

Criminal justice and transgression on northern Australian cattle stations

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The remote interior of northern Australia represented a site of transgression for both pastoral colonisers and Aborigines alike. From the northern frontier period in the late nineteenth century until the 1966 Equal Pay decision, a unique relationship existed on cattle stations in which pastoralists and their Aboriginal workers deviated from government control. Despite Aboriginal protection legislation that prevailed elsewhere in northern Australia, pastoralists created their own jurisdiction over Aboriginal people. This jurisdiction bypassed the assimilationist tendencies of government policy, by allowing Aboriginal people to practice customs and ceremonies, and retain connections to country.¹ At the same time, it maximised the capacity for pastoralists to exploit Aboriginal labour. Therefore, both pastoralists and Aboriginal people benefited from transgressing official 'Aboriginal Acts'.

However, this source of transgression was at the mercy of the pastoralist. Accordingly, it came to a sudden halt in the late 1960s with the introduction of labour-saving machines and the 1966 Equal Pay decision. These developments rendered Aboriginal workers redundant. They were transferred from the cattle station to the government sphere of welfare and criminal justice.² They were subsequently denied connections to country, and their historic labour contribution went largely unrecognised.

This paper suggests that the pastoralists' jurisdiction represented a repository of feudal power. The term 'feudal' is used to refer to an interdependent labour relationship between the landed and the landless, but one that is ultimately controlled by the landholder. The landless are answerable to the proprietor, rather than the state. The state is mostly complicit in this decentralised power exercised by those who produce an economic surplus from their land.³ In northern Australia, the state recognised the economic value of the cattle industry, and its complicity manifested through regulations as well as negligent oversight of pastoralists' power over Aboriginal workers. The consequences were twofold. On the one hand it resulted in impoverished conditions for Aboriginal workers and their dependants. On the other hand it enabled Aboriginal workers to transgress the intransigent nature of protection policies. While the interdependent relationship with pastoralists also involved assimilation, its effect was retrained due to the rights afforded to Aboriginal people on stations.

Transgression from state powers operated on cattle stations across northern Queensland, Northern Territory and Western Australia. These stations north of 'Capricorn' employed Aboriginal people on an unprecedented scale in Australia. Despite the fact that each station was autonomous and geographically isolated, there was a distinct pattern of feudal relationships. This was because the mutual dependence between pastoralists and Aboriginal workers provided a stable means of labour exploitation. This is discerned from oral histories of Aboriginal people, pastoralists and protectors; government reports, and official correspondence. When pastoralists' dependence ceased in the late 1960s, so did its jurisdiction for transgression. As Peter Yu describes, Aboriginal people were forced into 'severely overcrowded native welfare reserves' or 'hastily gazetted refugee camps'.⁴ This paper considers the growth of the pastoralists' jurisdiction (including the underpinning colonial land system) and the capacity for Aboriginal transgression within this jurisdiction, and concludes with the consequences of the demise of Aboriginal employment on cattle stations and possibilities for the future.

Feudal transgression: a more elucidatory means of classifying cattle stations

Traditionally, relationships on northern cattle stations have been classified in terms of 'free or forced' employment. Both sides of the debate ground their arguments in notions of power. The proponents of the 'forced labour' argument suggest that cattle station managers exercised power brutally over Aboriginal workers.⁵ In turn, the workers were powerless to resist. In the 1980s Raymond Evans drew attention to 'striking parallels across time and space between the condition of the slave and the unfree Aboriginal worker'.⁶ Both were denied economic rights of pay and freedom of movement in the labour market.

By contrast, from the late 1980s cultural historians such as Ann McGrath and Henry Reynolds emphasised the Aborigines' 'creative adaptation' to stations that afforded them agency.⁷ This 'accommodationist' school highlights the cultural leverage granted to Aboriginal workers to stay on their land and maintain kinship ties. McGrath summarises this cultural revisionist position as follows: 'Aboriginal station dwellers co-operated with the white people, but they were never truly colonised'.⁸

The traditional focus on the degree of power exercised between cattle station managers and their workers does not appreciate the context of the cattle station as a land jurisdiction. Possession of land gave pastoralists rights over Aboriginal workers. At the same time, Aboriginal workers who conformed acquired rights over the station land. By making the feudal notion of land jurisdiction a central issue, it explains how Aboriginal workers benefited from the relations — by retaining ties to their land but *at the same time* being exploited — by pastoralists

making residence contingent on Aborigines' labour contribution. Therefore, labour was neither free nor forced, but dependent on the land jurisdiction of the pastoralist.

Intersection between feudal land laws and power

In northern Australia, pastoralists' jurisdiction over Aboriginal people reflects the corresponding feudal rights to land and power. The feudal legal system is based on multiple layers of land possession beneath the ultimate title of the Crown. Each landholder is entitled to exercise power over their land and dispossessed workers. Consequently, feudal law does not centre power in one authority. When Australia was colonised, Britain introduced feudal land tenure throughout Australia. However, it was only in the pastoral north that feudal relations accompanied these laws. This is because landholders had an interest in exercising their right to power over 'landless' Aboriginal workers. This section will consider the role of Australian feudal land laws in dispossessing Aboriginal people, and dividing power between the state on behalf of the Crown and the pastoralist.

The feudal property principle, known as the 'Doctrine of Tenures and Estates', served colonial objectives of land expropriation and control. The Doctrine of Tenures provides for a 'single devolving chain of title' by ensuring that 'no land in which the Crown has granted an interest is ever without a legal owner'.⁹ The Doctrine of Estates articulates the interests of those who hold land from the Crown to grant their estate to a lessee.¹⁰ The Doctrine of Estates and Tenures, therefore, allows coexisting interests in one piece of land at the same time. In northern Australia feudal laws materialised due to pastoralists' need for Aboriginal labour. Not only did they have to answer to the 'Crown' by fulfilling lease requirements on their land,¹¹ but they also had to accommodate Aboriginal land interests in order to guarantee their labour. Throughout the rest of Australia, feudal tenure tended towards a nominal form of Crown control.

Feudal law was a powerful vehicle for Australian land conquest, as it justified Crown control and legitimised Aboriginal dispossession. Feudal tenure, as the source of Australian property statute and case law, meant the Crown could parcel out huge tracts of land to productive and loyal tenants while retaining ownership. This stratified system of land law was routinely implemented in other English, French and Spanish settlements, via a land lease system, to allow the Crown ultimate control.¹²

The High Court in *Mabo v Queensland*¹³ confirmed the feudal origins of Australia's land law. The majority claimed that the Crown acquired ultimate title, known as 'radical title', of all Australian land upon colonisation. Each substantive judgment made some reference to this feudal essence of land law as expressed in the Doctrine of Tenures and Estates. Despite recognising native

title, these judgments upheld the feudal basis of Australian land law. In his majority judgment, Justice Brennan reiterated that the tenurial principle that 'all lands are holden mediately or immediately of the Crown, flows from the adoption of the feudal system'.¹⁴ He posited that because colonial lands were the patrimony of the coloniser nation, the origins of Australia's land tenure were found in the traditional belief that after the Norman Conquest in 1066, 'the King either owned beneficially and granted, or otherwise became Paramount Lord of, all land in the Kingdom'.¹⁵

The *Australia Courts Act* 1828 (Imp.) was the statutory instrument for the formal implementation of feudal laws. It traced all Australian land possession to Crown grants.¹⁶ Common law precedent affirmed feudal tenure in *Attorney-General v Brown*. This 1847 NSW Supreme Court decision overruled a challenge to the Crown's sovereign title over tenures. Chief Justice Stephen explicitly stated that since settlement the 'waste lands' of the colony were in the 'Sovereign's possession; and that, as his or her property, they have been and may now be effectually granted to subjects of the Crown'.¹⁷ He referred to the British constitutional principle that the sovereign is the legal '*universal occupant*'.¹⁸

To sustain the imposition of feudal tenure laws in Australian common law, the corresponding fiction of *terra nullius* — land belonging to no one — was invoked to show there was no pre-existing property title to universal Crown title. International law upheld that states could acquire foreign land legally, and apply their laws automatically, where land was *terra nullius*.¹⁹ This doctrine was manufactured to include territories inhabited by 'backward peoples', due to the purported benefits of Christianity and European civilisation, and Vattel and Blackstone's eighteenth-century notion that land uncultivated could be claimed by occupation, as it would lead to land 'improvement'.²⁰ Their position drew on the modern justification of private property rights advanced by seventeenth century philosopher John Locke. This holds that common lands brought into production would 'first begin a title of property'.²¹ This was confirmed in the Privy Council's judgment *Re Southern Rhodesia*.²² In *Attorney-General v Brown*, Chief Justice Stephen rejected that there were Aboriginal proprietors at the time of settlement, as all of the country was considered 'waste land'.²³ The assertion of feudal land tenure in Australia, therefore, was predicated on the Crown's abnegation of existing Aboriginal land arrangements.

The interests of the landholder and the state are held together by a common endeavour to enforce the position of the 'landless'. Proprietors enforce this directly, and brutally, with the backing of the state. In this respect their direct dispensation of power reflects their direct interest in the land. By contrast, the Crown's interest in land is nominal and their exercise of power is remote. Therefore the dissemination of Crown title means the Crown's powers are reduced to a 'seigneurial means of expression',²⁴ and become the 'weakest link' in the

feudal chain.²⁵ In northern Australia, the Crown as supreme landlord had ultimate title to land but actual possession was in the hands of the pastoralists.²⁶ The pastoralists used their possession initially to dispossess Aboriginal people of their land, to quell their resistance and then to exploit and control Aboriginal workers. For this reason, Queensland colonial commentator Walter Tyrwhitt stated, pastoralists were the 'natural aristocracy' in the social hierarchy due to their land claims.²⁷

Pastoralists' governance on the frontier

On northern frontiers, Australian colonisers assumed local powers over Aboriginal people. These colonisers were almost invariably pastoralists. The *Adelaide Advertiser* reported in 1904 regarding Western Australia, 'As the settlement extends farther out the country formerly occupied exclusively by the natives passes into the hands of the pastoralists.'²⁸ The pastoralists used their powers to take Aboriginal land and exploit their labour. Pastoralists' direct control over Aboriginal people was a counterpoint to the weak centralised authority that rested in the hands of the colonial government in the nineteenth century and the Aboriginal Chief Protector in the twentieth century.

Historians such as Rosalind Kidd and Bain Attwood employ Foucauldian notions of fragmented power to explain the power distribution on the northern frontier.²⁹ They infer that there is no order between the decentralised powers of pastoralists and the centralised power of the state. This approach overlooks the unity of the pastoralists' and the state interests to retain land and sovereignty against Aboriginal people. This represents a feudal dissemination of power, in which the government is complicit to the landholders' jurisdiction. This is because the landholder can most effectively exploit land and labour.

Therefore, while pastoralists transgressed government controls of Aboriginal lives outside of stations, governments tended to sanction their powers. Pastoralists had a mandate to manage Aboriginal people working on their stations due to the profits they reaped.³⁰ In Queensland, land was leased on the condition that Aboriginal inhabitants would be removed by the pastoralist.³¹ In the Northern Territory, Regulation 14 under the *Aboriginals Ordinance* 1918 gave the pastoralist the power to maintain the worker, their relatives and dependants.³² These examples demonstrate that pastoralists' rights to land conferred entitlements to rule.

The proclamations of pastoralists and administrators reveal the concurrent view that pastoralists were the legitimate dispensers of Aboriginal justice. Pastoralists in the Northern Territory claimed that they were 'far removed from the restraints of formal law' and therefore 'every man was his own policeman'.³³ In 1904 the Northern Territory Government Resident, Charles Dashwood, claimed the lack of police in pastoral areas obliged pastoralists to contend with native

depredateions.³⁴ In 1890 the South Australian Minister responsible for the Northern Territory, JL Parsons, declared, 'Leave the native question alone and the natives will be obliterated.'³⁵

Pioneering pastoralists inculcated in Aboriginal minds the notion that they possessed an indeterminate amount of force. Northern Queensland commentator Sir Raphael Cilento stated, 'In the absence of law, the squatters took their own vengeance, and it was devastating.'³⁶ In the first decade of Northern Territory settlement, Lindsay Crawford, the first manager of the Victoria River Downs station, asserted, 'we have held no communication with the natives at all, except with the rifle'.³⁷ Prominent missionary and Protector of Aborigines in the East Kimberley, Reverend JB Gribble, in 1884 noted the disproportionate punishment exacted by Queensland settlers who 'go out in parties fully armed' in reaction to Aborigines spearing their cattle.³⁸ These punitive raids, despite being public knowledge, went unchecked by governments. By exercising their own force, pastoralists installed their dominant reign mercilessly. This went on to be a powerful instrument for the discipline of Aboriginal labour even after such force had subsided.

Normalised pastoralists' jurisdiction

The need for Aboriginal labour in the northern colonies by the late nineteenth century meant that pastoralists continued to control Aboriginal lives, but in a more refined manner. On cattle stations pastoralists assumed the role of welfare provider.³⁹ This offset the powers of the bureaucratic 'protectorship' that controlled virtually every aspect of Aboriginal lives on the 'outside'.⁴⁰ Rosalind Kidd points to the role of pastoralists as ration distributors, which gave them 'horrifying' power to punish Aboriginal people by withholding rations.⁴¹ Nonetheless, Aboriginal people on stations were able to transgress government controls, and to a degree, negotiate their relationship with their pastoral managers. This was a result of the new employment relationship that had elements of mutual dependence, obligations and loyalties, despite the dominant position of the pastoral lord.

The shift in control strategies from violence to labour discipline was consolidated in the 1930s when Aboriginal people were being born on stations and had become accustomed to their labour relationship with pastoralists.⁴² Consequently, there was a reduction in Aboriginal people's physical resistance to pastoralists' occupation. In addition, pastoralists realised by the 1930s that 'white' labour was not going to fill the labour needs of the industry.⁴³ The Territory's Chief Protector of Aborigines, Baldwin Spencer, noted that pastoralists had become 'dependent' on Aboriginal workers.⁴⁴ Aboriginal labour was not only abundant, with thousands of Aboriginal people on stations, but also highly skilled. Their familiarity with the environment made them competent stockworkers, and their

hunting abilities translated into mustering abilities. They were a stable labour force as they lived on station property (which was usually their traditional country), as well as a cheap labour source because pastoralists did not generally pay them wages.⁴⁵ Aborigines were therefore revalued in terms of their 'usefulness' to 'whites'.⁴⁶

The shift represented, in Foucauldian terms, the 'normalisation' of power.⁴⁷ Normalised discipline is just as powerful as violent punishment as a means of social control.⁴⁸ It 'hierarchizes' power, rather than displays it 'in its murderous splendor'.⁴⁹ Modernist political philosophers, such as Max Weber,⁵⁰ conflate normalisation (or 'civilisation') with the development of the modern bureaucratic state, and indeed this would apply to the bureaucracy formed to police the Aboriginal protection legislation. However, in the pastoral north, normalised power remained localised.

Contemporary writings reveal that pastoralists conceived themselves as the new paternalists.⁵¹ In *We of the Never-Never* (1907), one of the best-known and earliest literary representations of Northern Territory labour on Elsey Station, Jeannie Gunn, wife of pastoralist Aeneas Gunn, projected the new compassion. Contrasting colonisers' relentless approach to cattle spearing on the frontier,⁵² she advocated 'the judicious giving of an old bullock at not too rare intervals' in order to keep the Aborigines 'fairly well in hand'. Her response of 'granting fair liberty of travel, and a fair percentage of calves or their equivalent in fair payment' reflects changing mentalities from frontier violence to paternalism.⁵³ Furthermore, Albert Wright perceived violence towards his Aboriginal stockmen and their dependants as an undeserved wrong on 'his own people'.⁵⁴ These portrayals represent the changing attitudes towards Aboriginal people as their labour contribution increased.

Northern pastoral lords over their feudal estate and workers

The growing paternalism went hand in hand in hand with pastoralists' increased confidence over their land tenure. Pastoralists saw themselves as entitled to the land they had conquered. Pastoralist Billy Cox who 'ruled' the 'vast' Louisa Downs Station in the Kimberley for 50 years, and passed it on to his son and grandson, was attached to the idea that the 'station was theirs by right'.⁵⁵ Many pastoralists conceived themselves as lords who bestowed rights over their land and dependent workers. These pastoralists likened themselves to 'cattle barons' and 'cattle kings', even if their castles were made out of grass.⁵⁶ According to pastoralist Albert Wright, it was necessary for Aborigines under the new property regime to conform to station life. The 'inevitability' of losing their land meant Aborigines had to transform 'their very selves'; the choices were 'to die, or to serve'.⁵⁷ Over Aboriginal land and labour, the pastoralists were self-professed feudal lords.

Pastoralists' conceptions of their supremacy in the property hierarchy spread to the parliamentary realm. They resembled 'aristocratic squatters' who exercised political sway over the microcosm of their lease and the macrocosm of colonial legislature.⁵⁸ As self-entitled 'natural rulers',⁵⁹ they pointed to their respectability, affluence and civilisation. Their proprietary status meant large numbers of people depended on them, which qualified them for parliament.⁶⁰ North Queensland pastoralist and explorer Oscar de Satge, who served three terms in the Legislative Assembly between 1869 and 1888,⁶¹ wrote that the successful manager of a large station might aspire to fill any position from magistrate to Premier.⁶²

However, it was on the landholder's property that lordship powers would materialise most effectively. These powers were exercised over 'their' Aboriginal workers in a multiplicity of guises.⁶³ On smaller stations, particularly those run by the owner, Aboriginal workers tended to be closely controlled by the manager, who would reward their duty with liberal treatment and incentives. There, Aboriginal workers were more inclined to develop strong allegiances to pastoralists and their wives.⁶⁴ On the bigger stations, such as Victoria River Downs, managers tended to exercise more discretion with their workers and treat them as dispensable.⁶⁵ When it was owned by the British company Vestey's, the Aboriginal Protector and writer Xavier Herbert observed forceful treatment and abusive language.⁶⁶ These managers were much more focused on meeting budget outcomes set by distant owners.⁶⁷

Nonetheless, on both small and large stations, pastoralists and their wives exercised a lordship over Aboriginal workers. They demanded loyalty and discipline, which they often commanded by virtue of their control over rations and residence on the pastoral lease. From her experience of early Northern Territory stations, Mrs Dominic D Daly emphasised the need 'to keep the aboriginal in his proper place'.⁶⁸ Michael Durack claimed that station managers and head stockmen tried to be 'kind and just' to the best of their ability. But any more than that could not be expected in their circumstances, which necessitated productive and disciplined labour.⁶⁹

The paternal quality of pastoralists' lordship is indicated by their wide use of possessive pronouns. They referred to their Aboriginal workers as 'our Aborigines'.⁷⁰ Imbued with a clear sense of hierarchy, many pastoralists and their wives literally saw their role as one of master over servant. They conceived it as their duty to civilise Aborigines to European standards. Their proprietary position, physically and morally, endowed them with a right and obligation to impose discipline on Aboriginal workers. They exerted their supreme position directly on Aboriginal workers with whom they lived and worked, including domestic servants on the homestead, station hands and stockworkers on droving camps.

The terminology of lord,⁷¹ master⁷² and servant⁷³ seeps into contemporary pastoralists' descriptions of relations between station managers and workers. It is particularly deeply infused into accounts regarding Aboriginal workers in the homestead.⁷⁴ Female domestic servants even had to address the children of their employers with the title of 'Master or Miss'.⁷⁵ By classifying their Aborigines along these feudal lines, pastoralists could justify their 'firm but fair' treatment and significant labour controls over inferior workers. The Federal Minister for Home Affairs (1928-29), CLA Abbott, claimed that the 'faithfulness of blacks' in the Territory is contingent on a good and kindly 'boss' and 'missus'.⁷⁶

However, the lordly supremacy station masters and mistresses assumed not only endowed them with rights, but also obligations. The responsibilities attendant to their 'patrimonial jurisdiction'⁷⁷ included the maintenance of Aboriginal workers and their dependants, amounting to whole communities of Aboriginal people on stations. Pastoralists provided them with rations, including food, clothes and tobacco, land to live on, and shelter in some instances.⁷⁸ Pastoralists took on the government's official role to 'protect' and provide for Aborigines.⁷⁹ Pastoralists' feudal rights over Aboriginal people, therefore, were inseparable to their obligations.

Lordly responsibilities for the welfare and upkeep of workers depended on Aborigines' conformity to the station domain. This would entrench Aboriginal loyalty and dependence on the cattle station. 'Adequate tucker', according to Mary Durack, was assured to Aborigines as long as they 'played the white man's game'.⁸⁰ With her sister, Elizabeth, Mary Durack wrote of their Aboriginal workers: 'They work for us because we give them 'tucker' and whatever else they need. We give them what they want because we need them to work for us — just a matter of convenience from both points of view.'⁸¹ Michael Durack is even more forthcoming in pointing out the lordly obligations imposed on him as part of his dependence on Aboriginal station labour:

Many seem to imagine that the white man has the big end of the stick in this bargain, but I don't think this is the case. There are those of us who consider we would fare better with four or five skilled stockmen in place of a dozen not wholly reliable black abos whose lubra and picanninies must be clothed and fed as well. 'Then why not?' you ask. It is a big step. The blacks have been at the station for a long, long time. We are, in a negative way, attached to them and they to us.⁸²

In northern Australia, the pastoralists rather than the government were the self-proclaimed benefactors of Aboriginal people. Federal Minister for Territories Paul Hasluck wrote that managers of Kimberley stations in the 1930s served as feudal 'overlords' by providing their 'serfs' with 'stability and contentment'.⁸³

Nonetheless, 'white man's burden' on cattle stations furthered the economic interests of the industry. It enabled the pastoralist to express their lordly will over land *and* labour for a profitable outcome.

The strength of pastoralists' jurisdiction in the face of government legislation

Pastoralists' personal power endured in the twentieth century despite — and sometimes because of — burgeoning bureaucracies. The introduction of Aboriginal 'protective' legislation gave wide-sweeping powers to the Chief Protector of Aboriginals and the 'protectorship' under him. Their role was to regulate the lives of Aborigines, by restricting their movements, place of residence, family life, and expenditure of Aborigines' money.⁸⁴ These 'Aboriginal Acts' were common across northern Australia: *Aboriginal Protection Act and Restriction of the Sale of Opium Act* (Queensland 1897), *Aborigines Act* (Western Australia 1905), and *Aboriginals Act* (Northern Territory 1910).

The Aboriginal Acts applied onerously to Aboriginal people in missions, on government settlements and in town employment. The Northern Territory Chief Protector of Aborigines, Dr CE Cook observed, 'The Aborigines employed on cattle stations were no problem. The problems were on the missions.'⁸⁵ He attributed this to the 'relationship between the management and the Aborigines [on cattle stations] which worked in the interests of both of them'. By contrast, Aborigines on missions were far removed from home territories,⁸⁶ and missionaries sought to replace Aboriginal interests in their land and culture with an interest in Christian 'civilisation' and morality.⁸⁷

However, the Protector often acquiesced to the power of the pastoralist over Aboriginal workers, either pursuant to the Act or with disregard to the Act. Pastoralism was how the legislation's objective of uplifting and protecting Aborigines would be met, according to Baldwin Spencer, the Territory's Chief Protector in 1913.⁸⁸ R Marsh of the Federal Department of Territories, wrote in 1954, '[T]he pastoralists in maintaining aboriginal dependents are doing the job which would otherwise fall to the Government.'⁸⁹ Despite this rhetoric, the form in which pastoralists managed Aboriginal people did not always comply with the assimilation agenda of governments.

A key feature of the Aboriginal Acts was the introduction of employment permits for Aboriginal workers.⁹⁰ These gave station managers the power to employ as many Aboriginal workers as they chose. Managers could buy these permits for a small price so long as they were deemed of 'good repute', in the 'protector's opinion'.⁹¹ Ruby de Satge, who worked on a Queensland station, described the 1897 legislation in the following terms, '[T]he Act means that if you are sitting down minding your own business, a station manager can come up to you and say, 'I want a couple of blackfellows' ... Just like picking up a cat or a dog.'⁹²

The minimal government regulations concerning permit conditions, and the lack of government monitoring of station conditions,⁹³ meant the permits effectively gave employers a green light to exercise unlimited control over Aboriginal workers. Aboriginal workers were denied access to the bargaining process, freedom of movement or the right to refuse to work.⁹⁴ Stockworker John Watson at Fitzroy Downs stated that the protectors gave managers permits to 'work them [Aborigines] as they saw fit' and 'take charge of their welfare'.⁹⁵ Armed with permits, pastoralists were granted 'the status of "protector"', according to Eric Lawford who worked at Christmas Creek. He said:

It gave them [pastoralists] the same authority as the policemen, who were also protectors. If there was any trouble with the blackfellas then the police used to be called in to sort it out. But, because he was the permit holder and as such a protector, the station manager could do pretty much as he liked.⁹⁶

In the exceptional case where district protectors refused to grant permits due to poor living conditions, such as Ted Evans' rejections of applications by Vestey's managers at Victoria River Downs, pastoralists used their political clout to override the protectors' decisions. Evans reflected, 'that's the kind of power and lobbying you're up against when you try to do something'.⁹⁷ Humanitarians at the 1933 Aboriginal Welfare Conference referred to the protectionist legislation, as protecting the pastoralist rather than Aboriginal worker.⁹⁸

The alignment of pastoral and state interests is epitomised by the fact that a number of pastoralists served as official protectors. The Western Australian Minister responsible for Aboriginal Affairs (1914-19), Rufus H Underwood, commented that appointing pastoralists to positions of protectors was akin to 'leaving a hawk to protect a chicken'.⁹⁹ More commonly, however, police took up the role.¹⁰⁰ Their struggle to juggle it with other duties, and their close relations with pastoralists, meant police unofficially devolved their duties. They are reported to have carried out their responsibilities in relation to the Territory's *Aboriginals Ordinance* in a detached manner, making their inspection of employment conditions 'nominal and superficial'.¹⁰¹

Non-payment of wages as a source of pastoralists' authority

The non-payment of wages was endemic on northern Australian cattle stations well into the twentieth century. This phenomenon emerged as part of a broad system of pastoral lords' rights and obligations. Low labour costs not only assisted in maximising pastoralists' surplus, but also made possible a large-scale and dependent workforce. Inducements other than wages, such as rights of Aboriginal communities to live on their country, more effectively enforced ties of the Aboriginal worker to the pastoralists' jurisdiction.

In addition, pastoralists perceived it as their right to extract labour from Aboriginal workers without pay. Aborigines, as they saw, had an obligation to work for the pastoralist. According to Aboriginal spokesperson, Noel Pearson, Aboriginal work 'for slave labour rates of pay, or no pay at all', was perceived by pastoralists as 'an *exaction of responsibility* from Aboriginal people'.¹⁰² Like feudal lords, pastoralists' surplus extraction from workers was a matter of 'dues' rather than commodity relations. The feudal lord's use of its superior land claim was the means of labour exploitation, as the landless could only stay on the lord's land in exchange for their labour.¹⁰³

Some workers were aware that they were short-changed, particularly in later station years, but did not have the power to stand up to management and demand wages. John Watson articulates the situation of non-waged dependence accordingly, 'The Aboriginal people knew they were being exploited but they didn't have any choice.'¹⁰⁴ Stockworker Barney Barnes emphatically compared the lack of money on stations in the 1940s to being kept in a prison.¹⁰⁵ Moreover, Northern Territory Administrator, AR Driver, was forthright in conveying that non-payment of wages fostered 'a system of *serfdom*' in which employers 'were able to maintain strict control of a subject people'.¹⁰⁶

Where legislation provided for Aboriginal wages, there were government regulations that allowed pastoralists to bypass this requirement, aside from the frequent illegal employment of Aboriginal workers without employment permits. Notably, wages did not have to be paid where the pastoralist provided for Aboriginal workers' dependants on stations. Under Regulation 14 of *The Aborigines Ordinance* 1918-43, the Chief Protector had the power to exempt an employer from the 'payment of wages' to an Aboriginal person maintaining 'relatives and dependants'.¹⁰⁷ However, in reality, the relatives and dependants were themselves workers, contributing to the upkeep of the homestead and station property.¹⁰⁸ A stockworker at Fitzroy Downs, Jock Shandley, claimed that the managers 'really made [the dependants] work for their tucker, for their bread and beef'.¹⁰⁹ In addition, dependants were relegated to 'black camps', where accommodation usually comprised 'scrap' material, if anything at all,¹¹⁰ and their food rations were of the lowest standard in the station hierarchy.¹¹¹

After World War II, the Federal government increasingly 'maintained' Aboriginal children as part of its assimilation policy.¹¹² Consequently, pastoralists no longer had financial responsibility for Aboriginal children (or the elderly¹¹³), and were therefore required to pay wages to Aboriginal workers. However, they continued to bypass this requirement through the 'booking down system'. This involved crediting Aboriginal wages on the station store books and then charging excessive prices at the store. Through this common mechanism, pastoralists avoided cash payment of wages.¹¹⁴

This maintenance of worker communities typifies the feudal process of exploitation. It is not simply that Aboriginal workers were not paid, but they were rendered dependent on pastoralists for rations and access to land in lieu of wages.¹¹⁵ However, the relationship of dependence between pastoralists and Aboriginal workers provided Aboriginal people with an opportunity to command rights that they would have otherwise been denied under the protection of the government, particularly rights to their land and customs. Aboriginal workers, by asserting their connections to country, transgressed many controls imposed on Aboriginal people on the 'outside'.

Aboriginal transgression

The unique relationship that developed on northern Australian cattle stations by the 1930s provided rights and obligations to Aboriginal workers. The pastoralists' jurisdiction not only allowed pastoralists to transcend state power, but also the Aboriginal worker escaped the full impact of state 'protection'. By living on stations, which were on or near their 'homelands',¹¹⁶ Aboriginal workers and their dependants could transgress policies of protection and assimilation, which often involved removal from traditional country. As part of the working arrangement, whole Aboriginal communities lived on the property. This enabled them to retain aspects of their customary systems.¹¹⁷ Pastoralists came to accept that Aboriginal workers would continue their cultural practices, and often encouraged them as a means of maintaining their labour force.¹¹⁸ This working relationship based on rights and obligations on both sides, can be framed as feudal because at its heart was a common interest in land, albeit for very different reasons.

Aboriginal memories convey that within station life there was an endeavour to 'keep alive' their land connections.¹¹⁹ Riley Young of Yarralin pointed out that labour conditions enabled the otherwise frightened and dispossessed Aborigines to 'look after the land' and 'keep the place'.¹²⁰ Aboriginal workers' ongoing ties to their land were more than a matter of residence. They actively pursued customary and ceremonial rites that furthered their land interests and moral economy. The general rule was that masters did not interfere directly with 'tribal matters', such as religious rituals, so long as they did not jeopardise the station's economic venture.¹²¹

The unyielding determination of Aboriginal workers to retain their land connection was one factor that prevented them from becoming an enslaved labour force. Manning Clark claimed that cultural intransigence precluded Aborigines from being reduced to slavery in the north, although he also recognised that in the south-eastern colonies, particularly Tasmania, it had devastating consequences for Aboriginal communities.¹²² The northern experience confirms by corollary the cardinal maxim that 'neighbours made

difficult slaves'.¹²³ The well-known slave theorist Orlando Patterson proposed that the fundamental element of slavery — 'natal alienation' — was almost impossible to achieve with natives in a conquered land.¹²⁴ The master, not the slave, was the intruder in an established native community.¹²⁵

An integral aspect of the relationship between pastoralists and stockworkers was the allowance for *dependants* to reside on the station. This meant that Aboriginal communities could nurture kinship ties and share their resources in accordance with traditional social relations. Communities could also maintain their languages, express their Aboriginal identity and practice cultural rites.¹²⁶ These ongoing ties allowed Aboriginal workers to transgress broader government attempts to assimilate Aboriginal people. Aboriginal people on the pastoralists' jurisdiction fared well compared to their counterparts on the 'outside'. The benefits for those on the 'inside' became patently clear after Aboriginal communities were removed from stations *en masse* after the 1966 Equal Wage decision. After their removal, Aboriginal people had restricted access to their land and customary practices.

In addition, the Aboriginal 'moral community' that was fostered on stations was a counterpoint to the morality of the pastoralists. It allowed workers to resist the domination of the pastoralists' way of life. Their ongoing kinship ties and customs were powerful factors in providing workers with autonomy from their masters. It also set Aboriginal station workers apart from slave conditions, which rupture family and community ties.¹²⁷ The slave master seeks to impose a slave morality that is foreign to the slave, whereas on cattle stations it suited pastoralists to have relatives and dependants live on station land.¹²⁸ This is because it offset wages, created a stable workforce and provided an additional pool of labour. Ties of kinship gave Aboriginal good reason to remain on stations and made it difficult for Aborigines to leave on a permanent basis. On the Victoria River Downs Station in the Northern Territory, 75% of Aborigines were dependants of stockworkers.¹²⁹

However, the real opportunity to practice customary rites was in the wet season when Aboriginal people on stations were allowed to go 'walkabout'. Adult initiation and other important ceremonies were conducted in this season. Aboriginal workers asserted this right even when pastoralists, such as May MacKenzie, regarded it as 'awkward and annoying'. MacKenzie was frustrated 'that the tribe could never be persuaded to stay over the traditional time of walkabout, but went as inevitably as the season came, taking the boys just as they would have been most useful'.¹³⁰ However, generally pastoralists granted leave for 'walkabout' as a component of the station relationship of rights and obligations. They would sometimes provide rations for Aboriginal people to take with them. But walkabout also occurred in a period when pastoralists were happy to dispense with the labour force. It was allowed only during the months

of the non-mustering wet season (November-March), known as the 'slack season', when managers were happy to forego responsibility for their upkeep.¹³¹ Jimmy Bird remembered that Aboriginal workers 'had to wait until manager said we could go'.¹³²

Nevertheless, Aboriginal workers fondly recall their annual 'walkabout' in the wet season. Lochy Green's recollection of the Partukurru, or initiation time, at Myroodah Station illustrates the Aboriginal experience. He described the pastoralists' concurrence with the traditional Aboriginal law business, which is indicated by their provision of rations during this period:

That law business used to be held during the wet season, which was a holiday time on the stations. The managers used to let the Aboriginal people alone during that time, as long as they came back to the station when it was time to start work again ... The law men used to call people from all the other stations to come down for a big meeting — took rations with them.¹³³

Many Aboriginal workers were active in shaping their relationships with pastoralists and the manner in which they performed their work. Norbert Elias points out that 'civilizing' processes, including work, involve interactions between individuals that weave patterns of 'interdependence'.¹³⁴ This is apparent on northern cattle stations, where both the pastoralists and the Aboriginal workers' livelihood hinged on their coexistence. On the homestead, bonds of friendship would occasionally grow between Aboriginal servants and their 'missus'.¹³⁵ When mustering, pastoralists would recognise the skills of Aboriginal workers and assign them supervisory roles.¹³⁶ Stockworkers assumed independent responsibility over their tasks, and expressed a pride in their work.¹³⁷

Conclusion: limits of Aboriginal transgression and ways forward

The capacity for Aboriginal workers to transgress government protection and assimilation policies, was ultimately at the will of the pastoralists' jurisdiction. As long as pastoralists were dependent on Aboriginal labour, Aboriginal rights would be accommodated. However, once their labour value diminished, so did their rights. Therefore, the suggestion by cultural historians that Aboriginal rights on cattle stations indicate 'agency' must be considered within the context of the pastoralist's jurisdiction. Because the pastoralists had land and capital, they were able to dispense with the relationship of mutual dependence as it suited them. This rendered Aboriginal workers' land connections vulnerable to pastoralists' authority and legal rights to land.

This is starkly apparent in light of the mass retrenchments in the 1970s, and the removal of Aboriginal communities from station properties across northern

Australia. This was precipitated by the Equal Wage decision of 1966 and the pursuant Pastoral Award 1968, which pastoralists claimed made Aboriginal labour unaffordable. However, it was not the only factor. The introduction of motorcycles and helicopters to mustering practices had already begun to undermine the role of Aboriginal stockworkers on horseback.¹³⁸ Peter Yu described the Aboriginal expulsion from stations as breaking ‘the back of the feudal relationship between station managers and Aboriginal families ... precipitat[ing] a refugee crisis of enormous proportions’.¹³⁹ Lawford explained that the expulsion did ‘a lot of damage up here; it really disrupted our communities’.¹⁴⁰ Their rights to their land were restricted as the feudal land tenure system prevailed.¹⁴¹

For Aboriginal people to transgress ongoing government attempts to assimilate Aboriginal communities, they need to establish their own jurisdiction on their land. This could require resources to run their own cattle stations and other sustainable industries.¹⁴² Former stockworker John Watson laments the destructive practices of aerial mustering to the land, which would be better protected by Aboriginal people.¹⁴³ He states, ‘The Aboriginal people have an intimate understanding of the natural environment, but we haven’t been given the opportunity to apply that knowledge in modern jobs’.¹⁴⁴ The development of sustainable industries in northern Australia could revitalise the historic labour contribution of Aboriginal cattle workers. This form of economic self-determination would offer more than a fragile right to their culture and land. Rather, if appropriately supported by governments, it could create a long-term platform for Aboriginal rights and reconciliation.

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ENDNOTES

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- ⁸ McGrath 1987: 175.
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- ¹¹ Such as fencing, irrigating and stocking: Shepherd 1935.
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- ¹⁶ Bhuta 1998: 25.
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- ²⁸ Melbourne Correspondent 1904: 5.
- ²⁹ Kidd 1997: ix-xxi, 1-17; Attwood 1992: iii-iv.
- ³⁰ Biskup 1973: 16.
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- ³⁴ Gunn 1990: 141.
- ³⁵ Donovan 1981: 184 .
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- ³⁷ Lewis 1997: 3.
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- ³⁹ Berndt and Berndt 1983: 98.
- ⁴⁰ See Commonwealth of Australia 1918, *Aboriginal Ordinance* 1918 s5(1)(b).
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- ⁴² McGrath 1987.

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Transgressions

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- ¹⁰⁹ Shandley 1988: 73.
- ¹¹⁰ Mary C Stephenson 1982, *Interview with E. C. (Ted) Evans*, Darwin, April-June 1982, Northern Territory Archives Service, NTRS 266 (Oral history transcript) TS46 (Box3): 30-1 (Tape 2, Side A).
- ¹¹¹ Wilson 1952: 94.
- ¹¹² HJ Goodes (Director-General, Melbourne) 1960, *Child Endowment for Aboriginal Children on Cattle Stations in the Northern Territory*, Memorandum to the Minister, 17 March, 1960, NAA (Canberra): A885, B456, Part 2.
- ¹¹³ LL Gillespie (Assistant NT Administrator) 1962, *Child Endowment for Aboriginal Children on Cattle Stations in the Northern Territory*, Memorandum to the Director, Department of Social Services, Adelaide, 31 October 1962, NAA (Canberra): A885, B456 Part 2.
- ¹¹⁴ CR Lambert 1953, 'Employment and Payment of Aborigines in the Northern Territory: correspondence from the Secretary for Department of External Territories to the Administrator of the Northern Territory', 29 January, National Archives (Darwin), CRS F1 Item: 1953/307 .
- ¹¹⁵ Bush 1996: 3.
- ¹¹⁶ Rowse 1987: 84.
- ¹¹⁷ Although the 1948 Berndt report on stations owned by Vestey's noted that spiritual and economic foundations of tribal life were fractured: Berndt and Berndt 1987: 208-10.
- ¹¹⁸ JW Allen 1943, 'Aborigine Station Employees — Northern Territory: memorandum for the Minister for the Interior, Canberra from the Secretary, Northern Territory Pastoral Lessees' Association', 27 November 1943, National Archives (Canberra), A452/54; 1955/506.

- 119 McGrath 1987: 174.
120 Interview in Rose 1991: xxi.
121 Shaw 1992: 17.
122 Clark 1962: 5.
123 Newton-King 1999: 124.
124 Patterson 1982: 38.
125 Turley 2000: 7.
126 Wharton 1994: vii-viii; Albrecht 1957: 3.
127 Patterson 1982: 311; Scully 1977: 19.
128 Berndt and Berndt 1987: 9-10.
129 Ann McGrath 1978, *Interview with Noel and Dorothy Hall*, Darwin, 28 August, Northern Territory Archives Service, NTRS 226 (Oral history transcript) TS230 (Box 14): 4.
130 Wright 1960: 89.
131 Marsh 1954: 1.
132 Bird 1988: 101.
133 Green 1988: 191.
134 Elias 1982: 88.
135 McGrath 1987: 64.
136 Durack 2000a: 49.
137 Sing and Ogden 1992: 68.
138 Mary C Stephenson 1982, *Interview with E. C. (Ted) Evans*, Darwin, April-June 1982, Northern Territory Archives Service, NTRS 266 (Oral history transcript) TS46 (Box3): 43-4 (Tape 2, Side A).
139 Yu 1994: 19.
140 Lawford 1988: 23-4.
141 Despite the *Land Rights Act (NT)* 1976, which resulted from the eight year Gurindji strike on Wave Hill, no land was granted to Aboriginal people on pastoral leases. See <http://www.nlc.org.au/html/land_comm_hist.html>, accessed September 2007.
142 Altman and Whitehead 2003.
143 Watson 1988: 250-1.
144 Watson 1988: 248.