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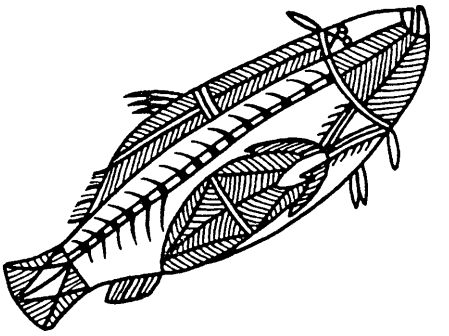


The Sydney Morning Herald

Thursday, November 14, 1985 Page 9

Fewer support Aborigines' cause

The Aboriginal cause has lost significant support among the Australian community in recent years, the latest Herald Survey shows.

But it still has more sympathisers than opponents.

The survey found 31 per cent of Australians believed the Federal Government should be doing more to help Aborigines. Seven years ago 50 per cent held that view.

The number who thought the Government should be doing less for Aborigines has grown in that time from 10 per cent to 22 per cent of the population, but they remain a clear minority.

Some 41 per cent think the Government is giving about the right priority to helping Aborigines, compared with 36 per cent seven years ago.

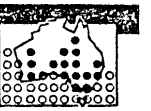
The survey also found a significant drop in the number who blamed Aboriginal problems mainly on the white community. Now 59 per cent see both communities as equally to blame.

The survey suggests that a backlash among white Australians against the Aboriginal cause is smaller than some people have suggested. An indication of this was that there was virtually no change in the numbers who blamed the Aborigines themselves for their problems.

Seven years ago 13 per cent thought the black community itself was mainly to blame; last month it was 14 per cent.

This group is still outnumbered by the 22 per cent who thought the white community bore most of the blame (compared with 30 per cent in 1978).

HERALD SURVEY



How much should the Federal Government do for Aborigines?

			By party vote: ALP		Liberal	
	1978 %	1985 %	1978 %	1985 %	1978 %	1985 %
More	50	31	63	36	34	23
About the same	38	41	26	42	50	43
Less	10	22	8	17	12	27
Don't know	4	6	3	5	4	7

Who is to blame for the blacks' problems?

	1978 %	1985 %	By age: 1985 18-24 %	35-44 %	60 plus %
The whites	30	22	21	27	22
Both equally	54	59	63	57	52
The blacks	13	14	13	11	20
Don't know	3	5	3	5	6

The survey was taken among 2,000 people on the last two weekends of October. The latter weekend saw the handover of Uluru (Ayers Rock) to its traditional owners. The questions were identical to those asked in a similar survey late in 1978.

The biggest shift in attitudes was in groups that were previously the strongest supporters of doing more for Aborigines — Labor voters, tertiary graduates, people in the big cities, and, above all, the young.

While these groups are still more inclined than others to want the Government to do more for Aborigines, and to blame whites for the blacks' problems, they are not as partisan as seven years ago.

These days, for example, it is not the young (the 18-24 age group) who hold whites most to blame, but the younger middle-aged (the 35-44 age group).

The proportion of the young blaming blacks' problems on the whites has dropped from 39 per cent to 20 per cent since 1978. Seven years ago 65 per cent of the young wanted the Government to do more for Aborigines, and only 7 per cent wanted it to do less.

These days only 35 per cent favour more help and 22 per cent want less.

Those wanting the Government to do more now number only 36 per cent of Labor voters (63 per cent in 1978), and 37 per cent of tertiary graduates (64 per cent).

Melbourne remains the heartland of support for Aborigines, with 42 per cent wanting the Government to do more and only 11 per cent less.

Sydney is also sympathetic (35-18), but the situation is reversed outside the capital cities (22 - 32). The backlash is strongest in rural Queensland (15-35).

The only other groups wanting blacks to be given less help rather than more were farmers (17-38) and those in the top income bracket (23-29).

(Herald Survey is conducted for The Sydney Morning Herald by Irving Saulwick and Associates in conjunction with ABC Australia Pty Ltd. Copyright Irving Saulwick and Associates)

THE ABORIGINAL LAW RESEARCH UNIT

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(1984-85) Anthropological Forum Vol. V, No. 3, (University of WA), special issue on Aboriginal land rights - contents as set out below:

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CONTENTS

ALRU BRIEFING PAPER

MINING ON ABORIGINAL LANDS :

THE UNITED STATES EXPERIENCE

> *... the fact remains that the U.S. government has for the most part committed to hold itself to a legal obligation, judicially enforceable, to deal fairly with Indian lands, and this includes Indian minerals.*

John D. Leshy, Professor of Law at Arizona State University and a recent visitor to the University of Western Australia, has written an important article under the title "Indigenous Peoples, Land Claims, and Control of Mineral Development : Australian and U.S. Legal Systems Compared".

John Leshy's article is timely. In Australia intense debate has been generated on the issue of Aboriginal control of mining activity on Aboriginal land. The Federal government's Preferred National Land Rights Model seems designed to reduce Aboriginal control, largely in response to representations from the mining industry. And yet the mining industry in America operates in a situation where Indians have substantial control over mining. Professor Leshy provides the following overview of the U.S. situation:

> *Indians in the United States today generally control the development of mineral resources on their lands. The tribes are considered beneficial owners of the minerals, collectively representing the interests of their members, though the United States holds legal title in trust for each tribe.*
>
> *The terms of mineral development are set partly by federal statute and partly by negotiations between the tribe and the mineral developer, with the federal government as trustee an obviously interested participant. For the most part, federal statutes or regulations establish minimum standards, and the tribe may negotiate upwards from them to secure greater protection for the environment, more employment opportunities for its members, and other benefits. The crucial financial terms, the rental and royalty rates, are mostly established by negotiation, with the marketplace and the tribe's veto power exerting important influences.*
>
> *The relatively recent developments have given tribes additional leverage over mineral developers, and greater control over mineral development. First, the United States Supreme Court has lately confirmed that tribes exercise not only considerable proprietary power over mineral development, but also sovereign powers, such as the right to tax and otherwise regulate the activities of mineral developers found within their jurisdiction. Second, the United States Congress has*

given tribes considerably more flexibility in dealing with mineral developers, including authority to enter more participatory arrangements like joint ventures and operating agreements.

The article traces the historical evolution of law, policy and practice in the United States that has led to this position. It notes that, for the most part, Indians have been accorded a power of veto over mineral development and the courts have held the national government to a fiduciary duty in its relationship with the tribes. Recent interesting additions to the 'legal landscape' on the issue include the Indian Mineral Development Act, 1982, and Supreme Court decisions upholding the right of the tribes to exercise governmental taxing power over mining activities so as to improve the rate of financial return.. (Kerr-McGee v. Navajo Nation 85 L.Ed.2d 200 (1985)). After examining statistics on mining activity on Indian lands, Professor Leshy suggests that "a rather compelling case can be made that the tribal veto on mineral development has not thwarted mineral activity on Indian lands".

He also notes that Indian control over mining is not necessarily dependent on Indian ownership of the sub-surface estate. Since the early part of the 20th century U.S. federal policy has been to reserve minerals from land grants; tribal lands subject to this sort of regime represent a close analogy to the typical Australian position. The issue became significant in the U.S. after the first "oil shock" in 1973 when the government and miners sought access to huge despotis of coal under ranchlands in several western States. Even though the government owned the coal, the ranchers were able, politically, to secure an Act requiring their consent (i.e. a veto power). The Act does not apply to minerals other than coal but, in practice, ranchers have been accorded a de facto veto. And miners have frequently chosen to purchase the surface interest outright in order to gain unimpeded access to the sub-surface minerals. This tradition of requiring the consent of the surface owner also benefits those Indian tribes that do not own the sub-surface minerals.

In comparing the Australian and U.S. experience, Professor Leshy notes the obvious differences in history and legal doctrine, including the absence to date in Australia of any judicial recognition of Aboriginal land rights independent of statute. In this context he refers to the 1955 Tee-Hit-Ton decision of the U.S. Supreme Court that:

> *... no compensation is owed for extinguishment of an 'unrecognised' right of occupancy. Thus Justice Blackburn was, in a strict sense, correct in relying on Tee-Hit-Ton to find that the doctrine of communal native title as applied in the United States did not support the Aborigines' claim in the Gove Rights case.*
>
> *But the actual experience in the United States has been largely to the contrary; that is, compensation has*

usually been paid to the Indians when they have been deprived of the land they have traditionally occupied. Significantly, most events in the three decades since Tee-Hit-Ton was decided have seen that long-standing policy confirmed rather than overturned. The practice of compensating the Indians has, in other words, been too much a part of the landscape to be dislodged merely by decisions of the United States Supreme Court.

Even that Court itself has, since Tee-Hit-Ton, sometimes displayed a greater sympathy toward Indian claims for compensation...

... The crowning example of the government's policy of compensating Indians came, ironically enough, in Alaska, in settling the very claims that the majority in Tee-Hit-Ton seemed to view so nervously.

In analysing the position in Australia and, especially in Western Australia, Professor Leshy notes that despite the strong Australian tradition of Crown ownership of minerals, some categories of land owners do own sub-surface minerals. But even where they do not, much land is subject to a legal requirement of the surface owner's consent to mining e.g. cemeteries, reservoirs, vineyards, gardens, land under cultivation and, significantly (since 1970 in W.A.) grazing land. Most W.A. farmers and graziers therefore, have a veto over mining. And they use it. It would be no great innovation in principle to accord similar control powers to Aboriginal landowners in the State.

Professor Leshy offers a range of other thoughtful comment on the similarities and dissimilarities between the two countries, and his article is a very useful contribution to the current debate in Australia. It is to be published in the forthcoming issue of the University of New South Wales Law Journal (Inquiries: The Editors, UNSW Law Journal, Faculty of Law, University of New South Wales, P.O. Box 1, Kensington, N.S.W. 2033).

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