

ABORIGINAL PROPERTY RIGHTS

ROXANNE DUNBAR ORTIZ

Nancy M. Williams. *The Yolngu and Their Land: A System of Land Tenure and the Fight for Its Recognition*. (Stanford: Stanford University Press, 1986). Illustrations, notes, appendix, glossary, bibliography, index. \$35.00.

Today, the original indigenous peoples of Australia comprise but one percent of the total population, numbering less than a quarter million. Living in rural communities, religious reserves and shanty towns, the greatest number are found in Queensland. However, in the Northern Territory, the subject of *The Yolngu and their Land*, the Aborigines make up twenty-five percent of the population.

The cultures of Australian Aborigines have been remarkably resilient in the face of two hundred years of European exploitation and domination. During the past two decades, a growing movement has brought domestic and international attention to these nearly forgotten people. Their severe health, economic, and social conditions remain, analogous to the poorest in the Third World, in stark contrast with affluent Euro-Australia.

Williams, the capable author of *The Yolngu and their Land*, is a research consultant in Aboriginal Man-Land Relations at the Australian Institute of Aboriginal Studies in Canberra. She received her doctorate in Anthropology from the University of California, Berkeley. The book is a handsome production containing several excellent color plates, a detailed index, and bibliography. The infinitely complex ethnographic materials are assembled by the author in a well-organized and relatively readable form.

The book is divided into two distinctive parts. The first half is a study of Yolngu epistemology, religion, language, and land concepts. The second half deals with the "European" perspective, a misnomer in that it actually deals with English property law and concept rather than Roman-based continental property law. Although the focus is the Yolngu, the author seeks to clarify theoretical issues regarding hunting and gathering societies and their relationship to land use and tenure in contrast with Western concepts.

The author argues that these two distinct views of land tenure are irreconcilable. An understanding of and respect for the Yolngu view, and by extension, all hunting and gathering cultures,

LAW & SOCIETY REVIEW, Volume 22, Number 5 (1988)

will ultimately confirm the land rights of these peoples. A brief final section of the book summarizes anthropological views on the subject.

The inspiration for the book and the counterpoint throughout is a legal case the Yolngu took to the Supreme Court of the Northern Territory in 1968. The 1970 decision was disappointing. The author concludes, "Because it lacked concepts of property that existed in contemporary common law, Yolngu ownership by right of title was found to be a matter of religious belief and not of economic significance. It was therefore not law" (p. 202). The author argues with impressive and convincing data against this interpretation.

The ethnographic information and interpretation are excellent. However, the author's grasp of law is weak and she fails to distinguish between politics and law. Classic studies of the English common law of property (e.g., Moynihan, 1962) are missing, and important studies in legal anthropology are also slighted (e.g., Pospisil, 1974; Nader, 1964).

The most serious omission is international law, particularly in the field of human rights. Williams relies exclusively on Anglo-Australian law norms. She seems unaware that Australian Aborigines along with hundreds of other indigenous peoples from around the world have been lobbying vigorously for international human rights law norms to protect their lands, resources, and cultures. The Australian government has been notably sensitive and responsive to these efforts. In 1982, a United Nations' Working Group on Indigenous Populations began to develop principles, such as inalienable freehold title, that will lead to an international accord. The Australian government has already embraced many reform principles.

Although Williams appears to dismiss religious rights as authentic law regarding land tenure, her study is most useful in showing the inseparable relationship of Aborigine religion and land use. International human rights law provides equal protection of religious freedom and economic rights. For indigenous peoples the integral relationship is fundamental, and this book contributes to the growing literature on that relationship.

ROXANNE DUNBAR ORTIZ is professor of Native American studies in the Department of Ethnic Studies at California State University, Hayward. She is author of six books on indigenous peoples' rights, including *Roots of Resistance: Land Tenure in New Mexico, 1680–1980*.

REFERENCES

- MOYNIHAN, Cornelius J. (1962) *Introduction to the Law of Real Property*. St. Paul: West.
- NADER, Laura (1964) *Talea and Juquila: A Comparison of Zapotec Social Organization*. Berkeley: University of California Press.
- POSPISIL, Leopold (1974) *Anthropology of Law: A Comparative Theory*. New Haven: HRAF Press.