, the CPA announced a 14 point program calling for the abolition of forced indigenous labour, equal wages for all, the abolition of the Aboriginal Protection Boards that ran the assimilation and segregation programs, and 'the restoration to Aborigines of central, northern and north-west Australia with the rights of independent republics; and the development of Aboriginal culture.'[29)]

These ideas put forth by Genders and the CPA, let us note, echoed the earlier writings of George Augustus Robinson in the mid-nineteenth century. Robinson, who served as Chief Protector of Aborigines in Victoria during the 1830s and 1840s, had seen Aborigines as a nation who owned the land that the settlers had taken over, and believed that the original owners should be given 'a reasonable share' in their former country.[30)] His ideas, however, were to be

of little consequential influence, as was the case of the proposals of Genders and the Communist Party of Australia almost a century later.

All the same, it seems clear that global developments of the 1910s and 1920s were having a direct bearing on the domestic debate concerning indigenous peoples. Australia was a founding member of the League of Nations as well as the International Labour Organization, and under the provisions of Article 23b of the League of Nations Charter, it was bound to engage in the 'just treatment of the native inhabitants of territories under their control'. While perhaps the Australian indigenous population was not exactly what the article had in mind, clearly the analogy was not difficult to see. Similarly, Article 22 of the Charter stipulated that member states had a responsibility for the wellbeing and development of colonized and other protected people. This, despite the legal fiction of *terra nullius* upon which Australian settlement was founded, could clearly be applied to the case of the indigenous population.

Further, Australia ratified the League of Nations Convention Against Slavery in 1926, and the ILO Convention Against Forced Labour in 1930. Given that native peoples continued to be massacred in rural areas, and often were forced to work for scanty rations with no pay, these international agreements meant that the issue of Australia's treatment of indigenous people became one that concerned its international obligations, and also its desired self-representation as an enlightened and civilized democratic state.[31] Evidently, these international norms reinforced existing domestic liberal doubt concerning the very propriety of Australian 'settlement', and brought some to suggest that the best practicable solution to the existing problem, given that the mass departure of the settler society seemed out of the question, was to accord indigenous people their own homeland, as per the then highly influential Wilsonian principles of self-determination for peoples, either in a federal structure joined with the other states, or in the form of independent aboriginal republics.

Programs to set aside large tracts of land to become an Aboriginal state or an Aboriginal republic, never found any political traction. While Australian governments might support the idea that peoples *overseas* had a right to self-determination, they never countenanced this idea domestically. Indeed, part of the rationale for assimilation was to make the claims of settler society to the Australian continent irrefutable. If there were no more Aborigines as a distinct people, but only Aborigines who had been assimilated into Australian society, then the dubious legal and moral foundations of the Australian state would be stabilized. Even liberal and progressive Australians in favour of Aboriginal citizenship tended to consider the territorial

integrity of Australia sacred; the best future, for them, was for Aborigines to become just like them, through assimilation. This remained the government's response to the changing international environment that called for Aboriginal policy to be reformed until the 1970s.

5. Indigenous rights movements

Indigenous movements calling for full citizenship rights, and for the implementation of social uplift programs to that end, were also gaining in strength during the 1920s and 1930s. Their goals were to some extent consonant with the aims of the official post-1950s assimilation program. As Attwood and Markus have noted, such organizations tended to be modernist in their orientation, called for more education and economic opportunities and increased participation in politics, and did not foresee a future outside of Australian society. Importantly, however, they disagreed with the means that the government was using to achieve its policy goals, and soon enough, they began taking the position that Aboriginal difference, far from being a stigma that they needed to eliminate, was something that Aborigines should be proud of, and which they should strive maintain into the future.[32)]

In the state of Victoria, William Cooper set up the Australian Aborigines League in 1932 to call for reforms in Aboriginal policy. His organization called for indigenous people to be accorded representation in federal parliament, as well as for the establishment of a ministry to deal with indigenous affairs, and also of indigenous advisory bodies at state level. Cooper subsequently worked with William Ferguson in New South Wales to re-establish the Aborigines Progressive Association. Originally formed in Sydney in 1924, Galligan and Roberts suggest that this organization was 'possibly inspired by the advancement movement in the United States which, from the turn of the century had aimed at full acceptance of blacks by encouraging them to become exemplary citizens, fully assimilated into mainstream society.'[33)]

While the first incarnation of this organization had been disbanded in 1927 due to police pressure, it re-formed in the 1930s, and aimed for the acquisition of full citizenship rights by indigenous peoples through the attainment of white norms. On Australia Day of 1938 (the 26th of January), which marked the 150th anniversary of colonization, the APA organized The Day of Mourning protest, declaring that a century and a half after the seizure of their country, it was time to ensure that the original inhabitants were able to enjoy the equality, responsibility and quality of being Australian citizens.[34)] As the protest meeting's resolution stated, the gathered Aboriginal peoples 'protest against the callous treatment of our people by the white man

during the past 150 years, and we appeal to the Australian nation of today to make new laws for the education and care of Aborigines, and we ask for a new policy which will raise our people to full citizen status and equality within the community.'[35]

In the same year, William Ferguson combined with Cecil Patten to publish an article entitled 'Aborigines claim citizen's rights!' in *The Publicist*. Here, they claimed that the major difference between whites and aborigines was the poor treatment of the latter by the former, even though the latter had equal capacities for citizenship. In their words, 'the typical Aboriginal or half-caste, born and bred in the bush, is just as good a citizen, and just as good an Australian as anybody else. [...] We ask for equal education, equal opportunity, equal wages, equal rights to possess property, or to be our own masters — in two words: *equal citizenship*!'[36] Thus Aboriginal movements too, were calling for incorporation into Australian society, although they clearly envisaged this as being a process quite different from the government's assimilation policy.

Incidentally, it was not the case that indigenous people held no citizenship rights at all at this time. It is a feature of Australian indigenous affairs that rights were accorded piecemeal, according to one's status as an officially assimilated Aborigine or a tribal Aborigine, as well as according to the state that one resided in. Thus Victorian Aboriginal men could vote already in 1856, at least in theory, while there were no laws that barred Victorian Aboriginal women from voting either, after adult Victorian women gained the franchise in 1908. However, being in an institution disqualified one from voting rights — this tended to eliminate the voting rights of a large number of 'half-castes' who were institutionalized under the protection and assimilation policies — and many people simply were unaware of their right to vote. Chesterman and Galligan note that even most Victorian politicians of the time believed that Aborigines were barred from voting, so it is little wonder that most Aborigines did not think nor try to vote.[37]

At the time of Federation in 1901, indigenous citizens technically were able to have voting rights not just in Victoria, but also in New South Wales, South Australia and Tasmania. Even in the less progressive states of Western Australia and Queensland, indigenous people holding over 100 pounds worth of property had the right to vote. However, due to discriminatory legislation put forward after Federation during deliberations on the Commonwealth Franchise Act of 1902, universal suffrage was granted to all adults over the age of 21 except for 'aboriginal natives'.[38] The basis for this denial was a condition in the Constitution (Section 25)

that, respecting states' rights, stated that people barred from voting in any state of the Federation were barred also from the Commonwealth franchise. Western Australia and Queensland, where there lived considerable numbers of Aboriginal people, had state laws denying Aborigines the franchise reportedly because of fears about how the comparatively greater numbers of Aborigines in those states could one day see whites outnumbered.[39]

It was against the lack of participation in formal politics, as well as the exclusion of Aboriginal peoples from social welfare, their lack of educational opportunities, bad health conditions, and white society's discriminatory treatment that the Aboriginal rights movement of the post-war era campaigned, and gradually, or perhaps it is more accurate to say grudgingly, their demands were met. Voting restrictions that limited the Aboriginal franchise in elections in Queensland, Western Australia, the Northern Territory and the Commonwealth were not fully lifted until the 1960s, although certain groups were granted the vote earlier. For example, after the Second World War, returned Aboriginal servicemen were granted the right to vote in return for their service, although few were able to take advantage of this right due to lack of knowledge about this legislation. Also, as part of its assimilation policy, the New South Wales government, as did other state governments, provided 'deserving' and 'superior' indigenous people with the possibility of applying for Exemption Certificates that gave the holder exemptions from all the limitations on indigenous peoples, although for the most part these were called 'dog tags' or 'beer tickets'[40] and widely disdained by the target population.[41]

All the same, through the 1940s and 1950s, federal policy concerning indigenous Australians was gradually made less exclusive. The relaxation of restrictions on Aboriginal people was greatly advanced by the fact that during the Second World War, many Aboriginal people had worked for the Australian military and thereafter used that contribution as a basis for claiming citizenship.[42] In terms of the right to social welfare, partly in recognition of wartime service, the Commonwealth Child Endowment was granted to settled Aboriginal parents not dependent on government support in 1941, and this measure was extended to residents of government and mission reserves in 1942. In the same year, those Aborigines not covered by the Aboriginal Acts, which is to say those who held Exemption Certificates, won the right to receive old age pensions, which were made universally available in 1959.[43] All differences in the provision of social welfare between indigenous and other Australians were eliminated in 1966, except for unemployment benefits. Indigenous peoples living in outback areas were excluded from receiving unemployment benefits as a matter of course. It was the view of the

federal government that such persons were not unemployed so much as outside the labour market. Only in the mid-1970s was this exclusionary policy eliminated and indigenous Australians in remote areas granted the right to receive unemployment benefits.[44]

6. Land rights as special indigenous rights

By the late 1950s, Aboriginal organizations were not just calling for full citizenship rights; they also claimed the right to remain a distinct people. Leaders began to talk about integration rather than assimilation, and about maintaining Aboriginal difference into the future.[45] Assimilation, to some degree, was necessary to participate in politics and acquire citizenship rights. But increasingly, 'Aborigines were not prepared to equate citizenship with the loss of cultural identity and with the abandonment of ethnic attachments.'[46] For example, the Australian Aborigines' League that had been involved in the Day of Mourning protest committed itself in 1957 to fighting for Aboriginal group survival, and for pride in their customs and culture.[47] Such calls were central to the land rights movement, which more and more was asserting specific Aboriginal rights to land, as opposed to the former emphasis on gaining for Aborigines the same citizenship rights as all other Australians. As Attwood and Markus comment, 'the primary focus of Aboriginal politics began to shift away from the idea of rights for Aborigines as Australian citizens to that of *Aboriginal* rights, the rights of Aborigines as the *Aboriginal* peoples of this continent.'[48]

An example of the way in which citizenship claims morphed into land rights claims can be seen in the case of the Gurindji people's protest movement of the late 1960s. In 1966, the Gurindji people working on Wave Hill station in the Northern Territory began a strike for equal pay. Aboriginal people had made such claims around the country since at least 1946, when protests had resulted in a major increase in indigenous salaries being granted in 1949. But the situation on many stations was still one of massive exploitation. Aborigines were usually poorly paid and often housed in atrocious conditions. The Gurindji strikers gradually extended the scope of their claims to include the return of their land, and ultimately, the government returned 26 square kilometers of the Wave Hill station (out of over 15,000 square kilometers) to them, while the station's owner, Lord Vestey, returned a further ninety square kilometers. The Prime Minister Gough Whitlam handed over a further 2,500 square kilometers of land in 1975, and that land, under the provisions of the Aboriginal Land Rights Act of 1976, was made inalienable freehold land.[49]

The increasing importance placed on Aboriginal land rights gradually united the Aboriginal movements. In 1972, young Aboriginal activists set up a 'Tent Embassy' on the lawns in front of Parliament House in Canberra, demanding titles to reserve and Crown land, as well as six billion Australian dollars and a percentage of Australia's Gross Domestic Product. Their emergence marked the rise of a pan-Aboriginal identity, as well as a shift towards more direct forms of protest against dispossession. In partial response to such claims, the Australian Labour Party government led by Gough Whitlam that came to power in 1972 set up an inquiry into Aboriginal land rights under Justice A.E. Woodward in 1973, although its purview was limited to the Northern Territory. Woodward's interim report of 1973 proposed the establishment of Aboriginal Land Councils 'to promote and represent the land claims of the various communities' of the Northern Territory, while his second report in 1974 stated that Aborigines had a right to land and also to financial support to use as they saw fit. He proposed that Aborigines be granted freehold title over reserve land, and that an Aboriginal Land Fund be established. As for mining on Aboriginal land, he suggested that this be allowed over Aboriginal objections 'if the national interest required it.'

The Whitlam government drew up legislation based on Woodward's findings, and after its dismissal by the Governor-general John Kerr, the Fraser Liberal government subsequently passed the Aboriginal Land Rights Act (Northern Territory, 1976).[50] This Act provided for existing reserves, which covered about 15% of the Northern Territory, to be registered as inalienable freehold land held in trust for Aboriginal people, and also set up a process for indigenous people to lay claim to unalienated crown land and Aboriginal-owned land. Other states implemented similar grants of land rights, with New South Wales, for example, providing for reserve land to be reclassified as indigenous owned freehold land, and also allocating 7.5% of state land taxes for fifteen years to buy land for dispossessed Aboriginal people. This fund amounted to between 400 and 500 million Australian dollars by 1998.[51] At the federal level, after the Mabo judgment discussed below, Paul Keating's Labour government set up a land purchase fund through the 1994 Indigenous Land Corporation Act, which was allocated 1.5 billion Australian dollars over 10 years to buy land.[52]

As of 2006, around 44% of the Northern Territory was Aboriginal land.[53] Of the Australian continent as a whole, while some large land claims are still pending, it is estimated that around 16% of the land area is owned, managed or controlled by indigenous Australians, with some two-thirds of this land being 'desert', in terms of climate, and the rest being tropical coastline

or island territory.[54] Australian state and federal governments of the 1980s and 1990s, both Labour and Liberal, have as a whole continued on with the trend to grant land rights to Aboriginal peoples still living on their traditional lands, as well as to endow land purchase funds whose function is to acquire land for the dispossessed with no possibility of returning to ancestral domains. This process was greatly advanced by two legal cases of the 1990s that found in favour of Aboriginal claims that indigenous land rights had survived colonization.

7. The requirement of indigenous authenticity

According to the Mabo and Wik High Court judgments of 1992 and 1996, indigenous groups could gain land rights on condition that they demonstrated, to the satisfaction of the courts, genealogical ties with the original owners, and also proved that they continued to maintain customary law and traditional practices. The Mabo decision of 1992 found by a six to one majority that the Meriam people of Murray Island formed a permanent community, with social and political organization, who had continuously and exclusively enjoyed possession of the island. Whereas the Crown, in the High Court's opinion, had gained sovereignty in 1879, the Meriam People's land rights had survived, and were protected by the common law.[55] As for the Wik judgment, it found that native title could coexist with pastoral leases where the land was never farmed, or was wild and neglected.[56] However, in both judgments, Aboriginal land rights remained subordinate to white settler land rights, and were only granted on the basis that the courts had been presented with proof that the peoples concerned had maintained their traditional customs and law into the present.

Whether this condition is reasonable, given that over two centuries the settler society set about destroying the indigenous world through dispossession, massacre, and assimilation policies, is questionable. Furthermore, certain aspects of indigenous customary law, such as genital modifications and child brides, as well as retributive punishments for bodily harm, have been considered legally repugnant and banned. Indeed, the High Court has set a dual condition for recognition with regard to tradition, in that it has to have been maintained, and also be legally non-repugnant. As Elizabeth Povinelli has pointed out, this condition needs to be critiqued on the grounds that it does not apply to British common law derived Australian law, but only to indigenous law. For the former is not considered to become invalid or unbinding when it changes, whereas indigenous law, according to this formulation, loses its validity or reality when it changes to adapt to new circumstances.[57]

This requirement, clearly, is quite different from, say, the liberalism of Will Kymlicka, who proposes in the Canadian context that First Nation marriage and kinship practices would have to be updated so as to assure the primacy of individual freedom, with minority rights permissible only if they are consistent with the liberal core principles of individual freedom and autonomy. It is even more removed from the liberalism of Seyla Benhabib, who proposes that public policy should allow culture preservation only if culture members are empowered to 'appropriate, enrich, and even subvert the terms of their own cultures as they may decide', as well as to choose to join or leave as they will.[58] What it does is to state that indigenous people must follow their own indigenous laws, but not make them or change them if land rights are to be recognized. This traditionalist model, as Kymlicka notes, traps indigenous people into a static model of the past. Only by presenting their laws as authentic laws identical to those of the past do they gain the right to follow them in the present. With regard to this position, Behrendt notes: 'Despite a diverse cultural make-up, Indigenous people in contemporary Australian society are often perceived in one of two ways: as relics of the past; or, especially those of less than "full blood", as inauthentic and devoid of culture.'[59] Taking issue with this traditionalist stance, Will Kymlicka has urged Aboriginal peoples' right to renovate customary law according to democratic procedures should be recognized in the interests of greater indigenous autonomy.[60]

The urgency of supporting Aboriginal attempts to live within their law and culture is highlighted by Patrick Dodson, who writes: 'With all our social problems the answer is not to attack the foundations of our community by putting the individual before the community.' Even as Aborigines will meet their obligations as citizens, he argues, Aborigines need to be accommodated as Aborigines.[61] This notion is one that resonates with the argument associated with Kymlicka, who finds a liberal individual basis for group rights in the fact that individual members of groups may suffer if their group does not enjoy collective rights. Thus for example indigenous groups require more land and self-government because these things are necessary for the individual wellbeing of members of those groups. Without them, individual members lose access to their culture that makes individual being meaningful to them, and this would detract from their wellbeing.[62]

Indigenous people posit a range of reasons for the Australian state to recognize special indigenous rights such as land rights. Among them is the *sui generis* claim, as made by Noel Pearson, which states that Aboriginal peoples were the first Australians whose unique position

gives them special rights. According to Pearson, it is on this basis of being the first Australians that indigenous peoples have specific citizenship rights concerning language and land and so forth that are not available to other Australians.[63] Recent Aboriginal claims have at their core notions of special rights as Aboriginal citizens —— for example to self-government or self-management, land and compensation for dispossession, protection of their cultural heritage, and the recognition of customary law —— as well as equal citizenship rights as Australian citizens in the form of guaranteed international human rights norms, freedom from discrimination, and so on.[64]

It goes without saying that these special Aboriginal citizenship rights have been the targets of constant and unwavering attacks, on liberal universalist grounds. They are not without popular support. The former One Nation party leader Pauline Hanson gained considerable popularity through her insistence that equality meant that everyone should receive the same treatment. Her argument, which ignored the point that not everyone starts out from a similar position in life, held that the principle of equality dictated that immigrants and Aborigines should not get special policy treatment. Furthermore, adding a nationalist tinge to her argument, she also claimed that such special treatment was divisive, as it encouraged ethnic separatism.[65] Her arguments, although commonly dismissed as racist, require serious consideration. If the liberal state is based on equal rights, then it seems to me that special rights can be granted not on the grounds of past history or unextinguished sovereignty, but in order to realize a more substantial equality. However, the establishment of particular indigenous rights seems to go beyond this, in creating differences in rights into the foreseeable future. If one takes a strong multiculturalist position, there may be no problem with the parallel existence within a single state formation of two regimes of rights. But as events subsequent to the granting of Aboriginal land rights make clear, the Australian state does not concur with such a strong multiculturalism.

8. Coda: the individualization of Native Title

A peculiarity of Australian recognition of Aboriginal land rights is that such rights have been granted in a form that is designed to replicate the communal land ownership patterns that are assumed to have prevailed in pre-colonial times. For example, land grants in the Northern Territory are generally given as inalienable communal title, which is to say firstly that the land becomes Aboriginal in perpetuity so long as the owners do not voluntarily cede it to the Crown,

and secondly that the land does not belong to any particular individual but to the group in question.

Considered as a way of ensuring group maintenance into the future, this particular mode of possession may not be problematic. However, the fact that titles are communal has long been criticized. From a position based on universalistic conceptions of citizenship, given that white people have a choice of individual or communal title, it has been argued that not allowing indigenous people the same choice is akin to imposing a lesser degree of land rights upon them.

Apart from this liberal progressive position that is critical of *only* allowing communal title, there is another more individual-oriented position, which holds that communal title is an impediment to individual initiative and development, not to mention the development of the mining industry. The federal government took this position in the 1990s, when the Howard Liberal government proposed allowing Aboriginal-owned land to be sold in parcels to boost home-ownership and to encourage self-reliance. As Prime Minister Howard said in 2005, 'I believe there is a case for reviewing the whole issue of Aboriginal land title, in the sense of looking towards more private recognition . . . all Australians should aspire to owning their own home and having their own business.' Howard's project to privatize Aboriginal land began in 1997, when his government commissioned John Reeves Q.C. to produce a report into indigenous affairs. Reeves' report, tabled in 1998, 'recommended ending inalienable Aboriginal land rights in the Northern Territory, and limiting the decision-making powers of traditional owners.' While at that time the government had insufficient seats in the Senate to implement these recommendations, Howard came back to the topic in 2005, when the Liberal-National coalition held power in the Senate as well as in the House of Representatives.

The following year in 2006, the government proposed and passed the Aboriginal Land Rights (Northern Territory) Amendment Bill, which made it easier for mining companies to get permission to develop mines on Aboriginal land. The amendment also introduced low-interest loans to allow the purchase of township land, both by Aboriginal and by non-Aboriginal people, and so allowed private ownership of Aboriginal land.[66] This measure has important ramifications for land use in the Northern Territory's Aboriginal townships.

Previously, local Aboriginal Land Councils communally owned land, on which somewhere between 500 and 1000 dwellings were constructed each year over the last 30 years using government funds. Local indigenous communities managed these residences. 'Indigenous community organizations have been encouraged by government to charge income-related rents for

these dwellings with the aim of covering asset maintenance and other recurrent costs."[67] In practice, few indigenous people paid market rates for their homes, but as a result of this policy shift, indigenous people will in future have to rent homes on the open market, or purchase homes under the conditions provided for by the Amendment. In short, the Howard government pushed Aboriginal peoples to adopt a more individual lifestyle centered on the private ownership of land and housing. This policy was greatly advanced by dramatic events in 2007.

On the 21st of July 2007, Prime Minister John Howard's Liberal ── National coalition government announced that it was to send military and police forces into indigenous communities in the Northern Territory. This was, the government claimed, a necessary response to what it termed an epidemic of child sexual abuse, as detailed by the 2007 report of the Northern Territory Inquiry into the Protection of Aboriginal Children from Sexual Abuse chaired by Patricia Anderson and Rex Wild Q.C. entitled *Ampe Akelyernemane meke mekarle,* or *Little children are sacred* in English.[68] The ensuing 'Northern Territory National Emergency Response' used the findings of the Inquiry to implement policy reforms targeting indigenous welfare, education, health, and land use. These reforms were enforced by the military and police. To ensure that children attended school, the government linked parents' welfare payments to their children's attendance. Health checks were made obligatory for all indigenous children, while the purchase of alcohol by their parents was restricted. Government oversight of indigenous welfare spending was also extended to cover gambling and tobacco. Further reducing the autonomy of indigenous communities, the power that many collectivities held to limit entry by non-indigenous persons under the permit system was abolished. Bail and sentencing could no longer take customary law into account in criminal justice cases. The government took up control over township lands that were hitherto held by indigenous people communally under the provisions of the Native Title Act of 1993, by unilaterally imposing compulsory 5-year leases on 'just terms', with the government seeking to obtain 99 year leases with indigenous approval.[69]

These new measures, for Northern Territory indigenous peoples amounting to the introduction of sumptuary law, were highly likely to contravene the federal Racial Discrimination Act (1975), which the government preemptively suspended. The 2007 legislation claimed that to protect indigenous children from sexual abuse and to ensure that they were healthy and educated, it was necessary to prevent indigenous adults in the Northern Territory from consuming alcohol, tobacco and pornography. In order to protect the citizenship rights of

indigenous children, in other words, it was necessary to circumscribe the citizenship rights of adult Aborigines in the Northern Territory. Also, the government determined that the reformation of indigenous society called for a comprehensive modification of actual community living conditions. Collective land and house ownership —— the norm in most communities both as a result of indigenous land rights legislation and indigenous customary law, were to be dismantled, and private ownership and use introduced in their stead. To make sure that welfare money directed to indigenous communities was spent in officially approved ways, the government introduced bureaucratic oversight of private spending. In this way, the federal government declared Northern Territory indigenous peoples to be legally incompetent to manage their own affairs. Like minors or those deemed mentally handicapped for legal purposes, their freedom of action was to be curtailed by a benevolent state. Important citizenship rights of indigenous Australians in the Northern Territory were suspended, and in their stead, the government introduced authoritarian treatment by the army and police that was ostensibly for the good of those subjected to intervention.

The Rudd Australian Labour Party federal government that took power in 2008 has basically continued the policy, with minor modifications. The policy has been continued despite the Rudd government's endorsement of the UN Declaration on the Rights of Indigenous Peoples in 2009. This year, despite drawing praise for this endorsement, the Australian government has drawn severe condemnation from the UN Special Rapporteur James Anaya because of the continuing intervention that infringes indigenous human rights.[70] How should we think about this intervention, in which federal governments of an advanced liberal state claim to be pursuing benevolent social ends such as the alleviation of poverty, the reduction of violence especially against women and children, and the improvement of especially children's population health, through illiberal means involving the suspension of certain citizenship rights? I argue that this case reflects a certain ambiguity in both indigenous strategies and in liberal strategies aimed at guaranteeing indigenous rights.

The indigenous rights movement, once full citizenship rights were granted, set about acquiring special citizenship rights to do with land and culture. However, the realization, to some degree, of these rights has been achieved in the context of a continuing catastrophe in indigenous communities, where substance abuse, violence, and illness are rife, not to mention unemployment and desperation.[71] Viewing this, the Howard and Rudd governments aimed to resolve the situation through a more thoroughgoing modernization of Aboriginal society. The

next step in the government's treatment of the 'Aboriginal problem' is clearly envisaged as requiring a greater stress on the individual. The Australian advanced liberal state, despite representing itself as multicultural, still requires that difference be subjected to liberal norms. Non-marketized indigenous communal life is still a target of assimilation policy, disguised in the shape of policies to promote private homeownership, enterprise and initiative.

Notes

1) Associate Professor, Department of International Relations, Faculty of Foreign Languages, Kyoto Sangyo University.

2) As Yuval-Davis writes, 'The liberal definition of citizenship constructs all citizens as basically the same and considers the differences of class, ethnicity, gender, etc., as irrelevant to their status as citizens'. Nira Yuval-Davis, 'Women, citizenship and difference', *Feminist Review,* Vol. 57, Autumn 1997, pp. 8–10. To quote Castles and Davidson, the citizen, in theory, is 'an individual abstracted from cultural characteristics.' Stephen Castles and Alastair Davidson, *Citizenship and migration —— globalization and the politics of belonging* (Routledge, 2000), p. 12.

3) Seyla Benhabib, *The claims of culture —— equality and diversity in the global era* (Princeton University Press, 2002), pp. 162–165.

4) Nancy Fraser, 'Social justice in the age of identity politics: redistribution, recognition, and participation', in Nancy Fraser and Axel Honneth, *Redistribution or recognition? A political —— philosophical exchange* (Verso, 2003), p. 47. On the need for minority citizens to receive special consideration, see also Castles and Davidson, *Citizenship and migration,* pp. 39–41. On the ways in which formal equality that ignores cultural specificities can entrench minority disadvantage, see Larissa Behrendt, *Achieving social justice —— Indigenous rights and Australia's future* (The Federation Press, 2003), pp. 21–23, 82.

5) Iris Marion Young, *Justice and the politics of difference* (Princeton University Press, 1990), pp. 182–183. Concerning what this might entail in more detail, John Rawls suggests in general terms that people need equal opportunity in education and training to ensure they can participate in debate and contribute to society socially and economically, as well as a decent income and distribution of wealth. These two will combine to allow intelligent and effective use of basic freedoms. In order to assure self-respect and inclusion, Rawls suggests that society, or in other words governments, should act as employers of last resort, as well as providing basic health care for all: John Rawls, *The law of peoples* (Harvard University Press, 1999), p. 50. A problem with Young's notion that Bern and Dodds point out is that groups are, as a rule, heterogeneous and always changing. How this mutability can be dealt with requires consideration. John Bern and Susan Dodds, 'On the plurality of interests: Aboriginal self-government and land rights', in Duncan Ivison, Paul Patten and Will Sanders (eds.), *Political theory and the rights of indigenous peoples* (Cambridge

University Press, 2000), pp. 168–169.

6) Will Kymlicka, *Multicultural odysseys — navigating the new international politics of diversity* (Oxford University Press, 2007), pp. 147–148.

7) Keith Banting, Richard Johnston, Will Kymlicka and Stuart Soroka, 'Do multicultural policies erode the welfare state? An empirical analysis', in Keith Banting and Will Kymlicka (eds.), *Multiculturalism and the welfare state — recognition and redistribution in contemporary democracies* (Oxford University Press, 2006), p. 61.

8) See Zygmunt Bauman, *Wasted lives — modernity and its outcasts* (Polity Press, 2004).

9) Lyndall Ryan, *The Aboriginal Tasmanians* (Allen and Unwin, 1981, 1996), p. 4. As established international law had it, populations lacking political organization and private property rights were not, as John Locke argued, proper political societies with rights to self-government and property; colonizers might legitimately invade such societies and appropriate their land, although a duty of care was required. Emmerich de Vattel also concurred with the idea that disorganized tribes might be discovered and subordinated, while the British lawyer William Blackstone argued that deficiencies in the productive use of land excluded natives from ownership rights. See, Paul Havemann, 'Chronology 1: Euro-American law of nations and indigenous peoples,' in Paul Havemann (ed.), *Indigenous peoples' rights in Australia, Canada, and New Zealand* (Oxford University Press, 1999), pp. 14–16.

10) Henry Reynolds, 'New frontiers — Australia', in Havemann, *Indigenous peoples,* pp. 130–131.

11) For an overview, see Ben Kiernan, 'Genocidal violence in nineteenth-century Australia' in *Blood and soil: a world history of genocide and extermination from Sparta to Darfur* (Yale University Press, 2007), pp. 249–309.

12) Henry Reynolds, *This whispering in our hearts* (Allen and Unwin, 1998), pp. 19–20.

13) Colin Martin Tatz, *With intent to destroy: reflecting on genocide* (Verso, 2003), pp. 77–78.

14) Kiernan, *Blood and soil,* p. 286.

15) Josephine Flood, *The original Australians: story of the Aboriginal people* (Allen and Unwin, 2006), p. 221.

16) See Henry Reynolds, *Dispossession: black Australians and white invaders* (Allen and Unwin, 1989), chapter 1 'White Australia: guilty or not guilty', pp. 1–23.

17) Kiernan, *Blood and soil,* p. 284.

18) Richard Broome, *The Aboriginal Australians — Black responses to white dominance 1788-2001* (Allen and Unwin, 2001), p. 96.

19) Brian Galligan and Winsome Roberts, *Australian citizenship* (Melbourne University Press, 2004), pp. 167–9, p. 164.

20) John Chesterman and Brian Galligan, *Citizens without rights — Aborigines and Australian citizenship* (Cambridge University Press, 1997), pp. 18–19.

21) Quoted and analyzed in Galligan and Roberts, *Australian citizenship,* pp. 169–170.

22) Broome, *Aboriginal Australians,* p. 169.

23) Rowse, 'Indigenous citizenship', May 2000, pp. 3–4.

24) Tim Rowse, 'Culturally appropriate indigenous accountability', in Denise Meredyth and Jeffrey Minson (eds.), *Citizenship and cultural policy* (Sage, 2001), pp. 120–121.

25) Quoted in Broome, *Aboriginal Australians,* pp. 175–177.

26) Murray Goot and Tim Rowse, *Divided nation — indigenous affairs and the imagined public* (Melbourne University Press, 2007), p. 30.

27) Broome, *Aboriginal Australians,* p. 177.

28) See Reynolds, *This whispering,* pp. 227–230, as well as Bain Attwood and Andrew Markus, *The struggle for Aboriginal rights — a documentary history* (Allen and Unwin, 1999), pp. 15–16.

29) Attwood and Markus, *The struggle,* p. 17.

30) Reynolds, *This whispering,* pp. 47–48.

31) Reynolds, *This whispering,* pp. 217–220.

32) Attwood and Markus, *The struggle,* pp. 12–13.

33) Galligan and Roberts, *Australian citizenship,* p. 171.

34) See Patrick Dodson, *Beyond the mourning gate — dealing with unfinished business* (AIATSIS, 2000), pp. 6–7.

35) See Tim Rowse, 'Indigenous citizenship: the politics of communal capacities', in *Change: transformations in education,* Vol. 3, No. 1, May 2000, p. 1.

36) Quoted in Geoffrey Stokes, 'Citizenship and aboriginality: two conceptions of identity in Aboriginal political thought', in G. Stokes (ed.), *The politics of identity in Australia* (Cambridge University Press, 1997), p. 162.

37) Chesterman and Galligan, *Citizens without rights,* p. 14.

38) Galligan and Roberts, *Australian citizenship,* pp. 167–9.

39) Chesterman and Galligan, *Citizens without rights,* p. 13.

40) Indigenous peoples were banned from purchasing and consuming alcohol in 1838 in New South Wales, Queensland and Victoria, the following year in South Australia, and in 1843 in Western Australia. 'Drinking rights' were universalized for all Australian adults only in 1962. See Broome, *The Aboriginal Australians,* pp. 59, 156.

41) Mark McKenna, *Looking for Blackfella's Point — an Australian history of place* (University of New South Wales Press, 2002), p. 168; and Broome, *Aboriginal Australians,* pp. 174－5. Incidentally, eligibility for these certificates was determined by, to take the case of Western Australia, the ability to produce references of good character and industry, to prove that one no longer associated with tribal Aborigines apart from one's family, the ability to speak good English as determined by a magistrate, and freedom from disease. As Broome notes, certificates could be revoked if the holder was adjudged to be uncivilized, as would be proved for example by two convictions for public drunkenness, or by contracting leprosy, syphilis, gonorrhea, yaws, etc.

42) Bain Attwood, *Rights for Aborigines* (Allen and Unwin, 2003), p. 163; Broome, *Aboriginal*

Australians, p. 173.

43) Broome, *Aboriginal Australians,* p. 174.

44) Will Sanders, 'Citizenship and the Community Development Employment Projects Scheme: equal rights, difference and appropriateness', in Nicolas Peterson and Will Sanders (eds.), *Citizenship and indigenous Australians — changing conceptions and possibilities* (Cambridge University Press, 1998) p. 142.

45) Attwood and Markus, *The struggle for Aboriginal rights,* p. 19.

46) Peter Kivisto, *Multiculturalism in a global society* (Blackwell, 2002), p. 105.

47) Attwood, *Rights for Aborigines,* p. 197.

48) Attwood and Markus, *The struggle for Aboriginal rights,* p. 20.

49) Flood, *The original Australians,* pp. 216–217.

50) Broome, *Aboriginal Australians,* pp. 188–194.

51) Broome, *Aboriginal Australians,* pp. 206–207.

52) Damien Short, *Reconciliation and colonial power — indigenous rights in Australia* (Ashgate, 2008), pp. 42–43.

53) That is, the amount of land owned, controlled or managed by Aboriginal peoples amounts to around 44% of the land surface of the Northern Territory. 'Introduction: Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 (CTH)', online at *Australian Indigenous Law Reporter* http://www.austlii.edu.au/au/journals/AILR/2006/33.html .

54) Flood, *The original Australians,* p. 243.

55) Short, *Reconciliation,* p. 37.

56) Short, *Reconciliation,* p. 67.

57) Elizabeth Povinelli, *The cunning of recognition — indigenous alterities and the making of Australian multiculturalism* (Duke University Press, 2002), pp. 176–178.

58) Benhabib, *The claims of culture,* pp. 66, 19–20.

59) Larissa Behrendt, *Achieving social justice — indigenous rights and Australia's future* (The Federation Press, 2003), pp. 62, 66.

60) Kymlicka, *Multicultural odysseys,* p. 153.

61) Dodson, 'Beyond the mourning gate', p. 14.

62) See Short, *Reconciliation and colonial power,* pp. 18–19; Ivison *et al,* 'Introduction', in Ivison *et al* (eds.), *Political theory,* pp. 7–8, Young, *Justice and the politics of difference.* This point was made much earlier by Charles Rowley, who considered that the failure of the Australian assimilation policy showed that any policy that attempted to prioritize individuals in isolation from their families and communities were doomed to fail. See Rowse, 'Indigenous citizenship', pp. 4–5.

63) Noel Pearson, 'White guilt, victimhood and the quest for a radical centre', *Griffith Review,* Vol. 16, May 2007, p. 41.

64) Behrendt, *Achieving social justice,* pp. 87–92. Such ideas are expressed in the Eva Valley statement of 1993, in the Barunga statement of 1988, as well as more recently in the Council for

Australian Reconciliation's *A national strategy to advance reconciliation,* which refers to both universal citizenship rights and specific groups rights to do with native title, language and culture. Peter Gale, *Lighting the Wik ── the politics of fear* (Pearson, 2005), p. 65.

65) James Jupp, *From White Australia to Woomera ── the story of Australian immigration* (Cambridge University Press, 2002), p. 129. See also Short, *Reconciliation,* p. 123.

66) Geoff Boucher and Matthew Sharpe, *Times will suit them: postmodern conservatism in Australia* (Allen and Unwin, 2008), pp. 3–4.

67) Will Sanders, *Housing tenure and Indigenous Australians in remote and settled areas* (Center for Aboriginal Economic Policy Research, 2005), p. 10.

68) This report is online at http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf . The title is derived from the Arrandic languages of the Central Desert Region of the Northern Territory, as noted in the publication.

69) John Altman and Melinda Hinkson, *Coercive reconciliation ── stabilize, normalize, exit Aboriginal Australia* (Arena, 2007), pp. 2–3.

70) See, http://www.unhchr.ch/huricane/huricane.nsf/view01/98A7FD0C9A5A8181C1257624002B0FBA?opendocument .

71) Indigenous life expectancy is around seventeen to twenty years shorter than other Australians. Among the causes for this are: a suicide rate three times the average, as well as an infant mortality rate twice the average. Indigenous people are fifteen times more likely to be imprisoned, and six times more likely to be either the victim or the offender of a homicide. The unemployment rate is around three times higher, while school attendance rates, school finishing rates and university entrance rates are less than half the national average. See, Steering Committee of the Review of Government Service Provision, *Overcoming indigenous disadvantage: key indicators* 2003 (Productivity Commission, 2003, 2005, 2007). As these statistics suggest, clearly Aboriginal citizenship rights are far from being realized. Castles and Davidson, *Citizenship and migration,* pp. 106–110.

普遍的市民権とオーストラリア先住民の市民権

── 同化と差異をめぐる一考察

マコーマック　ノア

要　　旨

グローバル化の加速により、人やモノの流動化が進み、結果として国民国家の境界線は希薄化しつつある。こうしたなかで、市民権という概念に対する関心が再び高まろうとしている。現代の議論のなかでは、全人に等しく配分されるべき普遍的市民権を認めながらも、民族や性や出自など、人の集団的属性を根拠として配分されるべき特別な市民権もある、とする主張が目立つ。本稿ではオーストラリアの先住民による市民権獲得闘争に焦点をあてながら、大陸の植民地化過程の歴史を再構築する。特に、植民地的搾取を正当化する作戦として導入された同化政策と先住民による市民権獲得闘争の関連性、そして普遍的な市民権の承認を求める運動から特別な市民権の承認を求める運動への転換を論じる。

キーワード：オーストラリア、市民権、先住民、土地権、植民地主義