

"It is our land and has always been our land":

How Aboriginal Australians conceptualised land rights in the Keane Committee

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Abstract

The New South Wales 1978 Keane Committee represented a genuine attempt to consult with Aboriginal Australians on land rights. However, the claims of Aboriginal Australians were not fully comprehended and the resulting land rights legislation did not have the support of the state's Aboriginal population. This paper examines the claims made by Aboriginal Australians that were overlooked by the Committee and contemporary scholarship. In analysing the evidence of Aboriginal witnesses before the Committee it becomes clear that Aboriginal Australians, in line with the movement for "Aboriginal rights", conceived land rights as an expression of autonomy and the restoration of traditional rights of ownership, rather than the creation of new rights in the way the Government saw them. In addressing this gap in scholarship, I hope to highlight the need to consider more attentively the claims of Aboriginal Australians so as to bring about meaningful reform.

Keywords

Aboriginal Australians, Keane Committee, land rights, sovereignty

Introduction

In 1978 the NSW Wran Labor government established a Select Committee ("the Committee"), chaired by Maurice Keane, to investigate the granting of land rights to Aboriginal Australians in NSW. As such the State Government attempted to capitalise on the developments made around land rights initiated at the federal level, which culminated in the passing of Australia's first piece of land rights legislation in the Northern Territory in 1976 under the Fraser government. Similarly, the Keane Committee resulted in the passing of the first land rights legislation for NSW, the [Aboriginal Land Rights Act 1983](#) ("the Act"). Both the inquiry into land rights by the Committee and the legislation which followed, were landmark developments. While previous NSW Parliamentary Committees had examined Aboriginal health, education and housing, none had ever investigated land rights ([NSW, Legislative Assembly, 21 November 1978](#), p.560). Given the long history of Aboriginal claims for land in NSW, the move to investigate and introduce land rights legislation came at a crucial time in the politics of Aboriginal rights ([Norman, 2009](#), pp.142,143; [Goodall, 1996](#), pp.xvii, 356).

However, the gains of this moment were ultimately limited by different understandings of what land rights meant from the perspectives of the political and legal community, on the one hand, and the Aboriginal peoples of NSW, on the other. For the State, the granting of land rights was about granting legal title over land: for the Aboriginal activists land rights involved the recognition of continuous Aboriginal ownership, sovereignty and the right of self-determination. By the time of the Committee, a generation of Aboriginal activists had been articulating demands for compensation and sovereignty for

well over a decade ([McGregor, 2009](#), pp.348, 353, 359). The Committee represented yet another moment when this could become possible.

Despite being a remarkable and significant event in the history of Indigenous and non-Indigenous relations in NSW, the Committee has largely been overlooked and the evidence of Aboriginal witnesses has been left unexamined. This paper endeavours to recover and interrogate the Aboriginal viewpoints, and examine what the Parliament's legislative response to the Aboriginal demand for land rights reveals about the State's conceptualisations of land rights.

Background to the Committee

Not wanting to "deliberate from a distance" the Committee consulted 4,000 people over a two-year period through "seminars, conferences, workshops and deputations" (NSW, Legislative Assembly 21 November 1978, pp.559, 560, 566; NSW, [Legislative Assembly 24 March 1983](#), p.5091). These opinions, ranging from rural housewives and pensioners to seasoned urban-based activists, entrenched the association in Aboriginal people's minds between land rights and sovereignty. The Committee served as another space for Aboriginal Australians to make claims for the recognition of their prior, uninterrupted ownership of their lands. However, it also became another moment where the legal understanding of land rights overshadowed Aboriginal Australian's conceptualisation of land rights.

Aboriginal campaigns for land rights in NSW are long standing (Goodall, 1996, p.xvii). According to Heather Goodall (1996, p.xvii) the demand for the return of land began once "the invasion violence eased". In the post-war period a series of Aboriginal-led protests brought land rights firmly onto the political agenda. While the 1963 Yolngu people's bark petition brought "national attention" to land rights, the Northern Territory Gurindji walk-off

gave land rights a sense of urgency and precipitated the start of the national movement ([Clark, 2008](#), pp.93, 107, 119, 234; Goodall, 1996, p.311; [Riddett, 1997](#), p.50). Throughout the 1960s and 1970s, demands for rights unique to Aboriginal Australians began to grow amongst activists ([Chesterman & Galligan, 1997](#), pp.193, 194). Indigenous and non-Indigenous activists who tirelessly lobbied for the 1967 Referendum expected the changes to the Constitution would liberate Indigenous peoples from restrictive State-based legislation and encourage a more humane approach to Indigenous affairs now that the Commonwealth had power to make laws with respect to the Aboriginal race at the Federal level ([Attwood, 2003](#), pp. 163, 165-6, 178). However, it was not long before Aboriginal Australians expressed their dissatisfaction with this purported gain in “formal equality” ([Chesterman & Galligan, 1997](#), pp.193, 194). They began agitating for “Aboriginal Rights”, which included self-determination, land rights and sovereignty, which non-Indigenous activists did not fully comprehend ([Chesterman & Galligan, 1997](#), pp.193, 194; Attwood, 2003, p.343).

The Wran Government’s 1983 *Aboriginal Land Rights Act*, which arose from the recommendations of the Committee, built on the gains made by the Commonwealth land rights legislation and conformed to the Government’s reform agenda (NSW, Legislative Assembly, 24 March 1983, p.5092; [Walker, 2006](#), p.175). However, Aboriginal expressions of sovereignty yet again went unacknowledged because of a disjuncture in the conceptualisation of land rights.

Recognition of continuous ownership

The first demand made very clearly by the Aboriginal witnesses who appeared before the Committee was the recognition of their traditional rights of ownership, which, according to them, had not been extinguished by settlement and the imposition of the common law. This contradicted the legal doctrine of *terra nullius* that had been used to legitimise British colonisation of Australia on the basis that the land was “uninhabited” ([Reynolds, 1996a](#), pp.ix, x).

While Australia’s legal establishment may have not considered Aboriginal Australians as having legally owned Australia at the time of settlement, Aboriginal witnesses before the Committee believed otherwise. As Delia Lowe, a housewife from Roseby Park and a Committee liaison officer, declared “It is our land and has always been our land” ([Select Committee of the Legislative Assembly upon Aborigines, 1980a](#), p.58; [Wilkie, 1985](#), p.16).

When discussing land ownership, Aboriginal Australians at the time conceptually separated legal ownership from “moral”, or “rightful”, ownership ([Tobin, 1972](#), pp.11, 19). Lowe explained,

Just because they have a document saying that the land is vested in the local council body from the Lands Department does not mean anything. It is total to us; we own it and nobody else does. Just because there is a system in this country which has laws that make all people, including the Aboriginal people come under the law, does not mean we regard that law in any way. The laws do not refer to the Aboriginal people and we do not regard that law as applying to us ([Select Committee of the Legislative Assembly upon Aborigines, 1980a](#), p.58).

As Lowe’s evidence revealed, Aboriginal Australians asserted that by virtue of their prior possession, the real or “moral” ownership of the land rested in them. Such ownership rights could not be, and had not been, extinguished ([Tobin, 1972](#), pp.11, 19). Furthermore, witnesses before the Committee considered this rightful and moral ownership as entitling

Aboriginal Australians to current, legal ownership. Billie Craigie, a founding member of the Redfern Aboriginal Legal Service, reassured the Committee that "...when we talk in terms of land we do not necessarily mean we want your opera house or your harbour bridge, or Canberra" ([Taffe, 2005](#), p.267; [Lothian, 2007](#), p.26; Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.227; [Aboriginal Legal Service, 2011](#)). Instead he made explicit mention of Aboriginal reserves as areas over which Aboriginal ownership of land continued to exist (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.227). Craigie's comments revealed the historical importance of reserves in shaping Aboriginal understandings of land rights and compensation. In the nineteenth century, reserves functioned as, according to Henry Reynolds ([1987](#), p.134), "an acknowledgement of prior ownership, of the perpetuation of native title after settlement, of the need for compensation."

Over three weeks in 1972 the Redfern based activists Peter Tobin, Billy Craigie, Gary Williams and Lincoln Wood conducted a study of the attitudes towards land rights of Aboriginal Australians living on reserves, which the Committee subsequently relied on in preparing its First Report (Tobin, 1972, p.3; [Select Committee of the Legislative Assembly upon Aborigines, 1980b](#), pp.43, 44). Tobin reported that for participants from Woodenbong "there appeared nothing unusual in the fact the Aborigines owned the land while the white government prevented them from having it, though allowing them to live there" (Tobin, 1972, p.7). Despite not having legal title to the reserve land, Aboriginal people saw their "tribal" rights over the reserve land as "real rights" (Tobin, 1972, p.8). These traditional rights continued, regardless of whether they continued to live on the reserve. In the Terry Hie Hie land claim submitted to the Committee, Gamilaraay people maintained their

entitlement to reserve land regardless of whether they occupied it (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.79).

Some witnesses even extended the demand to an entitlement to Government owned land not currently in use. The Terry Hie Hie land claim advocated “a freeze on the sale of all vacant Crown land in the district and its handing over, where desirable, to Aboriginal ownership” (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.71). Paul Coe from the Aboriginal Legal Service similarly recommended “All Crown land should be handed over to the Aboriginal people”, and even suggested the possibility of acquiring land “from private European owners” (Select Committee of the Legislative Assembly upon Aborigines, 1980a, pp.235, 244). Underpinning these demands was the belief that, as Craigie declared, “The whole country”, regardless of who has the legal title, “is Aboriginal land” (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.227).

Sovereignty

The call for land rights also involved the recognition of continuing Aboriginal sovereignty, entitling Aboriginal Australians to negotiate a treaty with Australian Governments. The High Court dealt definitively with the issue of Aboriginal sovereignty in [Coe v Commonwealth](#) in 1979, holding that Australia had become a British colony “by settlement and not by conquest”, dismissing any claim of Aboriginal Australia constituting a sovereign nation at the time of European contact ([Butt, 2010](#), pp.15-16, 87; [Maddison, 2009](#), p.46). The Court also rejected the claim of the continued existence of “an aboriginal nation which has sovereignty over Australia” (Reynolds, 1996a, p.6).

Regardless of the High Court's position, Aboriginal witnesses before the Committee made clear two issues relating to Aboriginal sovereignty. Firstly, Aboriginal Australia did constitute a sovereign nation at the time of European contact. As the Terry Hie Hie land claim read "Before European discovery and settlement, this group had control over the affairs of its people and the resources of its territory. This control meant political sovereignty" (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.71). Secondly, Aboriginal witnesses maintained that Indigenous sovereignty persisted (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.234). Witnesses did not mean "sovereignty" in the technical, legal sense of the word (Young cited in Maddison, 2009, p.47). Rather participants generally understood sovereignty to be, as described by political philosopher Iris Marion Young, an "idea" (Young quoted in Maddison, 2009, p.47). Sovereignty for Aboriginal Australians, as Larissa Behrendt has explained, was an assertion that they had "never surrendered" to the British colonisers (Behrendt quoted in Maddison 2009, p.47). Therefore, it followed that their "prior and continuing" rights to land must be recognised, accommodated and incorporated into the settler state (Behrendt quoted in Maddison 2009, p.48).

Coe also recommended that the State Government recognise the need for the Commonwealth Government, described as an "occupying force", "to negotiate with the Aboriginal people" (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.234). Frank Roberts, a representative of the State Branch of the National Aboriginal Conference who appeared before the Committee in Lismore, also spoke in support of a treaty, claiming that a treaty "would cover every aspect of what we have been fighting for and advocating" (Select Committee of the Legislative Assembly upon Aborigines, 1980a,pp.

288, 289). A constitutionally entrenched treaty, enshrining Aboriginal land ownership and compensation rights, would secure such rights from future parliamentary amendment and symbolically “overturn the legacy of state-endorsed dispossession” (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.289; Chesterman & Galligan, 2005, p.218; [Macdonald, 2004](#), p.12).

Self-determination

Entwined in the demands of Aboriginal witnesses for the restoration of their traditional rights to land was their third claim of a right, as a sovereign people, of self-determination. Since settlement, Aboriginal Australians have had little control over their own lives. At the time of Federation Australian Governments had implemented a policy of “protectionism” towards Australia’s Indigenous population, which was replaced in 1951 by the policy “assimilation” designed to “absorb” Aboriginal Australians into mainstream society (Maddison, 2009, p.5). At the time of the Committee, the NSW Government still pursued a policy of assimilation, despite the Federal Government having adopted a policy of “self-management”, or “self-determination” (Wilkie, 1985, p.156; Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.189; Attwood, 2003, p.349; [Maddison, 2008](#), p.42). The demand for the “fundamental right and need to be able to control their own destiny” dominated militant black politics in the 1970s ([Briscoe, 1977](#), p.14; McGregor, 2009, pp.343, 345). According to activists, true autonomy required the recognition and restoration of traditional Aboriginal rights to land.

Seeing the restoration of traditional rights over their land as the key to establishing functioning Aboriginal communities, the concept of a “land base” emerged among witnesses ([Gilbert, 2002](#), p.40; Select Committee of the Legislative Assembly upon

Aborigines, 1980a, pp.228-229). Coe explained that for Aboriginal Australians “land rights is the only priority because Aboriginal people would be in a position where they would be masters of their own destiny and be able to allocate the resources as they see fit, and be able to develop their new life in accordance with the economic resources they have” (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.240). Therefore, restoring traditional rights of ownership, entitling Aboriginal Australians to use their land in the ways they saw fit, would create autonomous communities, better able to identify and combat Aboriginal disadvantage. For example, the Wilcannia Aboriginal community called for the restoration of their traditional rights to land that would enable them to set up stations where relevant skills could be taught, combating Aboriginal unemployment in the area (Select Committee of the Legislative Assembly upon Aborigines, 1980a, pp.411, 412, 420).

Enmeshed in the call for self-determination through land rights was a demand for compensation. Speaking on behalf of the Albury Aboriginal community Cecil William Grant claimed that Governments had a “moral obligation” to recognise and provide compensation for their “total loss” of land (Select Committee of the Legislative Assembly upon Aborigines, 1980a, pp.321, 322). Aboriginal witnesses, although, also argued that the Government should not just provide compensation for the historic loss of land, but provide continuing financial assistance alongside the recognition of land rights to help create viable and autonomous, Aboriginal communities. As Craigie articulated, “We would want cash compensation to go with land rights. Unless you also give us compensation it will be of no use. You cannot eat dirt” (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.233). In his evidence Coe proposed the notion of a “land tax” (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.235). He explained, “Whenever

properties are bought and sold, a percentage of the money involved should be paid into a fund which could be administered by Aboriginal people”, providing Aboriginal Australians with the resources “to develop the land as well as the necessary skills needed to utilize the land as they see fit” (p.235). Roberts similarly saw a land tax as a necessity and a moral obligation of the Australian people (Select Committee of the Legislative Assembly upon Aborigines, 1980a p.288).

Outcomes of the Keane Committee

In August 1980, after two years of consultation, the Committee tabled its Report before Parliament ([Norman, 2007](#), p.77; Wilkie, 1985, p.23). According to Meredith Wilkie the Committee’s proposals “were generally welcomed by Aboriginal communities and organisations” (1985, p.34). A 1981 survey sponsored by the Premier’s Department found that “Aborigines in NSW were overwhelmingly in favour of land rights along the lines that the Select Committee had recommended” (Wilkie, 1985, pp.35-36). Significantly, the Committee recognised that at the time of European settlement, Aboriginal Australians “were in possession of NSW”, essentially disregarding contemporary case law (Select Committee of the Legislative Assembly upon Aborigines, 1980b, p.7; Wilkie, 1985, pp.23-24).

Flowing from this acknowledgement, the Committee recommended that new land rights legislation be introduced that entitled “all Aboriginal people, including urban, rural and reserve communities” to claim “Crown, lease and freehold land” on a basis of “prior ownership, traditional, need and compensation” (Norman, 2009, p.156; Select Committee of the Legislative Assembly upon Aborigines, 1980b, p.7; Norman, 2007, p.156). The Committee also advised that the NSW Government let the principle of “self-determination” underpin their policies relating to Aboriginal Australians (Select Committee of the Legislative

Assembly upon Aborigines, 1980b, p.7; Wilkie, 1985, p.23). It followed that the Report recommended that locally based, Aboriginal run Land Councils, designed to submit claims and then hold land, be established (Select Committee of the Legislative Assembly upon Aborigines, 1980b, pp.7, 71-73; Wilkie, 1985, pp.32-33; Macdonald, 2004, p.24). Further, stressing the importance of creating greater self-determining Aboriginal communities and the centrality of land to “the future development of Aborigines”, the Report proposed that financial compensation be made available (Select Committee of the Legislative Assembly upon Aborigines, 1980b, p.7; Wilkie, 1985, p.23).

However, it soon became apparent that the Government would not “immediately implement” all of the recommendations (Wilkie, 1985, p.34). “[F]inancial constraints” and “opposition to land rights from the mineral and rural industries” placed limits on the implementation of all the Committee’s recommendations (Norman, 2007, p.80; Macdonald, 2004, pp.13, 15). The legislation was introduced in haste, without a great deal of public consultation, firstly, because Walker believed that Aboriginal Australians had been denied the use of their traditional lands for too long and, secondly, because of the prospect of the Labor Party losing Government to a Liberal-National coalition that opposed the proposed legislation (NSW, Legislative Assembly, 24 March 1983, p.5091; [Ryan, 2012](#); Macdonald, 2004, p.48).

The NSW Aboriginal population decried the proposed legislation (Wilkie, 1985, p.44; Macdonald, 2004, p.6). It departed so significantly from the recommendations made in the Committee’s First Report that Bob Belllear, who had originally argued for the swift implementation of the recommendations, commented that the proposed legislation “lacked principles” and “*betrays the Party’s commitment to meaningful land rights*” (quoted in

Norman, 2009, p.159; quoted in Wilkie, 1985, pp.35, 45). Despite the opposition mounted by Aboriginal Australians who claimed the legislation was “not what we wanted”, in March 1983 the Wran Government enacted the *Aboriginal Land Rights Act* (Cook, 1985, p.v). That month “thousands” of Aboriginal Australians staged demonstrations outside NSW Parliament House (Norman, 2009, p.84). Gaynor Macdonald (2004, p.6) described the general mood of the protest as one of “anger, frustration and betrayal” and noted that not as many “non-Kooris” were in attendance. She attributed this to the fact “that many could not understand why it was that Kooris were protesting about getting the Act they had been calling for over such a long time” (Macdonald, 2004, p.6).

Aboriginal Land Rights Act 1983 (NSW)

The Government intended the Act to serve as an official acknowledgement of past injustices and to compensate Aboriginal Australians for the loss of their traditional rights over land. However, practical political limitations, the existing common law framework and a general failure to comprehend Aboriginal demands meant that the Act enshrined land rights as special, legislatively created privileges, rather than recognising them as inherent entitlements as Aboriginal Australians had envisaged.

Prior ownership

Taking note of the principle of prior ownership that underpinned the Committee’s recommendations, the Preamble of the Act acknowledged that, “Land in the State of New South Wales was traditionally owned and occupied by Aborigines.” In his Second Reading Speech, Walker explained that the acknowledgement, which “Aboriginal people have

constantly asked for, sets the ground upon which the legislation is being introduced" (NSW, Legislative Assembly, 24 March 1983, p.5093).

However, this recognition misunderstood Aboriginal Australian's conception of land rights. For Aboriginal witnesses, the true Aboriginal ownership of land had never been extinguished. Kevin Cook from the NSW Land Council criticised the Act on this basis, arguing that it "does not give effective recognition to our prior ownership of the land and its waters, minerals and foods" that "have never been ceded by treaty or overturned by conquest or law" ([Cook, 1985](#), p.v)

Flowing from the Government's conceptualisation of land rights as legislative entitlements, created by virtue of Aboriginal Australian's prior ownership, rather than the recognition of continuous rights, the State made only a limited amount of land available to claim by Aboriginal Land Councils. While the Committee's Report recommended that "claimable land" should include "Crown, freehold and leasehold lands", per the Act, only Crown land could be subject to a claim under the Act, and Aboriginal land claims could not overturn pre-existing legal rights, or vague and undefined residential or public needs exemptions (Select Committee of the Legislative Assembly upon Aborigines, 1980b, p.74; Wilkie, 1985, pp.58, 62; [Walker, 1982](#), p.11). The Act did not recognise the distinction made by Aboriginal witnesses between moral and legal ownership. Instead the NSW Parliament acknowledged that while Aboriginal Australians had once owned land, colonisation had extinguished those rights. Importantly, the Act specified that reserve lands owned by the Aboriginal Lands Trust must be transferred to the newly formed Aboriginal Land Councils (Wilkie, 1985, p.59).

Parliament did not intend to facilitate the “massive handing over of land to Aborigines” (NSW, Legislative Assembly, 24 March 1983, pp.5092-5093). Walker believed that opening up private land to claim “would create unnecessary political and social antagonism in the community” (NSW, Legislative Assembly, 24 March 1983, 5091). It is important to note that legislation which recognised that traditional rights to land had not been extinguished at a time before the [Mabo](#) decision would have posed both legal and political problems. The Australian nation state had been established upon the very absence of Aboriginal legal authority and legal ownership of Australian land. To recognise continuous ownership would challenge the very foundation of Australia’s legal system (Chesterman & Galligan, 1997, p.199; [Smith, 2005](#), p.104; Reynolds, 1987, p.7; Reynolds, 1996a, pp.x-xi; Goodall, 1996, 38).

Sovereignty

Just as the Act failed to recognise Aboriginal land rights as continuous, Parliament did not acknowledge Aboriginal sovereignty or fully understand the concept. The Committee did not see a treaty as serving to recognise continuous Aboriginal ownership and sovereignty, as Aboriginal witnesses had argued. Rather, the Committee’s Report conceptualised a treaty as a symbolic action, or apology, which would “acknowledge that the present situation of the Aboriginal people results from brutal repression by white society” (Select Committee of the Legislative Assembly upon Aborigines, 1980b, p.108). Furthermore, the Committee considered a treaty a federal matter, although, the Report recommended that the Wran Government give their support to such a proposal (Select Committee of the Legislative Assembly upon Aborigines, 1980b, p.108).

The Government considered the Aboriginal demand for recognition of Aboriginal sovereignty and a treaty as an issue peripheral to the issue of land rights, with no mention of a treaty being made in the Act's Second Reading Speech. Admittedly, acknowledging Aboriginal sovereignty posed difficult conceptual problems, similar to those of recognising continuous Aboriginal ownership. The Australian nation state was legitimised on the basis of the absence of Aboriginal sovereignty ([Reynolds, 1996b](#)). For an Australian parliament to recognise Aboriginal sovereignty would have the effect of acknowledging the illegality of the foundation of the Australian nation state (Reynolds, 1996b). In the judgment he delivered in *Mabo*, Justice Brennan made such a point in declining to examine the issue of Aboriginal sovereignty (Reynolds, 1996b; Reynolds, 1996a, p.15). Firstly, Brennan claimed that "questions relating to the extension of sovereignty" were "not justiciable in the municipal courts" (quoted in Reynolds, 1996b). Secondly, Brennan J said that while the High Court could bring Australian laws "into conformity with contemporary notions of justice and human rights", it could not "fracture" or "destroy" the Australian legal system (quoted in Reynolds, 1996b).

Self-Determination

In attempting to recognise, and compensate for, previous injustices and rectify current disadvantage, the Act created mechanisms designed to encourage Aboriginal self-determination. To remedy the continuing disadvantage of Aboriginal Australians, attributed to previous assimilationist policies, the Committee recommended the implementation of a policy of self-determination that acknowledged Aboriginal Australians "as a distinct and viable cultural group with the rights to retain their own heritage, customs, languages and

institutions” and “to decide their own future” (Select Committee of the Legislative Assembly upon Aborigines, 1980b, p.7; [Select Committee of the Legislative Assembly upon Aborigines, 1981](#), p.xii; Norman, 2009, p.156). However, the granting of the right to self-determination did not arise from recognition of Aboriginal sovereignty, as Aboriginal witnesses had argued before the Committee. The Government implemented the policy as a new, fairer alternative to, as Walker described it, “the now discredited policy of assimilation” in the hope of improving Aboriginal disadvantage (NSW, Legislative Assembly, 24 March 1983, p.159; Norman, 2009, p.156). The Act applied the principle of self-determination in two important ways. Firstly, the Act abolished the Aboriginal Lands Trust that had been established under the NSW Aborigines Act 1969, designed to implement the then-Government’s assimilation policy, and established a “three-tiered structure of Aboriginal Land Councils” (Wilkie, 1985, p.110; NSW, Legislative Assembly, 24 March 1983, p.5094). The Government intended the localised, rather than centralised, Land Council structures to ensure greater Aboriginal self-determination. However, as Macdonald (2004, p.43) argued, the Act enshrined white methods of decision making, such as “‘majority rule’ and ‘representation’”, which “undermined Koori authority”. Furthermore, the Act provided little practical help to the fledgling Land Councils (Macdonald, 2004, p.43).

Secondly, the Act incorporated the Committee’s recommendation that money be made available to Aboriginal Land Councils to fund the “land rights regime” ([NSW, Legislative Assembly, 11 September 2012](#), p.14919). The Act provided that “An amount equivalent to 7.5 per cent of Land Tax is to be paid into a N.S.W. Aboriginal Land Council account for a period of 15 years starting 1 January 1984” (Legislative Assembly, 24 March 1983, p.5094). As Walker explained, “This will guarantee a source of adequate funding over the long term” (Legislative Assembly, 24 March 1983, p.5094). The Committee and

Government recognised that for greater Aboriginal self-determination, a viable economic base needed to be established. While “principles of self-determination and compensation” underpinned the *Act*, the funding mechanism was not how some Aboriginal witnesses before the Committee had envisaged it (Macdonald, 2004, p.13). The Wiradjuri Land Council insisted that “compensation based on seven and one half percent” was “inadequate” and “not acceptable” (Macdonald, 2004, p.13). Furthermore, Aboriginal witnesses argued that they had an entitlement to financial compensation because, as Billie Craigie from the Aboriginal Legal Service explained, “For 200 Years the State has had the use of our land” (Select Committee of the Legislative Assembly upon Aborigines, 1980a, p.233). However, from the perspective of the Government, colonisation and the introduction of the common law had extinguished any traditional rights of ownership and occupancy Aboriginal Australians had over land in NSW. Therefore, Aboriginal Australians had no entitlement to compensation for what witnesses considered their loss and the State’s use of their land taken without consideration.

Conclusion

In conclusion, despite the best of intentions, the Keane Committee did not understand Aboriginal demands for, and conceptualisation of, land rights. For Aboriginal Australians, land rights were an expression of Aboriginal autonomy. The evidence given by Aboriginal participants before the Committee revealed that they conceived land rights as the restoration of their traditional rights of ownership of land in NSW, rather than the creation of new rights in the way the Government saw them. A belief that Aboriginal rights over all land had never been extinguished but had continued underpinned this understanding. It

followed that not only Crown land but other land as well should be available for Aboriginal land claims. Furthermore, witnesses before the Committee also asserted that as members of a sovereign nation they had an entitlement to negotiate a treaty with Australian Governments, entrenching land rights, and that the State Government should make resources available to facilitate the establishment of autonomous, self-determining Aboriginal communities.

This disjuncture in understanding led to land rights legislation that Aboriginal Australians did not support (Cook, 1985, p.v). In the future, efforts need to be made to, firstly, consult and include Aboriginal peoples in the decision making process, just as the Committee did, and secondly, to make a genuine effort to understand their demands. Only then will significant change occur.

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