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Dealing with issues of evidence, oral history, and the role of anthropologists and historians in the Northern Territory land claims process, the following two pieces by Ann McGrath have been cited regularly by scholars in the humanities and law since they were first published in 1988. They are important precursors to the issues debated in this volume, and more specifically, to the field of native title and related litigation. They are reprinted in this volume in order to ensure they are more readily accessible to interested scholars.
History and Land Rights*

Ann McGrath

The place of history and historians in the Indigenous land rights process has puzzled me for several years. In my view history is important, if not pivotal, to explaining land rights policy and practice. Dispossession occurred in past actions: land rights represents an attempt to make amends for past injustice and to improve the present lot of Aborigines. Land rights provides more lifestyle choices, offering Indigenous people an economic base and a chance to protect their cultural heritage. Land rights therefore addresses both past and present. Aborigines who claim land are highly conscious of certain historical events, policies, and patterns of behaviour which have led to their contemporary situation. But professional historians have done little to articulate or explain these phenomena. In fact, odd as it may seem, land rights are very rarely seen as having anything to do with history. The key professions involved have been law and anthropology, and the academic debate has centred around their analysis.¹ No debate yet exists on the relevance of historical interpretation to current or proposed policy.

Overall, very few historians have been involved in policy planning, consultation, or the actual land claims process. In the public debate, exceptions include Geoffrey Blainey, Manning Clark and Henry Reynolds. History graduates are working in related government departments, and Tom Stannage was an advisor in the Seaman Enquiry in Western Australia. Lenore Coltheart and I have been employed by the Northern Land Council (Darwin) as historical consultants, and Marcia Langton heads the land claims section of the Central Land Council (Alice Springs). So although not entirely absent, we represent a tiny minority of contributors to a well populated and transient field.

When the National Land Rights package was shelved, despite what seemed a strong commitment by the Labor government, ‘Nugget’ Coombs and others blamed government failure to educate people on the implicit principles of social justice. Some of the blame must also be levelled at historians, for land rights principles cannot be understood in an historical vacuum. The general public is ignorant of the history of dispossession. This has led to the labelling of land
rights as 'trendy', an issue for 'bleeding hearts' or 'wets', with angry blacks disregarded as not 'real' Aborigines. Thus, a receptive audience greets conservative perspectives such as Hugh Morgan's 'God's on our side' campaign, which used pioneering and colonial history to reproduce rationalisations of worthy conquest. 2

The ghost of the now-outdated anthropological model of a static 'traditional' Aboriginal society lingers on. Structural functionalist thought dominated the study of Australian Aboriginal anthropology for much longer than in the study of African or Melanesian cultures. This has eventuated through the influence of Radcliffe Brown and A. P. Elkin. This school followed the line that everything in society had a vital function in the structure that led to its cohesion and survival. But primitive societies were fragile, and, like a house of cards, could collapse when one component was removed or something new added. Any breath of change could endanger the whole structure. In line with Spencerian dogma, with its analysis of colonialism as a human struggle for survival of the fittest, it was thought that 'primitive' societies could not possibly survive such gales. Although the static model has been debunked, its spirit lives in legislation and popular attitudes.

Static anthropological models have fitted in perfectly with the 'destruction' theory, an historical hypothesis exemplified in the work of C. D. Rowley and others. 3 It assumed that colonialism brought change, which inevitably destroyed a previously changeless society. Change was the enemy. Because of the denial of change, evidence of incorporation of new technology, changing language and residence are interpreted as potential weapons to fight claims to Aboriginality.

The backlash can also be explained in terms of what has actually occurred in our past. The white 'occupation' or 'conquest' of Australia was never declared illegal. We have never really admitted that we are, as Xavier Herbert accused, a nation of thieves, of predatory dingoers. In the North American situation, the U.S. Indian Claims Commission was set up in 1946 to compensate Indians for breached treaties and the unfair taking of land. Over 30 historians are currently working on Indian land claims. 4 In Australia, historians have not been called upon to examine the 'legality' of settlement, or to document dispossession. With no treaties to break, land rights can still be seen as a 'favour' or 'kindness' rather than a just return of anything stolen. It is possible therefore, that future state govern-
the empty north' because the land had not been successfully colonised; white Australians feared a justifiable take-over by Asians, who might better fulfill the colonial ethic of tilling the soil and settling the land (the initial justification for 'settling' Australia had stressed that Aborigines were not cultivating the land). And perhaps there is an unacknowledged rationale that if we return parts of the north to its original owners, the Asians won't take it.

Much more land is available in the Northern Territory than in the more intensively settled southern states. General availability and quality of land, the allocation and revocation of Aboriginal reserves by various governments, past and present state policies, and Aboriginal community cohesion and politics, can also be classed as historical accidents.

Woodward's notions of land rights were chiefly influenced by the Elkin school, but he wanted to allow flexibility, and to take account of changing circumstances in the future. He thought that Aborigines should be free to choose their own manner of living, traditional or nontraditional. He was attentive to changing situations on pastoral properties, pointing out the good health of Aborigines living on them. Historical analysis would have placed this in a much more meaningful context, for the cattle industry is an example of Aborigines incorporating cattle culture into their own. They were able to stay on their land, choose their own communities, and make decisions at a more desirable pace. They could continue exercising their traditional skills and economy, and practise ceremonies. Nevertheless, their past success at adapting to white intrusion has not helped them gain land; they are the people the land rights Act forgot.8

Woodward saw spiritual affiliations with land as more important than in the United States. Generally, he concluded that claims based on present needs rather than historical circumstances should be preferred. In the United States, where the latter had been inevitable, it forced a great reliance on the availability of historical evidence. His only other suggestion regarding history was for the government to produce a white paper on Aboriginal dispossession to 'set out the story behind the bald facts'. This is revealing of his conception of narrative history. In order to do this, he suggested a mere reproduction of extracts from historical documents. This would include 'background notes' but no 'critical comment' and would point to an 'overall picture'; it was to be used in schools.9 It sounded somewhat indigestible for children, but nevertheless it is surprising that, unlike Woodward's other recommendations, this was ignored.

Under the resulting legislation, the Northern Territory Land Rights Act land may be claimed on the basis of traditional ownership. With the exception of Aboriginal occupied pastoral leases, only unalienated Crown Land can be claimed, and amendments to the Act may narrow this down further. Traditional owners are defined as a local descent group of Aboriginals who:

(a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and
(b) are entitled by Aboriginal tradition to forage as a right over that land.

Aboriginal tradition means 'the body of traditions, observances, customs and beliefs of Aboriginals of a community or group'. This could be applied in relation to particular persons, 'sites, areas of land, things or relationships'.10

Land rights models such as the proposed national package and state Acts and Bills to date have incorporated the possibility of claims on the basis of traditional ownership, association of right, historical association, need (economic, social and cultural) and compensation.8

According to Meredith Wilkie, the New South Wales Act does not acknowledge traditional or historical interests in land.12 Although the Act does acknowledge past ownership and dispossession, regional affiliations rather than past relationships became the criteria for claims. Sacred and significant sites are not mentioned, and distinctive Aboriginal land use patterns are not taken into account.

The obvious contrast between Territory and NSW legislation mirrors the complementary anthropological and historical paradigms. The fragile, 'house of cards' model of structural/functionalist thought lacked the flexibility to allow for degrees of cultural change. A certain model of society perhaps leads inevitably to a complementary model of history. The static model of traditional Aboriginal society has been taken up by historians of the 1970s and 80s as something which either survives or is destroyed. Because Aboriginal society in the Territory has been less affected, it is assumed to be very similar to pre-contact days. In NSW on the other hand, where intensive settlement has led to more dramatic changes, it is assumed that 'traditional' society has been destroyed. The nature of the Acts
recognises one society as alive, and the other dead. Of course both extremes blur the reality, with damaging political repercussions for both Aboriginal communities and white perceptions of them.

The word ‘tradition’ is problematic. It has a rather comprehensive use when applied to ‘primitive’ societies. The Oxford Dictionary defines it as ‘that which is thus handed down; a statement, belief, or practice transmitted (especially orally) from generation to generation.’ The term implies both the dynamism of a living culture, and the conservatism of reliving the past.

The concept of traditional ownership can be interpreted as having time-depth, as something existing entirely in the past, or in the present. But it has to be premised on the notion of a past reality. In the 1970s, anthropologists perceived this as a pre-contact reality. But in order to gain land rights, it had to be proved that the law was still being applied. To qualify as ‘traditional’, Aborigines had to follow a fixed legal code. Any loss of memory, failure to continue observances, or marked cultural changes could be seen as weakening the claim, and were something both anthropologists and land councils sometimes tried hard to conceal. A time warp was demanded whereby Aborigines were obliged to prove ongoing relationships with land, despite the many dislocating factors which may have pushed them off it. This might be interpreted as falsifying history. But as we shall see later, the notion fitted in fairly well with Aboriginal ideology and historical conceptions or ‘historiology’. And it is, after all, through this filter that anthropologists created their models of traditional society.

Yet historians have offered no critique. They have not established a professional presence. The notion that anyone can write history prevails; historians have not protested. An ‘old timer’ writing down a few memories of the local blacks, or their absence, from land under claim, receives as much credibility as a professional. So does anyone who strings together a list of old quotes. Some lawyers and anthropologists have outmoded notions of the discipline shaped by what they learned at school, and the more conscientious ones are rarely familiar with the latest debates on Aboriginal or colonial history. Consequently the potential usefulness of history as an explanatory tool is easily missed.

The relevance of history in meeting the requirements of the Northern Territory Act is also ambiguous. While the Act does not exactly demand it, brief histories have been included in claim books to provide a ‘context’ for the anthropological analysis but, with a few exceptions, the two are not really integrated.

The senior anthropologist, a consultant, is ultimately responsible for the land claim, and the lawyers for its presentation in court. The earliest claim books included no section on history, but it later became a standard practice to include a post contact historical summary. This was generally written by a field officer or anthropologist, including some from backgrounds as colourful as crocodile hunting and fine arts. Several were untrained in writing or research. Though often enthusiastically researched, they are often hasty jobs, in the nature of ‘potted history’ with linear, ‘key event’ oriented narratives. Little historical research had been carried out in the Territory, and the local academic community was small. Given their lack of experience, some authors have done an admirable task; some have trained themselves as historians in the process. But they are often antiquarians, who revel in digging up incident after incident, one lengthy quote after another. We are given a diet of mainly raw data. An analogy might be the amateur archaeologist who piles up all his or her stone tools and places them on display with no explanation. Such data — without analysis or interpretation — add little to our understanding.

The problem has not been adequately addressed; the historical submissions to land claims are viewed as peripheral. History is only ‘background’. It is seen as relating mainly to European settlement, relying on written documents and including only the occasional Aboriginal response. It is a far cry from social history, let alone ethnohistory. The history section is about white-introduced events, while the anthropology section, which explains social organisation and traditional attachment, is about Aborigines today. An artificial boundary between the two means that insights into the overall exposition of traditional ownership are missed.

The earliest Land Commissioner’s reports made no reference to regional history. The Borroloola claim report (1979) contained only a reference to the ‘clearing out of Aborigines’ and lifestyle changes which affected residence or country. Limmen Bight (1980), Alyawarra and Kaititja (1979) reports lacked comments on history. The Cobourg claim book included a substantial section compiled by Tonkinson & Peterson; this appeared well researched and gave history a degree of prominence. Alan Powell, a Darwin-based local historian, challenged this for selective use of evidence. This was
the only case of a historian challenging or offering an independent submission. The case did not proceed as the area was turned into a park which was jointly managed by Aboriginal traditional owners and the National Parks. The Kenbi land claim also represented a phase where history was being accorded more importance, but this claim has also not been heard. In the Old Top Spring Mudbura land claim, an historical section was placed at the end of the claim book; its relevance was not argued in the text, and in his Report, Toohey made no reference to it.  

Comments on regional history first appear in the Land Commissioner's reports for the Kartangurru-Kurintji land claim (Report 1979) and the Willowa (pastoral lease) land claim. Both hearings emphasised the Coniston massacres of 1928. The anthropologists saw this as a useful thing to stress. They encouraged claimants to talk about the massacres, assuming they related to issues of social justice and past coercion. I am told the Land Commissioner felt frustrated by the lengthy repetition of evidence and asked those presenting the claim whether they intended to actually rerun the Coniston massacres! He obviously questioned their relevance and in a section of his report entitled 'conflict' he stated he was not obligated to express any views regarding responsibility. He was only concerned with the impact of the events on Aboriginals: 'the reprisals caused fear among the Warlpiri and a movement away from their traditional country on and around the claim area.' He also mentioned the influence of gold and the establishment of reserves such as Lajamanu & Yuendumu. He pointed out how a history relatively free of European contact had enabled a great deal of independence, reflected in their desire to 'go it alone' in their cattle enterprise. He therefore makes definite links between past and present.

To my knowledge, the first time a historian was asked to produce a submission for a land claim was for Finnis River. One Saturday afternoon I was visited at my Darwin household and asked to write a history of the region. It would 'save' a claim which might otherwise fail. They wanted it by Monday. A rather frantic anthropologist seemed to have trouble understanding why on earth it might take me longer; couldn't I just find some history books and write it up quickly? There was then of course no readily available history of the Northern Territory, let alone the specific region. It meant starting from scratch, digging up archives, explorers' reminiscences, sifting through my doctoral thesis notes. I pleaded for two weeks (I was lecturing full-time) and invited a colleague to help. We did a century each. It was typed up by a member of the Land Council office staff of very doubtful ability, who insisted on changing 1890 to 1980 and so forth. Time for proofreading was out of the question.

We had been asked to write of European activities in the vicinity of the claim, especially those which might have proved disruptive to Aboriginal life, but not to discuss Aboriginal responses, or study relationships between white and black. Those preparing the claim wanted the history to show why the claimants had been so scattered, why so many lived in towns, and why others had big gaps in knowledge of language and things traditional. My anthropologist contact was especially interested in evidence of violence, poisonings etc., yet there was a relatively peaceful history in the specific region. Nevertheless, it was an area greatly disrupted by white settlement, near the major gold mining area, with pastoral and other activities. And it was also near a centre for government and part-Aboriginal children had been removed from their parents from 1911. Xavier Herbert was called to provide historical evidence; he spoke of the conditions at Kahlin Aboriginal Compound and his mining work with Kungarakan people around the Finnis.

I was called to appear as an expert witness, and wondered whether I would really remember much of what I had written for this crazily rushed job. Dramatic movements had occurred in the region; the claim was the first where two opposing groups disputed traditional ownership. Toohey asked Dr Tryon, linguist and commissioner, to research movements and changes in residence. He found most evidence in early linguistic maps and earlier anthropological accounts.

The historical aspects of this claim were considered relevant enough to warrant over two pages in Toohey's judgement. He devoted another two pages to questions of migration and movement. From this claim on, the history was usually included in the land claim book, or at least as a historical submission in advance (not called during hearing). The Commissioner's reports each included a summary of key historical events. Of Finnis, Toohey wrote:

It is a sad story. My purpose in referring to it albeit briefly is for the light it throws upon the claimants, their histories and their lifestyles. The impact of so many Europeans and Asians must have led to some breaking down of Aboriginal traditional life although many claimants showed a remarkable resilience in their capacity to retain and revive aspects of their 'Aboriginality'.
Professor Sansom, anthropologist and consultant to the Commissioner, objected to the portrayal of Aborigines as pushed from pillar to post, referring to the ‘Stanner corrective’. For every Aboriginal who ‘had Europeans thrust upon him, at least one other had sought them out.’ I fully agree with this analysis, but at the time of the claim it was ‘wrongthink’. Any voluntarism was thought to be detrimental to the case.

Arguably we should not have agreed to the constraints. In later historical submissions, such as Murrangi and Upper Daly, we were able to argue for professional independence, as the people most competent to make historical judgements. These experiences threw up questions about the pressures on the expert witness, their correct role etc. A conflict still exists between those who have a ‘missionary’ attitude to land claims and those who propound academic ‘objectivity’.

In his Finnis report, Toohey pointed out the relevance of ‘a consideration of historical contemporary material’. Incidentally it was in this claim that he recognised a more dynamic model of traditional ownership. Toohey was suspicious of portrayals of Aboriginal society as static, or which always functioned logically. He used his knowledge of prehistory to argue that the ‘likelihood of ownership changes from time to time’. The anthropologists were usually too busy trying to prove that ‘traditions’ continue in the idealised present context to concern themselves with change. But anthropologist Peter Sutton was in a different position, defending the claim of relatively recent arrivals over those with lengthier historical associations. He discussed strategies of adopting new land and the flexibility of Aboriginal land relationships through conception dreamings, living in and accumulating knowledge about certain country.

In other claims, various aspects of historical evidence have been stressed. Early exploration or pastoralists often feature. ‘Famous’ incidents such as the Coppermine murders were discussed in the Malak Malak land claim. But Toohey still seemed uncertain about the place of history. He wrote:

> While it is artificial, particularly in the context of a land claim, to begin with the history of white contact, there are advantages in doing so, if only because we are dependent upon the observations and records of Europeans for much of our knowledge and understanding of the claim area.

Why is it artificial? Surely without white intrusion there would be no cause for land claims. The premise does not seem to justify his assertion. The reasons for putting the history of white contact first is a different issue to the nature of the sources. A certain nervousness exists as to whether history is relevant or mainly of limited ‘interest value’. That this has not been spelt out leads to fuzzy arguments.

The Roper Bar land claim refers to conflict and competition over resources, with special reference to the impact of the pastoral industry. Toohey reported: ‘A wholly hunting and gathering existence became untenable as nearly all the land was taken up by pastoral leases’ (this is questionable, as they were not intensively stocked, and bush bands continued to kill cattle). He pointed out the continuance of ceremonial activity at Dagaragu, especially on weekends and holiday time, despite the existence of the cattle industry. He discussed the famous walk-offs from Wave Hill and struggles for land in recent years (1960s-70s), which, he argued, proved the strength of traditional attachment.

Earlier struggles to maintain ties with land may be equally relevant. In a later claim in Central Australia (1982), the Coniston massacre came up again, and in his recommendation Toohey now gave more weight to its relevance. When looking at residential patterns, consideration had to be paid to ‘a number of historical factors including forcible removal from their country’. In an adjacent claim, he similarly commented on strong pressures to vacate the Crown area, whether for temporary visits to settlements for goods, or onto welfare reserves. In assessing traditional attachment, transmission of knowledge about country and dreamings are crucial. Toohey concluded ‘events are still alive in the minds of close relatives... and form part of the oral tradition passed on to succeeding generations.’ This seems a highly significant statement, for it recognises historical consciousness as part of tradition. Should it then become a recognised part of the evidence and argument for traditional ownership? As some relationships with land are of a historical nature, for example sites of massacres and graves now have traditional significance, could more post-contact sites be included?

The confusion regarding the role and relevance of history remains. Perhaps it has worsened. In the Waramungu land claim, anthropologist Reyburn strung together a great lump of documents.
and was criticised for only getting to the end of the nineteenth century, and being of dubious relevance. This incident, and Murranji, have led to a shying away from emphasising history. Nobody seems certain whether it should be only ‘fact’, ‘documents’ or ‘interpretation’. Is historical interpretation subjective? Is it political? Lawyers consider ordinary words such as colonialism and racism as ‘emotive’ ‘trigger words’. Lenore Coltheart was rather viciously attacked by a lawyer representing opponents of the Murranji land claim, for referring to Aborigines as representing a ‘nation’, of making comparisons ‘with occupied France and Vietnam’.

Historical evidence is considered ‘highly sensitive’. I asked the Land Council lawyer, Rob Blowes, why this was the case, and he said historians were prime targets because they had not yet established their credentials in court, as had medical practitioners and now anthropologists. Lawyers did not understand how they reached conclusions. So, in effect, the whole discipline was being asked to justify its existence and validity.

New guidelines for preparation of a land claim have been drawn up, and incorporate the ideas of John Von Sturmer, who was asked to review claims procedure by the Commissioner. The history had created a ‘new ecology’ for the people. He proposed that the implications for Aboriginal residents should be spelt out. The thrust of the materials should not be to provide a moral basis for restitution of land or to rationalise Aboriginal knowledge gaps or long absences, but to ‘account for current Aboriginal relationships to and conceptualisations of land’. He recommended a history of landscape and society with constant reference back to current Aboriginal society. Von Sturmer suggests models which might allow for measuring change over time (pre-contact, past-contact, now etc.). The ideas, if implemented, could dispel many of the static models imposed by the anthropological paradigms, but what about the time and money? I agree with the thrust of this thinking, but the logistics are difficult. The Land Councils have objected. The depth of prehistory and anthropological research required would take years. Thoughtful, ‘comprehensive’ histories could take more than a decade to research.

In the meantime, more interdisciplinary collaboration would help. I don’t believe historians own the subject of social change; the disciplines of anthropology and history have complementary sets of expertise. We could share our knowledge to explain the dynamic story of societies and the complex interactive processes of colonialism.

Historians, as I see it, can play an important role in explaining post-colonial culture change, power, land relationships etc. How can ‘land tenure models’ of anthropologists be looked at ahistorically? Current Aboriginal self-conceptualisations and social organisation are of course influenced by historical factors. Historians could explain the history of dispossession and the social changes it brought.

They could also dig up and interpret contemporary documents which could provide clues to the legal situation relating to Indigenous rights. They could discuss early contact, and Aboriginal attempts to negotiate. And as there is still some doubt as to whether traditional land rights were effectively extinguished, surely it is relevant to document the continuing exercise of these rights by Aborigines over time. Practice must have some relevance to a debate which, in recognising only British statutes, failed to truly acknowledge Aboriginal law.

Historians could also provide some critique of the oral traditions and life history data which have been revealed by the claimants under cross-examination. The anthropological data are often sieved out, with elements relating to post-contract history chucked out as chaff. A tendency to view Aboriginal statements about their history as ‘truth’, requiring no examination, is also somewhat prevalent amongst those appearing for the claimants. The pitfalls of this were shown at the Maralinga Atomic Test hearings, where oral testimony, analysed by historian Heather Goodall, changed the whole direction of the case. An understanding of the nature of oral transmission is required. Oral tradition is essentially dynamic, amended every generation, to cater and account for changing circumstances. Once transcribed of course, or written about in a book, it is transfixed in time. The intervention of academics in recording and analysing these ‘traditions’ inevitably subverts the course of their development. For easy handling, our system has a vested interest in freezing tradition and compiling registers of traditional owners.

In the world outside land claims there is real scepticism about Aboriginal notions of historicity. But we must rely on their history to gain Aboriginal perspectives. Surviving traditions contain some facts, but more importantly they reveal current Aboriginal models of colonialism. Consideration of Aboriginal uses and conceptions of history has the potential to shed light on the notion of traditional
ownership. Some anthropologists have become trapped in Aboriginal models of history, in an ideology which tends to deny historical change. At the Aboriginal history section of the 1984 Australian Historical Association Conference, this ideology was propounded. Despite the onslaughts of colonialism, Aboriginal speakers argued that, for their people, things had always been the same: 'we have always followed the law, which comes from the dreaming'.

In striking contrast to our dominantly linear historical paradigms, theirs are 'timeless' or cyclical, according to the principles of reincarnation, with animals, people, spirits constantly resurfacing on the land. Aborigines postulate that tradition is constant. But this stance is not reality, not practice; it must be distinguished as ideology, as both a legal code and historiography.

Anthropologists have not been concerned with historical depth; when they can't find it, they have sometimes hidden it. The complex task of explaining kin and land-owning relationships provides them with more than ample work. 'Historical' memory, I am certain, is relevant to ownership. Stories were and are adapted to become that of the incoming groups; others are forgotten. Living memory of traditional ownership means that the 'fact and claim of estate' had not been extinguished. As consciousness had to die for this to happen, this usually only occurred after the demise of preceding generations. In his study of the Murinbata, Stanner spoke of their stance on traditions as being 'old, continuous and true'. But he felt that, historically speaking, they were shallow and selective. Stanner wrote:

'It is a painful wrench for a European mind to have to deal with so shallow a perspective on time, and with mentalities that are ahistorical in outlook while asserting the contrary.'

He was doubtful whether any real tradition existed, and argued that if any, this had to be 'as the product of a continuous act of making the past consistent with an idealized present'.

In a situation which rewards people who can prove traditional ownership, the makers of Aboriginal history are extremely powerful. History is an Aboriginal strategy to explain change, to cope with change, and to incorporate it into existing structures. This highlights the flexibility and resilience of Aboriginal culture; it proves the capability of dramatic changes. It may be painful, and certainly not easy, for us to understand Aboriginal history and to critically assess its oral traditions. But not only does this provide a great opportunity for social historians to use a rich array of on-the-spot cultural research, it is politically and socially useful. It may also be enriching for Australian history generally. Perhaps we could even twist our minds beyond old historical models such as that which presents the past as leading up to the present, and instead consider the alternative of the present merging into a past continuum.

Notes

* This paper was first published in Law and History in Australia, Vol. 3 (1987). It is re-printed in this volume with minor textual changes.
9. 'Woodward Report', p. 9 and Appendix C.


18. Ibid., pp.11-12.

19. Ibid., pp. ii, 14, 33.


27. Cross-examination of L. Coltheart, transcript of proceedings, ‘Murranji Land Claim’ (7 February 1984). The assertion that Aboriginal Australia was a ‘nation’ is considered novel, and as Paul Coe argued this unsuccessfully in Coe v Commonwealth it is somewhat discredited in the eyes of lawyers (personal communication, Nick O’Neill).


