

The Taking of Land Without Consent: The Dispossession of Aboriginal Land in South Australia

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I acknowledge that this is Kaurna land and that the Kaurna People are the first nation of this land and that they continue to assert control over it by their customs and traditions.

Narratives of Dispossession and Possession

The narrative of dispossession of land from Aboriginal people could well be expressed by them as:

We know this is our land, and then they said it was theirs, but we did not, and still do not believe, that is correct, under either our own law or theirs.

In contrast the early colonial narrative could be:

We arrived in the new Province with instructions about the native's use and enjoyment of land, but from a property law perspective we did not call it ownership and we quickly established our own system of rights in land based upon the land tenure system existing in the United Kingdom which alienated their land from them.

How then are we to reconcile those competing narratives? We could say at the beginning of 1836 Aboriginal people owned all the land but by the end of that same year they owned none of it. The key event that purportedly swept away Aboriginal title to land was the arrival and occupation by a small number of British colonists on a small part of the land in and around Adelaide. According to this logic, these moves resulted in the complete usurpation of Aboriginal rights in South Australia. We see a similar taking of land without consent of Aboriginal people operating across the whole of Australia through each of the Australian colonies but South Australia is a stark example because land is taken without consent in the face of specific instructions not to do so. Today I am going to explore the position in South Australia of Aboriginal title to land.

As we know, the virulence of the strain of dispossession in Australia was presumed to be absolute and lethal to Aboriginal land rights, until the decision by the High Court in *Mabo*.¹ In that case, the High Court through the lens of

* This lecture was delivered in 2010. This chapter is an edited version of the written lecture text.

1 *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

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