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Aboriginal Sovereignty

A Practical Roadmap

LARISSA BEHRENDT

Growing up in the Aboriginal community, the idea of Aboriginal sovereignty became a concept that seemed inherent.

I had heard the language of "sovereignty," had heard the word expressed as part of my father's politics, as a central part of the politics of the Aboriginal people who influenced me ideologically—Michael Mansell, Gary Foley, Kevin Gilbert—and I understood from an early age that the concept of "sovereignty" referred to and flowed from a distinct history, a distinct culture, a distinct community, distinct identity. I had heard the history of how, as the first peoples, we never conceded our land and our sovereignty remained.

It was not surprising then that as an Aboriginal lawyer, I became interested in the idea of sovereignty under international law and started doing my doctoral thesis on the argument for existing Aboriginal sovereignty under international law. And so I began looking at the fairly straightforward analysis of how the British claim to sovereignty over Australia was invalid, but I began to realize that this was not the most interesting question.

The more interesting question was not how international law defined "sovereignty" and how we, as Aboriginal people, fit our claims into that concept. The starting point was to deconstruct the political aspirations of Aboriginal people when we use the term "sovereignty." This is the appropriate starting point because it moves away from a question that is defined by the parameters of international law and is instead a question defined by Aboriginal people themselves, by what we want, by what we aspire to.

THE STARTING POINT for recognizing Aboriginal sovereignty is to ask the question, "When Aboriginal people say they want to exercise their sovereignty, what does that mean in practice?" The answer may be similar to other questions about the vision for the relationship between Aboriginal people and the rest of Australia, such as, "When you say you want a treaty, what should it include?" or "When you say you want to be self-determining, what would that look like?" This vision can also be seen in various reports, in community expressions such as the Barunga Statement, and in the speeches of our leaders and representatives.[1]

I would argue that it covers a spectrum of claims. It includes the right not to be discriminated against, the rights to enjoy language, culture, and heritage, our rights to land, seas, waters, and natural resources, the right to be educated and to work, the right to be economically self-sufficient, the right to be involved in decision-making processes that impact upon our lives, and the right to govern and manage our own affairs and our own communities.

These claims can be conceptualized into three categories:

- **Equality rights** (the right not to be discriminated against and the rights to equal access to services, infrastructure, and opportunity). These are rights that it is assumed all Australians are entitled to but that Aboriginal people have been historically denied and, despite laws like the *Racial Discrimination Act* (1975), are still being denied;
- **Indigenous rights** (rights to culture, heritage, language, native title). These are rights that are actually enjoyed by most other Australians, but the dominant legal culture has difficulties in conceptualizing a space for the recognition of Indigenous people wanting to protect these rights. For example, many Australians for whom English is a first language have their rights to language effectively looked after, but Aboriginal people have no such protection of their language. The space to accommodate it requires the creation of mechanisms such as language policies, language centers, and education policy.
- **Empowerment rights** (rights to make decisions and have control over the decisions that affect our lives). The law is least tolerant and policy makers most antagonistic toward the recognition and protection of these rights. It is in this cluster of rights that the principle of sovereignty finds the greatest resonance, and it is the area in which there is the most resistance from the dominant culture.

FINDING THE FRAMEWORK to achieve the aspiration of Aboriginal sovereignty requires the development of ways to ensure the enjoyment of each of those different types of rights. To better protect equality rights, we need to strengthen the rights protections that are currently far too weak within the dominant legal system.

The framers of our Constitution believed that the decision making about rights protections—which ones we recognize and the extent to which we protect them—were matters for Parliament. They discussed the inclusion of rights within the Constitution itself and rejected this option, preferring instead to leave our founding document silent on these matters.

A nondiscrimination clause was discussed but was rejected because it was believed that entrenched rights provisions were unnecessary, and it was considered desirable to ensure that the Australian states would have the power to continue to enact laws that discriminated against people on the basis of their race, particularly Aboriginal people. It is a telling legacy of these ideological underpinnings that the first legislation passed by the new Australian Parliament were laws that entrenched the White Australia policy.

The 1997 High Court case of *Kruger v The Commonwealth*[2] highlights the further legacy of the choices made by the framers of the Constitution. This was the first case to be heard in the High Court that considered the legality of the formal assimilation-based policy of removing Indigenous children from their families.

The plaintiffs had claimed a series of human rights violations including the implied rights to due process before the law, equality before the law, freedom of movement, and the express right to freedom of religion contained in s. 116 of the Constitution. They were unsuccessful on each count, a result that highlighted the general lack of rights protection in our system of governance and the ways in which, through policies like child removal, there was a disproportionately high impact on Indigenous people as a result of those silences.

It is a reminder that there are silences in our Constitution about rights and that these silences were intended, and it gives us a practical example of the rights violations that can be the legacy of that silence.

This legacy remains despite the attempt to change the place of Aboriginal people in Australia in the 1967 referendum. Perhaps because of the focus on "citizenship rights" in the decades leading up to the referendum, and because the rhetoric of equality for Aboriginal people that was used in "yes" campaigns, it was inevitable that there would be a mistaken

perception that the constitutional change allowed Aboriginal people to become citizens or attain the right to vote. What the alteration to the Constitution achieved was for Indigenous people to be included in the census, and it allowed the federal Parliament the power to make laws regarding Indigenous people.[3]

In *Kartinyeri v Commonwealth*, a subsequent High Court decision in 1998 that considered the powers to make laws regarding Aboriginal people as a result of the 1967 referendum, it was argued that since the intention of those advocating for a "yes" vote was that the power should be used to benefit Aboriginal people, the government could not use the law to take away rights and benefits from Aboriginal people.[4] The majority of the High Court rejected this argument and held that if the Parliament has the power to make a law protecting Aboriginal people and their rights, it also has the power to take those rights away.

The 1967 referendum did not produce a new era of equality for Aboriginal people, as its proponents for constitutional change had hoped. It might have given the federal government the power to make laws for Aboriginal people, but there is nothing that requires that this power be exercised in a way that is beneficial to Aboriginal people. Instead, the most enduring, though perhaps unintended, consequence of the constitutional change was the new relationship it created between federal and state and territorial governments. Rather than being a relationship of cooperation, it has seen governments of both levels try to blame the other for the failure of Indigenous policy and to shift the responsibility and the cost away from themselves.

The cumulative effect of this legal framework is that we have a legal system that still leaves much faith in the benevolence of government. It allows governments to make all the decisions about Aboriginal rights and leaves Aboriginal people dependent on the benevolence of government.

A sad history that has been. But you do not need to look back to the past policies of dispossession, removal of children, and rations instead of wages. You need only look to the era since the Racial Discrimination Act of 1975 was passed. This legislation that enacts Australia's obligations under international law into our domestic legal system has only been suspended three times, and each time it has been about the rights of Aboriginal people—the Hindmarsh Island Bridge dispute, the Native Title Amendment Act, and the Northern Territory Intervention. That the Act that protects citizens from racial discrimination has been suspended only in circumstances where it

prevents the protection from applying to the most vulnerable members of the community is indicative of why governments cannot be trusted to protect the needs of Indigenous people and why their unfettered responsibility for policy making for Aboriginal people has been disastrous.

The government agenda in the Northern Territory is a stark reminder of how vulnerable Aboriginal people remain within the legal framework established by the Australian Constitution, particularly because our rights are dependent upon the benevolence of government. While we have been the sector of the community most susceptible to human rights violations, the failure to provide a check on government power has also created the current climate in which dissent can be so easily silenced.

Discussion of improving human rights tends to be dismissed by anti-rights advocates as the folly and luxury of the elite who are out of touch with the realities of the day-to-day lives of the masses. This simplistic rhetoric fails to appreciate the important role rights play in the small details of people's lives. Rights such as access to education, adequate health care, employment, due process before the law, freedom of movement, and equality before the law target the very freedoms that an individual needs to be able to live with dignity. They are precious and they are inherent and should not be given merely at the benevolence of government.

Every other Commonwealth country, even the United Kingdom from whom we inherited our legal system, has modernized its legal system by incorporating a bill of rights that entrenches the contemporary understanding we have that all people have inherent human rights. Every other Commonwealth country now draws a line in the sand that tells the government that this is the point at which you cannot cross, this is the point at which your power ends. In this era where every Commonwealth country has enacted antiterrorism legislation that infringes on the human rights of their citizens, only Australia has no such line to monitor the exercise of power by our government.

This has created a legal system that places responsibility for human rights protection with the Parliament but provides no benchmarks or standards against which the exercise of such power can be measured or tempered. This complete discretion of Parliament over human rights protection has left Aboriginal people vulnerable to human rights violations and explains why equality rights remain a key part of the political agenda of Aboriginal people.

When it comes to Indigenous rights, Australian law has little tolerance for their equal recognition, and this is most clearly illustrated by the way courts have conceptualized native title. While all Australians inherently have the rights to cultural heritage protection, language, and protection of property, the Australian legal system is constructed in a way that protects those rights for members of the dominant culture but is less adapted to making laws that protect those rights in other cultures, including Aboriginal cultures.

One of the clearest examples of this is the problem the dominant legal system seems to have in accommodating Aboriginal interests in property. After ignoring Aboriginal rights to land during the colonization process and subsequently adopting a legal fiction of *terra nullius*, formal common law did not recognize Aboriginal interests to land until the decision in the *Mabo* case in 1992.[5] Within this recognition of the property rights of Aboriginal people are several characteristics that reveal the continuing inability to protect the property rights of Aboriginal people in the same way that the law protects the property rights of other Australians.

One of the fundamental vulnerabilities of the native title regime, as it currently exists, is that the interests of the native title holder(s) are treated as secondary to the property interests of all other Australians. Whenever there is a conflict between property interests over land where native title exists, it is always the native title that is found to have been extinguished.

The rhetoric of those antagonistic to native title interests often evokes the nationalistic myths of white men struggling against the land to help reaffirm three principles in the public consciousness:

- that when Aboriginal people lose a property right, it does not have a human aspect to it. The thought of farmers losing their land can evoke an emotive response, but the thought of Aboriginal people losing their land does not;
- that when Aboriginal people gain recognition of a right, they are seen as getting something for nothing rather than getting protection for something they already had. The rights are seen as "special rights" or *sui generis;* and
- that when Aboriginal people have a right recognized, it is seen as threatening the interests of non-Aboriginal property owners in a way that means that the two interests cannot coexist. In this context, native title is often portrayed as being "un-Australian."

This is the falsehood that the dominant legal system tells in relation to the way that native title is held to be extinguished by competing interests. Every day the law finds innovative ways to balance competing interests in property—landlords and tenants, mortgagor and mortgagee, body corporates, holders of easements can all hold an interest in a piece of land, and the law finds ways of accommodating and balancing them all. All of this ensures that a right that is conceptualized as existing before the imposition of the dominant legal system, as being "recognized" and not "created" by this dominant legal system, is given the least protection of any comparable property right (such as an easement).

THE LARGEST CHALLENGE to the recognition of sovereignty is the reluctance to provide a recognition, space, and mechanisms for Aboriginal people to exercise the ultimate decision-making powers over the matters that concern us, to exercise empowerment rights.

The dominant legal system here recognizes no jurisdiction. There is no ability to generate community laws. Customary or cultural laws are given limited recognition and protection, taken into account in specific circumstances when the law feels it can comfortably accommodate some recognition without challenging its ultimate control of the process (such as the *Fernando* principles in sentencing).[6]

And when small windows are given to Aboriginal people to exercise more control, the results are positive. Consider the circle sentencing trials in New South Wales. This is the process whereby members of the Aboriginal community decide the punishment for offenders who have admitted their guilt in relation to the matters they were charged with. This is an example of an innovative mechanism that has been explored to assist with the problem of the disproportionate number of Indigenous youth who have contact with the criminal justice system. It offers a way of dealing with offending behavior that is focused on building a sense of personal responsibility and strengthening strong community ties. It has reduced recidivism and directed young offenders away from custodial sentences.

The circle sentencing model shows how space can be created within the dominant legal system for Aboriginal people to exercise decision-making power and authority. But these programs are piecemeal, underresourced, and usually run as pilot projects. They are also merely an adjunct to the larger processes of the criminal justice system. They do not envisage the recognition of a jurisdiction vested in the Aboriginal people.

This stands in stark contrast to the way other countries recognize that their Indigenous people retain some inherent control over their own affairs. For example, the United States Supreme Court established a legal doctrine through three key cases that would define the rights and jurisdiction of Native people in the United States.

- *Johnson v McIntosh*[7]—The "discovery" of lands in the New World gave the discovering European power sovereignty and good title against all other European powers and gave them "the sole right of acquiring the soil from the natives." The "Indians" retained the right of occupancy that the discovering nation could extinguish "by purchase or by conquest." The sovereign could grant land occupied by Native people but it was subject to the right of Native people to occupy it. The impact of the decision was to recognize a legal right of Natives to their lands, good against all third parties but existing at the sufferance of the federal government.
- *Cherokee Nation v Georgia*[8]—The Cherokee nation was considered a "state," that is "a distinct political society separated from others, capable of managing its own affairs and governing itself." However, it was not a "foreign" state. Chief Justice Marshall described these states as *domestic dependent nations*.
- *Worcester v Georgia*[9]—Chief Justice Marshall held: "The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia have no force."[10]

The impact of these three cases was to give Native people the status of "domestic dependent nations" and to prevent states from having any power over their affairs and limited jurisdiction on the lands of the Natives. The jurisdictional space for decision making about matters related to Native people under this "domestic dependent nation" status is unexplored within Australian jurisprudence.

The absence of a strong human rights framework within Australian law has meant there is little to temper or fetter the exercise of power by the federal government in relation to policy on Indigenous people. The result is that often policy approaches are unmindful—or even resentful—of

international human rights standards, and policy in Australia in relation to Aboriginal people is heavily influenced by ideology.

Research in Australia and North America has detailed that better socio-economic outcomes are achieved when Indigenous people are involved in the setting of priorities within their community, the development of policy, the delivery of services, and the implementation of programs. This involvement can be characterized as self-determination and, when control is given centrally to Aboriginal people without constraint, can be a form of sovereignty. In this way, the aspect of sovereignty that is about providing Aboriginal people the space, resources, and mechanisms to determine their own future is not just an ideological embrace of "sovereignty," it is a research-based policy approach.

Despite this evidence, when decisions are made about where to spend the dollars allocated to Aboriginal affairs, they are often directed not by looking at what the research shows works to improve socio-economic disadvantage, but are shaped by the ideologies embraced by government.

Under the Howard government (1996–2007) these ideologies were:

- assimilation and mainstreaming;
- mutual obligation and shared responsibility;
- unlocking control of Indigenous-controlled land so that it could be accessed by non-Indigenous interests; and
- that the "real Aborigines" live in the north.

If there is an example we can use that can highlight the way in which the ideological drivers shaped approaches to Indigenous policy, it is the Northern Territory Intervention. The Intervention represented the Commonwealth's "emergency response" to a 2007 report into child sexual abuse in Aboriginal communities of the Northern Territory. The government chose not to implement the recommendations of the report, rather acting to quarantine welfare payments, force the acquisition of townships through compulsory leases linked to service provision, increasing policing and sending in the army, scrapping the access permit system, and appointing managers to all prescribed communities.

At the outset we need to remember that Aboriginal communities and the women and men who live in them had been pleading *for decades* for more resources for housing, health services, and police services in their

communities to assist them with dealing with levels of violence within their community. In the interim, many successful programs had been developed by community members, often without government assistance, such as night patrols, dry-out areas, and safe houses. That is, they had been exercising a form of self-determination and sovereignty in solving these pressing issues within their community.

Apart from the much-needed additional resourcing of police and health services, the key aspects of the Northern Territory Intervention ignored the evidence of what community initiatives were working and instead embraced the ideologies of assimilation and mainstreaming (hence the failure to fund underresourced Aboriginal health services on the ground), mutual obligation and shared responsibility (hence the quarantining of welfare payments), unlocking control of Indigenous-controlled land so that it could be accessed by non-Indigenous interests (hence the repeal of the permit system and changes to land tenure), and that the "real Aborigines" live in the north (hence the extraction of resources from Indigenous programs in other states to fund the Northern Territory Intervention). It is clear that those aspects of the intervention that were most driven by ideology had nothing to do with the protection of children.

The intervention in the Northern Territory is a textbook example of why government policies continue to fail Aboriginal people:

- the policy approach was led by ideology rather than by research or understanding about what actually works on the ground;
- in fact, the policy approach of the intervention is in direct contradiction of what the research shows us works and what experts recommend as appropriate action;
- the rhetoric of doing what is in the best interests of Aboriginal people, or children, masks a list of other policy agendas that are unrelated to dealing with systemic problems of violence and abuse and seek to undermine community control over their own resources; and
- the approach is paternalistic and top-down rather than a collaborative approach that seeks to include Aboriginal people in the outcomes.

The Rudd and Gillard governments have continued to support the intervention designed by the Howard government and have continued to quarantine welfare payments.

The only clear evaluation of the linking of welfare payments to school attendance was undertaken with the Halls Creek Truancy Trial. From February to July 2008 a further scheme, the Halls Creek Engaging Families Trial, was introduced on a voluntary basis. The evaluation of the trial, undertaken by Professor Robyn Penman, found that school attendance of the children did not improve over the course of the trial. The study noted three factors:

- lack of parental insistence that children get to school in the morning;
- teacher quality (one teacher showed a 20 percent greater attendance rate than some of the other teachers), and
- bullying and teasing.

The attitudes of parents are only one of the factors that affected school attendance. The evidence pointed to the pivotal role that teachers and the school culture itself play in a community where children decide their own time-use patterns at an early age. The data also showed that poor or good attendance did not necessarily run in families. In one family of five children, attendance ranged from 14 percent to 88 percent.

There is no evidence that shows that linking welfare to behavior reforms is effective. In fact, there is evidence to suggest that the imposition of such punitive measures in an already dysfunctional situation will exacerbate the stress in a household. What the evidence does show works in getting Aboriginal children into schools are:

- breakfast and lunch programs;
- programs that bring the Aboriginal community, especially Elders, into the schools;
- Aboriginal teachers' aides and Aboriginal teachers;
- curriculum that engages Aboriginal children; and
- programs such as that developed by Aboriginal educationalist Chris Sarra that marry programs that promote self-esteem and confidence through engaging with culture via programs that focus on academic excellence.

This shows that there is much the schools can also do to engage children with schooling. It suggests that rather than simply punishing parents

for their children's nonattendance, the government should be providing schools and teachers that meet the needs of the Aboriginal community.

It cost $88 million to make the initial administrative changes in Centrelink to facilitate the welfare quarantining, but not one dollar was spent in the intervention on any of the types of programs that have been proven to engage Aboriginal children in schools. All this in communities where only forty-seven cents is spent for every dollar spent on non-Aboriginal students, communities where there are not enough teachers and classrooms. A punitive measure placed on families to ensure their children come to school is hypocritical from any government that neglects the same children by failing to provide adequate funding for a teacher and a classroom.

Money tagged as "Indigenous-specific funding" often does not make its way into Aboriginal communities in need. It is estimated that spending on basic Indigenous health services is, according to Access Economics, estimated to be underfunded by $450 million and that data from the Council of Australian Governments' trial in Wadeye highlighted that for every dollar spent on the education of a non-Aboriginal student only forty-seven cents was spent on the Aboriginal student.[11]

The underinvestment in infrastructure was highlighted when a Shared Responsibility Agreement was signed with the Wadeye community, and when the children all turned up to school, there were not enough classrooms or teachers to accommodate all of them.

Aboriginal people have finally seen long-needed resources coming into their community, but in exchange they have been made to surrender their rights under the Racial Discrimination Act (1975), the Trade Practices Act (1974), and the Aboriginal Land Rights (Northern Territory) Act (1976).[12] The provision of basic services should never have been intertwined with the stripping away of fundamental rights in this way.

The Northern Territory Intervention fails to protect Aboriginal rights in many ways. There is the failure to protect "equality rights"—through suspension of the Racial Discrimination Act (1975), the suspension of the protection of Northern Territory antidiscrimination legislation, and the suspension of the right to appeal to the Social Security Appeals Tribunal. There is a failure to protect "Indigenous rights"—legislative amendments now prohibit customary law factors to be taken into account in sentencing, and the intervention has been accompanied by moves to remove bilingual schooling. And there is a failure to protect "autonomy rights"—the Intervention was

developed without consultation with the people it would affect and without the involvement of Aboriginal people working on the ground in communities across the Northern Territory who had already developed programs and practices that were working. Their knowledge and expertise was overlooked and personnel were brought in from outside the territory to undertake work that community organizations were already doing effectively.

This vulnerability highlights the extent to which the rights of Aboriginal and Torres Strait Islanders are dependent upon the benevolence and paternalism of government. It also shows how a failure of rights protection means that ineffective or ill-conceived policies are more likely to be developed and rolled out in Aboriginal communities.

As Australian citizens, Aboriginal people are entitled to adequate housing, adequate funding of teachers and the provision of enough classrooms, and an adequately funded and appropriate police service. They are entitled to these things without having to give up hard-won rights to land and to forgo the protection against racial discrimination and unfair trading practices.

As Australia's first peoples, Aboriginal people are also entitled not just to citizenship rights, but also their inherent rights as Aboriginal people. This includes a residual jurisdiction and rights to land and natural resources, which remain unrecognized by the dominant Australian legal system.

When Aboriginal people speak of "sovereignty," it becomes clear that it describes a set of political, economic, social, and cultural aspirations that are achievable, that fit well within our current understanding of basic human rights, and that also offer a practical approach to policy making that is supported by the research as being the most effective way of reducing the socio-economic disparity between Aboriginal people and all other Australians. It also becomes clear that the anti-Aboriginal, anti-rights advocates who like to shut down any debate about the recognition of Aboriginal sovereignty as being divisive have clearly never taken the time to listen to the voices of Aboriginal people.

It is a falsehood that the recognition of Aboriginal sovereignty is a threat to Australian sovereignty and the two cannot exist. Every day the law finds ways to balance the sovereignty of local, state, and federal governments. Coexisting sovereignty is in no way conceptually difficult for our laws or institutions—unless it involves the incorporation of the sovereignty of Aboriginal people.

The benefit of finding ways to facilitate the exercise of Aboriginal sovereignty is that it not only allows for the empowerment of Aboriginal people, the research shows that this involvement of Aboriginal people in the critical decision making that affects their lives produces better policy, more effective programs and service delivery models, and improved socio-economic outcomes for Aboriginal people, their families, and their communities.

NOTES

1. Larissa Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future* (Annandale, N.S.W.: Federation Press, 2004), 86–117. The Barunga Statement was a set of Indigenous political claims and objectives presented to Prime Minister Robert Hawke in 1988. It called on the Australian government to recognize Indigenous human rights, land rights, and self-determination, to negotiate a treaty, and to provide specific frameworks for full Indigenous participation in national political life.
2. *Kruger v The Commonwealth* (1997) 190 CLR 1. The plaintiffs, all of whom were Aboriginal people from the Northern Territory, challenged the validity of the legal power relied upon to remove them from their families when they were young children (one of the plaintiffs was the mother of a stolen child). They argued that this legal power contravened implied constitutional rights to freedom from removal and detention without due process, to equality under the law, to freedom of movement and association, and to freedom from laws targeting a specific race for destruction or genocide, and that it contravened the right to freedom of religion in s. 116 of the Constitution. In rejecting the existence of these implied rights, and the inapplicability of the right to freedom of religion, the High Court found the Constitution provided no legal protection for members of the Stolen Generation.
3. The 1967 referendum was the result of years of activism led by the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI). Presented to the Australian electorate as a referendum on equal rights and citizenship for Aboriginal people, it was passed with more than 90 percent of the national vote. It amended Section 51(xxvi) of the Constitution, granting the Commonwealth legislative power over Indigenous people and taking that power away from the various states, and Section 128 to include Aboriginal people in the census.

4. *Kartinyeri v Commonwealth* (the Hindmarsh Island Bridge case) (1998) 195 CLR 337. In 1996, the Howard government passed an act authorizing developers to build a controversial bridge between mainland South Australia and Hindmarsh Island, exempting the area from heritage protection and the Racial Discrimination Act. A group of Ngarrindjeri women argued that the bridge would interfere with "secret women's business," and challenged the act in the High Court on the basis that s 51(xxvi) of the Constitution, as amended in 1967, allowed the Commonwealth to make laws only for the benefit of the "Aboriginal race." The High Court rejected this argument, deciding that the Commonwealth was empowered to make laws to the detriment of any particular race.
5. *Mabo v Queensland* (No. 2) (1992) 185 CLR 1. In *Mabo*, the High Court recognized the existence of some Indigenous customary land holdings, known as "native title," where a claimant group could establish a continuing connection with the land and where their title had not been extinguished by an overlapping government land grant.
6. See Larissa Behrendt, Chris Cunneen, and Terri Libesman, *Indigenous Legal Relations in Australia* (Melbourne: Oxford University Press, 2008), 137–167. The *Fernando* principles, established by Justice Wood in *R v Fernando* (1992), 76 A Crim R 58, set out the ways in which Aboriginality can be considered in sentencing as a relevant factor for explaining the particular offence and circumstances of the offender.
7. *Johnson v McIntosh* 21 U.S. (8 Wheat.) 543 (1823).
8. *Cherokee Nation v Georgia* 30 U.S. (5 Pet.) 1 (1831).
9. *Worcester v Georgia* 31 U.S. (6 Pet.) 515 (1832).
10. Ibid.
11. Access Economics for the Australian Medical Association, *Indigenous Health Workforce Needs* (Canberra: Australian Medical Association, July 2004) (no longer available online); Bill Gray, *Council of Australian Governments (COAG) Trial Evaluation: Wadeye, Northern Territory* (Canberra: Commonwealth of Australia, 2006), available from: http://www.facs.gov.au/sa/indigenous/pubs/evaluation/coag_trial_site_reports/nt_coag_trial/Pages/default.aspx.
12. The Racial Discrimination Act was suspended to allow the government to implement the intervention, though this exemption was removed in 2010. It allowed for unfair trading practices, and it watered down Aboriginal land rights by introducing compulsory leases, by acquiring land without any obligation to pay compensation or rent, and by scrapping the permit system that had governed access to community land.

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SOVEREIGNTY

FRONTIERS OF POSSIBILITY

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Unparalleled in its breadth and scope, *Sovereignty: Frontiers of Possibility* brings together some of the freshest and most original writing on sovereignty being done today. Sovereignty's many dimensions are approached from multiple perspectives and experiences. It is viewed globally as an international question; locally as an issue contested between Natives and settlers; and individually as survival in everyday life. Through all this diversity and across the many different national contexts from which the contributors write, the chapters in this collection address each other, staging a running conversation that truly internationalizes this most fundamental of political issues.

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