

## Negotiating Nature: Collaboration and Conflict Between Aboriginal and Conservation Interests in New South Wales, Australia

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**Abstract** Faced with the paradox of a large global increase in conservation reserves and a simultaneous global decrease in actual effective protection for biodiversity, conservation scientists and policymakers are questioning established conservation theory and practice. I argue that the fundamental premises, the foundational myths, for Western-style conservation also need to be questioned. The statistics on Indigenous land claims, and conservation reserves, in Australia and more specifically the state of New South Wales (NSW), reveal a landscape of policy failure in both arenas. Focusing on Australia, I use spatial analysis and policy histories to demonstrate converging trajectories of land use priorities for conservation needs and Indigenous peoples' needs. This intersection, while generating much potential for conflict, also creates new political landscapes. A combination of spatial and cultural analyses can create a clear picture of new "operational landscapes", and an understanding of the (sometimes) complementary values of different cultural groups negotiating about these landscapes. From the basis that environmental problems are fundamentally social problems, this paper contributes to explorations of new paradigms supporting new social-ecological relationships, and new relationships between Indigenous and non-Indigenous peoples.

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### Introduction

Since the declaration of national parks at Yosemite in 1864 and Yellowstone in 1872, the concept of national parks as the centerpiece of nature conservation policy has spread across the globe. This concept is embedded in Western paradigms, both scientifically and culturally. The last decade has seen increasing challenge, and change, to this concept, including interactions with indigenous peoples, who may operate from quite different paradigms about the relationships between people and nature.

Examination of nature/culture issues has been a major preoccupation of geographers and others over the last 10 years (for example, Cronon, 1995; Braun & Castree, 1998; Head, 2000; Eden, 2001; Demeritt, 2002). Geographers are also exploring issues in indigenous and postcolonial geographies (Peters & Wolf-Keddie 1995; Howitt, Connell & Hirsch, 1996; Baker, Davies & Young, 2001; Nash, 2002). Some of this work has considered conservation management (Proctor & Pincetl, 1996; Katz, 1998; Zimmerer, 2000), and some has considered interactions between indigenous people

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and conservation issues (Head, 1990; Stevens, 1997; Suchet, 2001). In the following, I expand upon a number of issues embedded in these discussions, examining links between new understandings of conservation management with indigenous social justice processes and outcomes.

Faced with the paradox of a large global increase in conservation reserves and a simultaneous global decrease in actual effective protection for biodiversity, conservation scientists and policymakers are questioning established conservation theory and practice (Orr, 2003). I argue that the fundamental premises, the foundational myths, for Western-style conservation also need to be questioned. Focusing on Australia, I use spatial analysis and policy histories to demonstrate converging trajectories of land use priorities for conservation needs and indigenous peoples' needs. This intersection, while generating much potential for conflict, also creates new political landscapes. These landscapes provide the potential for explorations of new conservation paradigms, which can respond both to biodiversity issues and indigenous social justice issues.

The statistics on indigenous land claims, and conservation reserves, in Australia and more specifically the state of New South Wales (NSW), reveal a landscape of policy failure in both arenas. My research is specifically intended to address that failure, by providing new data and new theoretical and practical approaches. This paper draws on completed field research (Adams, 2001; Adams & English, in press), and ongoing analysis of interactions between conservation agencies and indigenous peoples.

Key issues include the continuing association between government land management decisions (including conservation) and colonial processes of indigenous dispossession. I argue that breaking down this association is necessary for both conservation aims and indigenous aims. From the basis that environmental problems are fundamentally social problems, this paper contributes to explorations of new paradigms supporting new social-ecological relationships.

### **Intersecting Policy Histories**

While land use priorities in Australia, and in the state of NSW, have changed over the 215 years of white settlement, the contemporary landscape is a reflection of historic practices which persist. In this section I analyse land use priorities in determining the spatial locations of land designated for conservation uses, and land available to Aboriginal people through statutory claim processes.

For Australia overall, a total of 9.2% of the continent is in conservation reserves (Sattler & Creighton, 2002). For NSW, 5,387,102 hectares are reserved as protected areas, which is 6.7% of the land area of the state (National Parks and Wildlife Service Annual Report 2000/2001). Land owned by indigenous people is somewhere between 16% and 18% of Australia, but is highly unevenly distributed (Pollack, 2001). In NSW, land granted under Aboriginal land rights legislation amounts to 0.1% of the state. These two broad categories of land, Aboriginal and conservation, have a number of common elements in policy history and geographic attributes.

In late 2003, the NSW conservation agency, the NSW National Parks and Wildlife Service, was restructured and renamed as the Department of Environment and Conservation. For historical accuracy, in this paper I refer to the department as the National Parks and Wildlife Service (NPWS).

### *Conservation Lands Policy*

The National Reserve System, and consequently the NSW reserve system, currently have the goal of establishing "a comprehensive, adequate and representative system of protected areas to conserve Australia's native biodiversity" (Commonwealth of Australia, 1999, p. 6). The system is intended to be *comprehensive* enough to include

the full range of regional ecosystems discernible at the bioregional scale; *adequate* to maintain the ecological viability and integrity of populations, species, communities and ecological processes; and *representative* of the intrinsic variability within ecosystems (JANIS, 1996; Commonwealth of Australia, 1999).

Despite this increased attention to “biodiversity” as a criteria for conservation today, and an earlier focus (since the 1940s), on sampling the natural environments of the state, quantitative research by conservation scientists (Pressey et al., 2000) demonstrates that for the majority of NSW, conservation reserves are “most representative of land with least potential for commercial uses” (p. 67). These reserves are also characterised by high relief (they are rugged or mountainous) and have low potential for intensive land use (agriculture or housing). For the two thirds of the state in the eastern and central sections, 80% of land is privately owned, with distribution of this land “strongly opposite to that of public tenure, covering much higher percentages of land with low ruggedness and/or high inherent land use potential” (p. 67).

That is, conservation is a “residual” land use. Conservation lands are not primarily representative of biodiversity distribution or rare species habitats, they are representative of areas that are not required for other purposes. Government conservation agencies are relatively minor players in the politics of government at state and national levels, and other agencies with influence over land management (such as urban planning, natural resources and agriculture) dominate decisions about land use.

This is mirrored for Australia overall (Sattler & Creighton, 2002, and earlier qualitative assessment by Hall, 1992), with areas with no or few conservation reserves being primarily more fertile lands. Conservation agencies in all states have very limited resources for land purchase, so their primary source for reserves is public (“Crown”) land. This land has gradually decreased as government released successive areas for commercial purposes. Releases were broadly relative to land use potential, so Crown land characteristics were increasingly inverse to land use potential.

Earlier work in the USA also identified this phenomenon (Runte, 1979), using the expression “the worthless lands thesis”. While for both countries there is also a historic trend to conserving areas of high scenic value, which often correspond to ruggedness or low potential for other land uses, it is the prioritisation of other land uses which has been the primary determining factor.

Research for other countries, both western and non-Western, indicates similar patterns (Aiken 1994; Barnard et al., 1998; Dahlström, 2003; Ranta et al., 1998; Knight, 1999; Pressey et al., 2000). Conservation has generally been residual to other competing land uses, and this broad process is continuing.

A key factor in this outcome is the particular Western construction of “conservation”, primarily based on systems of protected areas. Once parks are gazetted, they are generally accepted as representing “nature”, meaning that the land outside them is available to be used in ways which do not have to consider the sustainability of their natural values, because those are already looked after in the national parks.

### *Aboriginal Lands Policies*

Indigenous people in Australia were dispossessed of their lands systematically and early in the settlement process. In the last thirty years, various processes for returning some lands to Aboriginal people have been instituted.

While NSW is the state with the largest number of Aboriginal people in Australia, there are very significant unresolved Aboriginal claims to land (over 1,000 undecided individual claims under the NSW Aboriginal Land Rights Act 1983, and over a hundred under the Commonwealth Native Title Act 1993).

The NSW Aboriginal Land Rights Act (1983) created a system for claiming land, to provide for the spiritual, social, cultural and economic benefit of Aboriginal people. The only land available for claim is vacant Crown land (that is, unused public land). By 2000, 7,000 claims had been lodged, and 2,000 had been granted in full or in part (NSW Department of Aboriginal Affairs, 2000). This successfully claimed land totalled 76,000 hectares, and constitutes 0.1% of the land area of the state. While it is only unused public land that can be claimed, even that land must not be needed for “an essential public purpose”. Aboriginal land under the NSW Aboriginal Land Rights Act is, accordingly, also a residual land use: the land available is land that no-one else has wanted up until now, and that may not be needed for some other purpose.

As land available under both the state land rights legislation and the Commonwealth native title legislation is restricted to Crown land and some other limited categories, these purposes are also residual to other land use. Land available under joint management arrangements, or as part of native title claims to national parks, obviously exhibits the same residual characteristics of the reserve system itself.

### *Policy Convergence*

The foregoing demonstrates the results of two centuries of land use decision making for two quite separate policy areas. While these two areas were dealt with separately, there is a clear convergence spatially: Aboriginal interests and conservation interests are competing for the same left over lands, for apparently different purposes.

The amount of the landscape to be incorporated into conservation reserves will no doubt continue to be negotiated. However, all further additions will have ramifications for both Aboriginal people and conservation agencies. These additions relate to Aboriginal interests in apparently opposite ways: an increasing protected area estate may gradually reduce land available for claim under Aboriginal land rights legislation, reducing Aboriginal access to land; but the protected area estate itself may preserve native title rights not maintained elsewhere, and, at a more constrained level, may be available for joint management regimes, potentially increasing Aboriginal access to these lands. These processes will have different outcomes: in NSW, land claimed under land rights legislation is freehold and can be dealt with in any of the normal ways, whereas land accessed by native title or joint management processes is likely to be highly constrained, and not able to be sold or developed. For conservation agencies, increased amounts of land successfully claimed by Aboriginal groups decreases that available for new conservation reserves. This convergence of the spatial results of differing policies is evident in many locations. I will use one example to explore the detailed expression, legally and spatially.

### **Competing Claims in Western Sydney**

Western Sydney is home to much of Sydney’s population, including more than 20,000 Aboriginal people. It is also home to over 1,300 species of native plants and more than 800 species of native terrestrial and aquatic fauna. Many of these are now regarded as rare or threatened, including Cumberland Plains Woodland, once the dominant vegetation community of western Sydney. A number of conservation reserves have been gazetted in western Sydney, all on Crown land.

The Maroota Crown lands discussed in this section are located approximately 50 kilometres north west of the Sydney CBD, in the “western suburbs” of Sydney. Geologically, Maroota is the interface between the Hawkesbury Sandstone landscape, with low fertility, steep ridges and dissected valleys (much of it in conservation reserves already), and the intensively settled, high fertility, Cumberland Plain alluvium and shale landscapes. The valleys of the Maroota lands contain tall open forest, providing

habitat for a range of fauna species including Koalas, Yellow-bellied Gliders and Powerful Owls. Maroota also contains significant evidence of Aboriginal use, including extensive Aboriginal archaeological sites.

A proposed "Maroota National Park" was one of the incoming Labor Government's election promises in February 1995. NPWS has had an interest in the area since 1973, with a formal proposal being developed and circulated in 1975, and numerous further attempts to have an appropriate conservation tenure declared for the land. All these attempts were thwarted by other government agencies with different interests in the land, although no proposals were actually implemented.

The local Aboriginal Land Council made a number of land claims over vacant Crown land in western Sydney, including five claims over Maroota, covering 4,500 hectares of remnant bushland, which were rejected by the Government in 1996 on the basis that the land was needed for "the essential public purpose of nature conservation". That is, they were rejected on the basis of objections by the NSW National Parks and Wildlife Service.

After the Government's rejection of the claim, the Land Council appealed the decision to the Land and Environment Court. The court handed down their decision in 1999, overturning the Government's decision. The NSW Government appealed the decision to the Supreme Court acting as the Court of Appeal. In 2001 the Court of Appeal ordered that the land be transferred to the Land Council.

At Maroota, the chronologies demonstrate that over extended periods of time the governments of the day did not have an agreed use in mind for the lands, but in fact a range of uses were proposed and abandoned. These were typically contested between different departments. One department obstructed NPWS proposals for twenty years. However, when it came to assessing the claim and then supporting the assessment in court, the Government argued that in fact the NPWS proposal should receive precedence over the land claim. They had (in the role of department and portfolio ministers) denied the "essential public purpose" for twenty years, and then, when faced with the prospect of the land moving out of State ownership (in the role of representative of Executive Government), vociferously supported it. Effectively, the NPWS proposals had moved up the ranks into approval by Executive Government, but this was well after the land claim was lodged. Government priorities had been that all other land uses took priority over conservation, and finally, conservation took priority over Aboriginal claims.

The resistance to Aboriginal ownership of Maroota and other land claim sites in Sydney is indicative of at least three assumptions. One is that the Western scientific construction of "biodiversity" is a universally accepted idea, which should take precedence in conservation decision-making. Another is that conservation is an activity that should be the domain of government departments. The third is that the Aboriginal people of Sydney are no longer "authentic", and do not have cultural associations with the landscape - they are not appropriate custodians of the land. As Byrne (2003, p. 170) argues, this "tacitly affirms the essentialist position that authentic Aboriginality is always prior or distant: away in the past or away on the frontier".

### **Negotiating Nature: A Reconfigured Landscape**

The granted land claims in western Sydney have created a new operational landscape for NPWS. The situation currently is that Aboriginal organisations own significantly more land in western Sydney than the NPWS. Local Aboriginal people, previously largely invisible for NPWS conservation planning and management activities, have become highly visible as owners of large landholdings. Aboriginal people may now have major influence over the future evolution of these landscapes, just as they did in the

past – how this may be complementary or otherwise to non-Aboriginal aspirations has yet to be explored. These landholdings, and the existing conservation reserves, need to be re-evaluated for their significance as contemporary Aboriginal cultural landscapes, as well as their value for biodiversity. An approach that sees the two sets of land, and the two sets of values, as complementary rather than adversarial, or just unrelated, may allow increased opportunities for both conservation and Aboriginal interests.

Adequately responding to this reconfigured landscape, both biophysical and metaphysical, requires organisational change. The NPWS is now investigating what resources can be made available for achieving conservation of mutually recognised natural and cultural values on “Aboriginal lands”, with complementary Aboriginal input to the management of “NPWS lands”. NPWS staff and Aboriginal organisation members are beginning to discuss the differences and correspondences between their understandings of “nature” and “culture”.

Different intentions founded on quite different understandings may, however, result in the same outcomes on the ground. Neither Aboriginal people nor conservation professionals necessarily have to give up their worldviews: they have to understand the other parties worldviews. What they have to give up is the assumption of the hegemony of their worldview. This understanding establishes the conditions for respect, and ethical negotiation. Positive outcomes for biodiversity conservation on the ground can be produced by Aboriginal social and spiritual understandings and actions, and also result in improved social justice outcomes for Aboriginal people. Positive outcomes for Aboriginal people can be produced by conservation managers’ skills in managing threatened species and species reintroduction programs, supporting the survival of species which are spiritually and economically important to Aboriginal people.

Reciprocal partnerships between conservation interests and Aboriginal communities could help respond to the challenges of a rapidly changing landscape. While outcomes are likely to be uncertain, that is not different to the situation now. The attraction is in the idea (with some evidence) that the different worldviews may, in fact, significantly overlap in on-ground management outcomes: different values and intents can result in similar physical scenarios. A physical result that derives directly from spiritual beliefs, for example, need not be quantitatively or qualitatively worse than (or even different to) one deriving from scientific beliefs.

Maroota and other successfully claimed places have now become Aboriginal land: the authority supplied by Western property regimes has passed to Aboriginal people. The places all (now) have high conservation value. Consequently, state conservation agencies must meet with these Aboriginal owners to negotiate, if the state wishes to participate in the management of the conservation values. Until the transfer of the lands, conservation agency staff saw no need to meet with the Aboriginal people with an interest in these lands: all of these areas were proposed for conservation estate without discussion with local Aboriginal people. This situation is now completely reversed: the Aboriginal owners could choose “not” to meet with agency staff. A fundamental difference in approach is indicated by the fact that most groups do want to meet and negotiate. Since the transfers, these are real, rather than potential, spaces for change. If however, the only real meeting places are created “after” Aboriginal people have regained rights to land, the potential is limited: this perpetuates the situation where Aboriginal people “force” others to the negotiating table by law or judicial decision. It is processes of structural and attitudinal change which are necessary to create the opportunity for new meeting places - recognition spaces - across the landscape.

Institutions, both conservation and Aboriginal, will be the frameworks in which the relationships will develop, and places where the structural and attitudinal changes will take place. Institutions are cultural domains, and the two suites of institutions

I am examining are from distinctly different cultures. It follows from the observation that “improving the performance of natural resource systems requires an emphasis on institutions and property rights” (Berkes & Folke, 1998, p. 2). This approach has been investigated extensively in relation to agricultural practices and “landcare” in Australia, but not in biodiversity conservation, and relatively recently for Aboriginal issues (see Mantziaris & Martin, 2000). The corresponding “social” change lies in breaking down the compartmentalisation of issues: “Aboriginal people bring a large bundle of issues into their conversations about environments” (Rose, 1996, p. 4); and “[w]hat we are doing in natural resource management is absolutely political and riddled with conflict – it is about governance and social goals and institutions after all” (Dovers, 2000, p. x). Institutions are fundamentally cultural entities - examination of them within their cultural frameworks can help reveal the places for negotiating change: the recognition spaces.

Solutions to the pathology of consistent policy inadequacy in this area will need to be applied at multiple scales. While political will is obviously important, political cycles are short and volatile. Institutional change at organisational and policy levels exerts pressure both upwards, influencing ministers and government, and downwards, influencing practice. Conservation agencies can and do influence politics and politicians. They also clearly influence relationships with other parties, and on-ground outcomes. They have a high level of control over management of their own “estate”, significant control over acquisition of new land, and some control over plants and animals (“biodiversity”) on all land.

The advantage of the level of policy inadequacy in this area is that it sets conditions for learning: if policies appear to be working, there is no incentive to learn. However, if successful assessment of the situation is followed merely by cumbersome process and just a formalisation of relationships, good results are unlikely. These issues are complex, highly related to other issues, span long time frames and involve contesting, or at least, negotiating, values. They are definitively policy “macro-problems”.

A collaborative research approach which includes being open to learning from indigenous perspectives, and simultaneously being committed to addressing indigenous disadvantage is the framework. Examining our own assumptions, questioning received wisdom, is a critical first step. I am not suggesting that it is possible to achieve “certainty” or “closure” on these issues: instead, redefining relationships offers the possibility of new connections between different peoples, as the basis for jointly working through continuing and inevitable uncertainties.

The contrasting, and often contesting, worldviews of Aboriginal people and conservation agencies are a core cultural difference in these issues. Agency landscapes are full of biodiversity and natural values, to be studied, protected, appreciated, and used for recreation. Aboriginal landscapes are home and hearth, places lived in and worked in, full of spirit, history, and social values. Western conservation theory insists on “protected areas” emptied of people; indigenous relationships to nature are about engagement, about people actively caring for country. Fundamentally, the Aboriginal relationship with “nature” challenges the Western one. The outcomes of over a century of national park creation and management suggest that an open-minded consideration of indigenous views may lead to better outcomes, both socially and ecologically.

*Keywords:* Aboriginal; conservation; indigenous; national parks.

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