Special Topic Forum: Indigenous Spirituality and the Law

Country, Tradition, and Christianity in the Law

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In a May 1984 speech in Canberra, mining magnate Hugh Morgan made a theological claim about Aboriginal people and the law. 'For a Christian aborigine,' he declared, 'land rights or the proposed [*Aboriginal and Torres Strait Islander*] *Heritage Protection Act* is a symbolic step back into the world of paganism, superstition, fear and darkness.'[1] The Aboriginal and Torres Strait Islander Heritage Protection Bill would enable the Commonwealth to intervene to protect 'areas of particular significance to Aboriginals in accordance with Aboriginal tradition.'[2] But for Morgan, these protections based in Aboriginal tradition were anti-Christian. The Hawke Government passed the Bill the following month.

It was not only miners who speculated if Christianity was incompatible with First Nations People's connection to Country and the legal entitlements that might flow from this. Peter Carroll was a missionary linguist in West Arnhem with strong sympathies for the Bininj land rights. Only a few years prior, hoping to help sure up Bininj claims, he had assured the commissioners of the Ranger Uranium Inquiry that Christianity had 'very little effect' on Bininj spirituality.[3] His superior, Alan Cole, later queried whether 'the spiritual nature of the relationship between Aborigines and the land [is] compatible with Christianity'[4] and concluded that 'the religious attachment of Aborigines to their tribal land … is of necessity something different in the case of the Christian Aborigine.'[5] This ambiguity raised a legal question: could First Nations Christians hold a spiritual connection to Country that would entitle their sites to special protection, and them to land rights, under Australian law?

As Miranda Johnson demonstrated from the late 1960s, arguments for Aboriginal land rights hinged on the validity of land tenure based in a spiritual rather than economic or political attachment to land. Churches were at the forefront among those arguing for First Nations' rights to their lands on the grounds of Indigenous spirituality.[6] Evolving legislation around land rights subsequently emphasised 'Aboriginal tradition' and the 'sacred site'.[7] Native title law in Australia is unusual for the way it is grounded in the continuation of 'traditional' beliefs and practices of First Nations people.[8] Would settler law recognise land rights of First Nations people who held to religious beliefs (apparently) brought by the colonisers?

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[1] Hugh Morgan, 'Australian Mining Industry Council, Minerals Outlook Seminar' (Speech, 2 May 1984) 5 (State Library New South Wales, MLMSS 10168/10, c14).

[2] *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) s 4 ('*Heritage Act*').

[3] Russell Walter Fox, Graeme Kelleher, and Charles Baldwin Kerr, 'Ranger Uranium Environmental Inquiry: Second Report' (Australian Government Publishing Service, 1977) 266.

[4] Alan Cole, 'Questions and Comments Gleaned from Various Preliminary Submissions Received by the Federal Secretary' (Internal memo, 10 December 1981) (State Library New South Wales, MLMSS 6040/20).

[5] Alan Cole, 'Church Missionary Society Aboriginal Commission Report' (Research Report, Christian Missionary Society, February 1984) (State Library New South Wales, MLMSS 6040/44).

[6] Miranda Johnson, *The Land Is Our History: Indigeneity, Law, and the Settler* (Oxford University Press, 2016) 52.

[7] *Aboriginal Land Rights Act 1976* (NT).

[8] Elizabeth Povinelli, *The Cunning of Recognition*: *Indigenous Alterities and the Making of Australian Multiculturalism* (Duke University Press, 2019) 156.

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This question was all the more pertinent because the status and rights of First Nations people under settler legal systems in Australia has, at times, hinged on conversion to Christianity. Through most of the 19th century, non-Christian Aboriginal people were barred from testifying in court.[9] In 1840, the Colonial Secretary blocked a bill in New South Wales that would enable the admission of Aboriginal evidence; writing that to admit evidence from a witness 'ignorant of the existence of a God' contravened British jurisprudence.[10] This was, supposedly, all the more reason to 'impart to them the truths of Christianity and prepare them for the reception of their legal rights', according to George Augustus Robinson in 1842.[11] Under subsequent assimilationist policies and missionary regimes, First Nations People were expected to adopt Christianity as part of their preparation for 'full citizenship'. Designated as 'wards of the state', Christian conversion was a means to exhibit citizenly behaviour. Though Christianity was not a legal requirement, Christianity and the rights of citizenship were closely associated in the first half of the 20th century.[12]

Morgan's 1984 speech was met with outrage, particularly from the Uniting Church.[13] Yolngu leader and Uniting Church minister, Djiniyini Gondarra labelled it 'demonic'. 'God has given the Aboriginal people … knowledge of the land and the ceremonies' he retorted.[14] Charles Harris, an Aboriginal and Torres Strait Islander minister, also hit back, turning settler categories against Morgan.

> What is more pagan than the western culture in its lust for greed and wealth [?] … Mr Morgan has no knowledge of Aboriginal spirituality to make a statement like that. Aboriginal Christians do have a concern for land and do have a concern for sacred sites.[15]

First Nations People themselves argued for the harmony of Christianity and their connection to Country, insisting on both.[16] In later years, similar statements to those of Harris and Gondarra were made by native title claimants. Anthropologist Peter Sutton, for instance, recalled Wik claimant Jean George Napranum explaining in Canberra that 'the land was given to us by God'.[17]

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[9] Nancy E Wright, 'The Problem of Aboriginal Evidence in Early Colonial New South Wales,' in Diane Elizabeth Kirkby and Catharine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester University Press, 2001) 140.
[10] Quoted in Russell Smandych, 'Contemplating the Testimony of "Others": James Stephen, the Colonial Office, and the Fate of Australian Aboriginal Evidence Acts, Circa 1839-1849' (2004) 10(1-2) *Legal History* 97, 113.
[11] Ibid 116.
[12] Laura Rademaker, *Found in Translation: Many Meanings on a North Australian Mission* (University of Hawai'i Press, 2018) 42–9.
[13] The Uniting Church's Commission for World Mission issued an immediate press release. John Brown, 'Aboriginal ministers attack mining chief's statement' (Commission for World Mission, Uniting Church in Australia, Press Release, 5 June 1984) (State Library New South Wales, MLMSS 10168/10, c14).
[14] Response from Charles Harris and Djiniyini Gondarra to Hugh Morgan, 1984 (internal memo, no date, State Library New South Wales, MLMSS 10168/10, c14).
[15] Ibid.
[16] Ian McIntosh, 'Anthropology, Self-Determination and Aboriginal Belief in the Christian God' (1997) 67(4) *Oceania* 273, 285. See also Djiniyini Gondarra, *Father, You Gave Us the Dreaming* (Uniting Church in Australia, 1988); George Rosendale, et al, *Rainbow Spirit Theology: Towards an Australian Aboriginal Theology* (ATF Press, 1997); Anne Pattel-Gray, *Aboriginal Spirituality: Past, Present, Future* (Harper Collins, 1996).
[17] Peter Sutton, *Native Title in Australia: An Ethnographic Perspective* (Cambridge University Press, 2004) 130.

Morgan's warnings and missionary anxieties about a conflict between Country and Christianity never eventuated. In the years since the passage of the *Aboriginal and Torres Strait Islander Heritage Act 1984* (Cth) and the subsequent decisions of the 1992 case of *Mabo v Queensland* [*No 2*][18] and in 1996, *Wik Peoples v Queensland*,[19] it seems the courts have not found Indigenous Christianity to affect the recognition of sacred sites, land rights, or native title. David Triger and Wendy Asche found only one native title case in which Aboriginal claimants faced cross-examination around whether their connection to Country was given by the Christian God or Dreaming Ancestors.[20] In most cases, the fact that many claimants and key witnesses were Christians (including ministers in various churches) was not addressed in legal assessments of their continuous spiritual affinity to Country, nor were they invited to share their theological insights on these matters.[21] Instead Christian spirituality has been largely assumed not to interact with 'tradition'. Given this silence, it seems Morgan's binary of 'pagan' as opposed to 'Christian Aborigines' implicitly continued in the legal frameworks imposed on First Nations Peoples and their spiritualities; spiritualities which have proved to be more complex and nuanced than settler categories and assumptions.[22]

[18] (1992) 175 CLR 1.
[19] (1996) 187 CLR 1.
[20] David S Trigger and Wendy Asche, 'Christianity, Cultural Change and the Negotiation of Rights in Land and Sea' (2010) 21(1) *Australian Journal of Anthropology* 90, 100.
[21] Ibid 94, 95, 105.
[22] Ibid 104–5.