1

"Land Back"

Indigenous Peoples and Land Rights

WILLIAM NIKOLAKIS

Introduction

Across the globe, Indigenous Peoples continue their struggle for land rights. Too often, few gains are made. Despite this, Indigenous Peoples maintain their resistance and advocacy to get their "Land Back," often in the face of violence and discrimination. This book brings together voices from across the globe on land rights. Many of these voices are from countries where little has been published. The chapters examine the patterns that form land rights: from dispossession to the state-driven processes for recognition and reclamation of land rights, and the strategies and barriers to securing land rights. The book then details the opportunities that exist for Indigenous Peoples to get their Land Back.

The ownership, use, and enjoyment of lands is fundamental to the survival of Indigenous Peoples. Evidence also shows that Indigenous lands (and stewardship) are critical to tackling the climate and biodiversity crisis (Blackman & Veit, 2018; Blackman et al., 2017; Fa et al., 2020; Garnett et al., 2018; Russell-Smith et al., 2013; Schuster et al., 2019). Land rights also create dilemmas. In most cases, the state establishes the tests for who gets "land rights" (recognition) and what they get (reclamation), and typically the state can infringe on these rights to authorize resource extraction (with or without consent). Too often the lands returned are marginal and a fraction of the claimants' traditional territories. Winning back land rights is typically time, resource, and emotionally intensive, with claimants having to "prove" their rights in arduous legal processes that often take decades to settle. Importantly, land rights can mire Indigenous Peoples within the labyrinth of the state's bureaucracy, and there may be considerable restrictions on how these lands can be used.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

Land rights do, however, offer some tenure security for landowners, and where these rights are justiciable and enforceable, they can create a layer of protection against encroachment. As an academic and activist shared with me, for Indigenous Peoples in colonized countries, "The only thing worse than having land rights is not having them." Drawing from the experiences of twelve countries, the aim of this book is to identify what is working and what is not, with the ambition to support land rights in practice.

The Land Rights Story: Insights from Yirrkala

Dispossession and Strategies to Safeguard Land Rights

Across the world there are countless stories of dispossession. This chapter focuses on the experience of the Yolngu (or Yolŋu) people of Yirrkala to illuminate this pattern of dispossession, the strategies used to protect and reclaim lands, and the processes set in place by the state for recognizing and reclaiming land rights.

For tens of thousands of years, Yolŋu people have lived at Yirrkala, by the rich Arafura Sea, and today it is part of the Northern Territory of Australia. Indigenous Peoples, like the Yolŋu, have occupied the Australian continent for at least 65,000 years, reflected in archaeological evidence, the ongoing cultural practices, and the profound Indigenous connection with "country" (Clarkson et al., 2017).[1] For generations, the Yolŋu traded *trepang* (sea cucumber) and other items to Macassan seafarers, who came south each trading season from Sulawesi. The arrival of Europeans to Yolŋu territory in the 1870s, however, was different from their contact with the Macassans. Britain had asserted sovereignty to parts of southern Australia in 1788, and colonization, like elsewhere, was marked by violence, denial of Aboriginal rights to land, and the coercion of "natives" by the state. The settlers brought with them an insatiable hunger for land and resources to feed ambitions of social and economic mobility.

The newly drafted Australian Constitution, formed at federation in 1901, made no mention of the country's first peoples' laws and their land

[1] Legal decisions have coined this as "time immemorial," but it is argued that this term is vague and frames Indigenous Peoples' occupation of their lands as something that occurred in antiquity (Weir, 2013).

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

ownership systems, like that of the Yolŋu.[2] In 1931, Yirrkala became part of the Arnhem Land Aboriginal reserve – an area for exclusive occupation by Indigenous Peoples and their use. At around 90,000 square kilometers in size, the Arnhem Land reserve included hundreds of clan groups, including the Yolŋu. In 1934, a Methodist mission was established at Yirrkala, following a lethal confrontation between the Yolŋu and Japanese pearlers (Morphy, 2008). Growing violence meant the mission station became a safe place for Yolŋu (Morphy, 2005). In 1963, the Yolŋu and the missionaries received word that the federal government in Canberra, located more than 4,000 kilometers south, had granted a mining lease to over 360 square kilometers of Yolŋu land near Yirrkala.

To stop the development of a bauxite mine in their homelands, the Yolŋu rallied and petitioned the government to recognize their land ownership at Yirrkala. The petition, written in Yolŋu Matha and English on bark, known as the "Bark Petition," was tabled before the House of Representatives in August 1963.[3] A parliamentary committee of inquiry considered the issue of Yolŋu land ownership at Yirrkala, but the mine lease was granted anyway. The Yolŋu then commenced an action in the Northern Territory Supreme Court, claiming proprietary native title rights to the mine site. In their claim, the Yolŋu sought declarations to occupy and use these lands free from outside interference. This was Australia's first native title or land rights case.

The decision in *Milirrpum v. Nabalco Pty. Ltd.*[4] was handed down by Justice Blackburn in 1971. Blackburn reasoned that when British settlers arrived, Australia was *terra nullius* or "nobody's land."[5] Under British colonial constitutional law, the absence of prior possession meant the Crown gained absolute title to the land and English law applied (to the Yolŋu as well, despite them not being recognized as British citizens). British law effectively filled a legal vacuum across Australia. This legal concept of *terra nullius* was applied in other parts of the world, from

[2] The Australian Constitution, 1901, had two provisions on Aboriginal Australians: section 51 (xxvi), that the Commonwealth had power to make laws with respect to people of any race, except Aboriginal peoples (this power was left to the states); and section 127, that Aboriginal peoples were not to be counted in any population census. The wording relating to Aboriginal peoples was removed from both provisions in a 1967 referendum.

[3] The Bark Petition is on public display at Australia's Parliament House in Canberra.

[4] (1971) FLR 141.

[5] The doctrine (or fiction) of *terra nullius* was overturned in Australia in 1992, in the High Court decision of *Mabo v. Queensland (No. 2),* 1992 175 CLR 1.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

western Canada to the Democratic Republic of Congo (DRC), to legitimate the transfer of land to colonial governments and to settlers.

While Justice Blackburn acknowledged Yolŋu evidence of an elaborate system of rules and customs related to land, he characterized these rules and customs as spiritual or religious, rather than proprietary. The Yolŋu, he concluded, belonged to the land, but the land did not belong to them. He wrote: "On the foundation of New South Wales, therefore, and of South Australia, every square inch of the territory in the Colony became the property of the Crown."[6] There was no Yolŋu right to land, and the mine could proceed.[7]

Recognition and Reclamation

The winds of political and social change swept across much of the world during the 1960s and 1970s. Indigenous Peoples and ethnic minorities protested and advocated for basic citizenship rights, which were previously denied to them (Anaya & Williams, 2001). Against a backdrop of Indigenous resistance to historical and ongoing dispossession, the settler-colonial governments commenced (and in some cases recommenced) the project of "settling" with Indigenous Peoples in the 1970s. Across the globe, different pathways were developed for the recognition of Indigenous Peoples and their land rights and processes for the reclamation of their land. For example, in the United States, the *Alaska Native Claims Settlement Act* 1971 provided title to lands for Alaskan Native corporations.[8] As well, the modern treaty process commenced in Canada

[6] (1971) FLR 141 at 245.

[7] This decision was not appealed to the High Court of Australia – a conservative bench meant the risk for squashing land rights was high – but the time for change was nearing (Woodward, 2005). However, recently, Australia's Federal Court ruled in favor of the Gumatj traditional landowner's claims for up to $700 million (Australian dollars) in compensation for the acquisition of the Gove mine site in 1969, without the just terms required by section 51 (xxxi) of the Australian Constitution, 1911. The Australian Government has sought leave to appeal this decision. See http://bit.ly/3HnODx7. The High Court of Australia granted special leave to the Commonwealth Government to appeal this decision on October 19, 2023. The decision of the Federal Court, if affirmed by the High Court, could have wide-ranging implications for native title holders across the country. This appeal was dismissed by the High Court of Australia on the March 12 2025, in the decision of Commonwealth of *Australia* v. *Yunupingu* [2025] HCA 6.

[8] Similar trends, for example, were followed in Brazil, with constitutional recognition of Indigenous Peoples and their land rights in 1988; in Colombia with the creation of the National Political Constitution, 1991, recognizing Indigenous Peoples and their collective rights; and Paraguay in 1981, with the Statute of Indigenous Communities.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

in 1973, after the Supreme Court of Canada's decision in *Calder v. British Columbia*, recognizing that Aboriginal title had likely survived the British Crown's assertion of sovereignty.[9]

Spurred on by *l'esprit du temps*, the failure of the Yolŋu's land rights case (*Milirrpum*), and the Gurindji people's "walk off" at the Wave Hill pastoral station in the Northern Territory, a report into recognizing Aboriginal land rights was commissioned by the Australian government in 1973. The Aboriginal Land Rights Commission, headed by the Yolŋu's counsel in *Milirrpum*, Edward Woodward, recommended a statutory land rights scheme for the Northern Territory. This scheme became federal legislation applying only to the Northern Territory, the *Aboriginal Land Rights (Northern Territory) Act* 1976, and remains the high-water mark for land rights in Australia. This statute provides a real property right to exclusive ownership and use of lands for successful claimants, with consent required for any state encroachments. Lands are governed through statutory land trusts, reflecting in part, Indigenous modes of social organization, and were designed in the spirit of "self-administration" (Neate, 1989).[10] According to Labour Party powerbroker H. C. "Nugget" Coombs, this land rights legislation was critical for ensuring Indigenous Peoples in the Northern Territory did not become a "dependent, landless proletariat with no other options" (1993, p. 3). Ironically, the *Aboriginal Land Rights Act* took effect on January 26, 1977, or Australia Day, the day marking the anniversary of British settlement in the country – a day referred to as Invasion Day or Survival Day by Indigenous Peoples and their allies.

Later efforts to have a national land rights framework across Australia were thwarted, though the existence (or survival) of native title (customary land rights) was recognized by the High Court of Australia in the 1992 *Mabo* decision, which Dorsett and McVeigh argued became the "site of engagement of Australian common law and jurisprudence with Indigenous law and jurisprudence" (2012, p. 471); this decision opened the door for further native claims across the continent. However, this ruling was codified with the passing of the *Native Title Act* 1993, where subsequent amendments to this statute and jurisprudence have restricted

[9] In Canada, the James Bay and Northern Quebec Agreement was the first modern treaty signed in 1975. Since then, twenty-six modern treaties have been concluded across the country, providing title to more than 600,000 square kilometers of land (Government of Canada, 2020).

[10] A federal policy to develop a national land rights scheme was abandoned by Prime Minister Bob Hawke in 1986.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

the breadth and scope of Indigenous laws to preserve Crown sovereignty, and with it the recognition and reclamation of land rights (Foley & Anderson, 2006).

Recognition: Who Are Indigenous Peoples?

Indigenous Peoples have played a foundational role in the growth of "rights" dialogue, both at domestic and at international scales, advocating for rights to self-determination and a recognition of their land rights (among other rights) (Anaya & Williams, 2001; Xanthaki, 2007). Gaining momentum in the 1960s and 1970s, Indigenous Peoples advocated for their "continued survival as distinct communities with historically based cultures, political institutions, and entitlements to land" (Anaya & Williams, 2001, p. 34). While there is no single universal definition of Indigenous Peoples, at the international level, Jose Martinez Cobo (1986–7) developed a working definition, taken up by the United Nations, as those peoples "having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, [and] consider themselves distinct from other sectors of the societies now prevailing on those territories … They … are determined to preserve, develop and transmit to future generations their ancestral territories and, their identity."

Adding to this, Erica-Irene Daes (1996) described that Indigenous Peoples have an experience of subjugation, marginalization, dispossession, exclusion, or discrimination. On every inhabited continent there are Indigenous Peoples, who are often treated by the state as unique political and individual entities (Tully, 2000). It is typical for the state to establish the processes for the recognition of Indigenous Peoples, the nature and scope of any rights (such as land rights, rights to hunt and fish), and safeguards on these rights from encroachment.[11] For example, the common law-settler states of Canada, Australia, New Zealand, and the United States (the CANZUS states) established "corporate rights vested to historically continuous indigenous groups" (Gover, 2015, p. 345), which are held by these collectives in perpetuity. Povinelli (2002) described this phenomenon as the "cunning of recognition," where the state establishes

[11] See, for example, *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. In *Haida Nation*, it was ruled that the state has a "duty to consult" where there is a potential violation of Aboriginal rights, even where these rights have not been formally recognized (para. 32). This is a duty to consult only, and is not a duty to get consent from Indigenous Peoples for any proposed encroachment (para. 31).

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

"authenticity tests" for recognizing Indigenous Peoples and their rights, assessing and validating claims to Indigeneity and to land rights through the executive and the courts. Coulthard connects this phenomenon to the "structural and psychoaffective facets of colonial domination" (2014, p. 49), "where colonial rule does not depend solely on the exercise of state violence, its reproduction instead rests on the ability to entice Indigenous Peoples to identify, either implicitly or explicitly, with the profoundly asymmetrical and nonreciprocal forms of recognition either imposed on or granted to them by the settler state and society" (2014, p. 25).

In any case, rights by themselves are insufficient, being "only effective to the extent that they are morally and institutionally enforceable" (Ivison, 2003, p. 338). Peoples must also have the capabilities to exercise these rights, or the freedoms, agency, health and wellbeing, and the opportunities to put these rights into practice (Sen, 1981).

Land Rights: Recognition and Reclamation Processes

> *Land rights to me has always been there. I've always practiced my rights. So, them telling us we now have title never meant nothing to me, because to me we've always owned it.*[12]

Indigenous Peoples have and continue to be dispossessed of their lands, displaced, and discriminated against. Despite this, they continue with their advocacy and action for redress and protection against further transgression. Gilbert defined land rights as rights to "occupy, enjoy and use land and resources; restrict or exclude others from land; transfer, sell, purchase, grant or loan; inherit and bequeath; develop or improve; rent or sublet; and benefit from improved land values or rental income" (2013, p. 115). Land rights are foundational for basic human rights, for without land rights the basic human rights to food, housing, security, and religion or culture cannot be fully achieved (Gilbert, 2013). Land rights, according to Ivison, flow to Indigenous Peoples not as racial or cultural entities, but as "political, or perhaps more precisely, as constitutional ones" (2003, p. 334), reflecting the pre-existing laws of Indigenous Peoples and their systems of land ownership.

[12] Personal communication, Member, Xeni Gwet'in First Nation, 2021 (title-holding group, from Tsilhqot'in Nation, the first declaration of Aboriginal title by the Supreme Court of Canada in 2014).

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

There are generally three parts to Indigenous land rights: (1) they are typically a collective and perpetual right held by an Indigenous collective, who have a pre-existing legal connection to a territory, for members to exclusively occupy, possess, and use the land. Once reclaimed, often under state-defined processes, this land is typically inalienable, unless transferred or sold to the state, and the state typically has powers to encroach upon land rights in special circumstances with or without the consent of the landowners; (2) the landholding group determines membership to the collective, and while there are collective rules and norms that determine membership, the state also often establishes (or at least affirms) membership (Gover, 2010; Nikolakis et al., 2016); and (3) there is a right to be self-determining – in the sense that landowners can govern their land in their own ways, putting this land to use for collective and individual benefit, and typically with responsibilities and duties to maintain the land for future generations.[13]

While there has been considerable discussion around land rights at the international level, there is "strictly speaking . . . no human right to land under international law" (Gilbert, 2013, p. 115).[14] Thus, there is a considerable degree of variability across the world for how land rights are recognized, the processes for reclamation, and the protections and safeguards on land rights. The chapters in this book demonstrate a number of approaches for recognition and reclamation of Indigenous land rights: (1) constitutional provisions; (2) statutes; (3) customary, common, civil, or Islamic laws; (4) policies, decrees, or other orders; and (5) treaties and self-government agreements.

1. Constitutional approaches for recognizing Indigenous Peoples and their land rights exist across diverse jurisdictions, from Canada to the Democratic Republic of Congo (DRC), to Brazil and Colombia (among

[13] For example, in Canada in *Tsilhqot'in Nation* the court ruled that Aboriginal title confers ownership rights akin to fee simple title, including a right to decide how land is used, to generate economic benefits, and to proactively use and manage land (para. 73). Aboriginal title is an exclusive right to use land, but the use must be consistent with the "group nature of the interest and the enjoyment of the land by future generations" (para. 88).

[14] Gilbert (2013) documents human rights instruments affirming Indigenous Peoples' land and self-determination rights: The General Comments on the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and Human Rights Committee's jurisprudence of article 27 of ICCPR. The Indigenous and Tribal Peoples Convention (No. 169) of the International Labour Organization also provides for Indigenous land rights.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

others). As constitutions are the supreme law in many jurisdictions, and typically require public referenda to be changed, constitutional provisions offer the most secure and powerful mechanism for recognizing and protecting land rights (Nikolakis & Hotte, 2020). However, enforcing these provisions on the ground has typically proven challenging, as documented in the chapter on the DRC by Lassana Koné (this volume), where the "legal dualism" in the constitution recognizing customary and state land rights is not given effect in practice – which perpetuates tenure insecurity for Indigenous Peoples, and suggests a robust institutional framework must be built around constitutional provisions to make these effective.

2. Statutes are the most common approach for recognizing and restoring land rights; for example, New Zealand codified and restricted customary or native title in the *Te Ture Whenua Māori/Māori Land Act* 1993 (TTWM), and later in the *Marine and Coastal Area Act* 2011. Australia has the federal *Native Title Act* 1993, as well as state and territory land rights statutes like the *Aboriginal Land Rights (Northern Territory) Act* 1976; India has the *Forest Rights Act* 2006; Norway has the *Finnmark Act* 2005; and other examples include Botswana, Chile, Honduras, and Colombia. Statutes are binding and instrumental, and they are more secure than policies or jurisprudence. However, statutes can be repealed or amended like the situation in Australia or New Zealand, or simply ignored by government or other actors, or interpreted differently than their intent by courts (Nikolakis & Hotte, 2020), and there are numerous examples across the world of statutes stripping away or diluting land rights (for example, the United States' American Indian treaties).
3. Customary, common, civil, or Islamic laws are legal principles defined or developed by a collective's authorized institutions. Customary laws are the laws, practices, and customs developed by Indigenous societies that give expression to land ownership and use. Common law is developed by judges. The decisions or case law offer precedential authority; however, this authority can be overruled by a superior court, distinguished, or codified by the legislature like the Australian *Native Title Act* that codified the doctrine of native title in the *Mabo* decision. Civil law countries have codified laws around property and land rights, while Islamic laws are those interpreted from scriptures and other legal sources by jurists (muftis) and are typically drawn from codes today. In pluralistic legal systems, different approaches may operate in parallel; for instance, customary law may be incorporated into the common, civil or Islamic law in a form of legal dualism,

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

with examples from the DRC and Morocco in this book. There are instances where the courts are taking a more expansive view on incorporating customary Indigenous law in Aboriginal or native title cases, such as in Canada and Australia (what Roughan, 2009, described as a form of "legal association").

4. Policies, decrees, and other orders are those developed by the executive arm of government. These policies may be substantive, such as establishing a land tenure and land titling policy, or they may be symbolic, like recognizing Indigenous prior occupation, without implementing land rights. Policies and decrees are not binding in the same way the constitution, statute, and precedent are, but they can reshape norms and practices, which may be a preliminary step towards creating law.
5. Written treaties set out the terms of settlement between Indigenous nations and settler-colonial governments, the most well-known perhaps being the American Indian treaties recognizing the US tribes as "domestic dependent nations," concluded up until 1871. In Canada and New Zealand, historic treaties were signed (and typically not honored), and modern treaty processes have been established that provide for a distribution of lands, compensation, and self-governance powers (Borrows, 2006). There has also been growing public attention on treaties more recently in Australia. Canada has concluded self-government agreements, such as with the Westbank First Nation, and a Sechelt First Nation self-government agreement was legislated in 1986. Both these agreements in British Columbia set out the terms of the governing powers of the First Nations and redistribute lands back to the First Nations.

Many countries are a hybrid of the different mechanisms listed above; for example, Canada and Malaysia have constitutional provisions, engage in treaties or self-government agreements with Indigenous Peoples, and have common-law recognition of land rights. Regardless of the approach, it is typically the claimants who have to prove their rights through procedures laid out and heard by the state – and their struggles too often yield isolated, poorly resourced, and meagre gains. Typically, the customary laws and institutions of Indigenous Peoples are not reflected in land rights regimes.

A Framework for Conceptualizing Land Rights

The experience of the Yolŋu of Yirrkala is shared across the world. Indigenous Peoples have been dispossessed and displaced, but their

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

resistance and advocacy in many cases has led to their recognition as distinct peoples with unique rights and land ownership. The people of Yirrkala had their title to land "confirmed" in 1980 under the 1976 *Aboriginal Land Rights (Northern Territory) Act*, a federal statute creating legal processes for traditional lands that had not been alienated as Crown land, to be returned to "traditional owners" (Neate, 1989). These lands were returned as inalienable and collectively held Aboriginal freehold land.

In the global picture, the Yolŋu's reclamation of their traditional lands is an anomaly. A Rights and Resources Initiative (2015) report found that while more than 50 percent of the world's lands are the territories of Indigenous Peoples, only 10 percent of these are legally recognized as such (covering around 1,176 million hectares). Most of the "recognized" lands were in five countries: China, Canada, Brazil, Australia, and Mexico. The rights accorded in these jurisdictions vary greatly. Noteworthy from the study is that forty of the sixty-four countries analyzed did not have any land rights mechanisms in place. In a follow-up study the Rights and Resources Initiative (2023) analyzed seventy-three countries that covered 85 percent of the global estate, and found an increase in Indigenous and local community land tenures to 1,264 million hectares in 2020 (up 1.4 percent from 2015). It is important to note that 61.4 percent of these Indigenous lands were in the five countries listed above. The bulk of the countries analyzed in the Rights and Resources Initiative studies did not have any land rights mechanisms in place.

Those peoples without recognized and secure land rights are at continued risk of further dispossession and displacement by settlers and state-backed energy, mining, agricultural, and forestry interests. Garnett et al. (2018) identified that 37 percent of the Earth's remaining "natural lands" are within the territories of Indigenous Peoples. These lands tend to have lower intensity land uses, and they are the remotest and least populated areas on Earth. Because of this, they are at heightened risk from dispossession. Where Indigenous lands are titled, offering some form of legal protection, these areas are shown to reduce deforestation compared to other areas (Benzeev et al., 2023; Baragwanath & Bayi, 2020; Blackman et al., 2017; Sze et al., 2022) and thus store more carbon (Blackman & Veit, 2018; Walker et al., 2014).

A Conceptual Model for Land Rights

The chapters in this book reveal patterns of dispossession; strategies to reclaim lands; processes for recognition and reclamation, most often

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

driven by the state; the barriers to reclaiming lands; and the opportunities available to Indigenous Peoples for advancing and safeguarding their land rights. Taken together, each of these dimensions form a conceptual model for understanding the development of land rights (see Figure 1.1).

- *Dispossession* – To dispossess is to deprive people of their lands, their property, and their livelihoods. The chapters in this book focus on the historical and ongoing processes and tools for dispossession. There remain significant dispossession pressures on Indigenous Peoples, with or without secure title to their lands.
- *Strategies* – Indigenous Peoples have applied various strategies to secure and safeguard their land rights. These strategies are dynamic as land rights are at constant threat of derogation or dispossession (even with an "enforceable" title). These strategies include activism, direct action and advocacy, litigation and negotiation at local and at international scales. Whyte (2011) documented that the success of these strategies is dependent on the power of Indigenous Peoples vis-à-vis the state, and their capacity and resources to effectively engage with, and contest, the state.
- *Recognition and reclamation* – There are legal, administrative, and political processes to recognize Indigenous Peoples and their land rights, and to restore full land rights to those dispossessed (in some cases these are simply access rights). Often the state determines the parameters of these recognition and reclamation processes, which have important consequences for Indigenous Peoples and their land rights.
- *Barriers* – There are structural and cultural factors that enable dispossession. These include power relations, which affirm the state's sovereignty and land grabs, supported by the state, as documented across the chapters. Lobbying and advocacy by the agricultural and natural resources sectors frustrate recognition and reclamation processes and undermine land rights.
- *Opportunities* – There are pathways that have been developed by Indigenous Peoples to advance and safeguard their land rights in ways consistent with their goals and values. These opportunities can reshape (and potentially transform) the institutional and political framework to create the space to reclaim and safeguard land rights.

Figure 1.1 illustrates the interaction of these dimensions, starting at point A, **Dispossession**, which has catalyzed **Strategies** by Indigenous Peoples to secure and safeguard land rights (point B). These strategies have

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

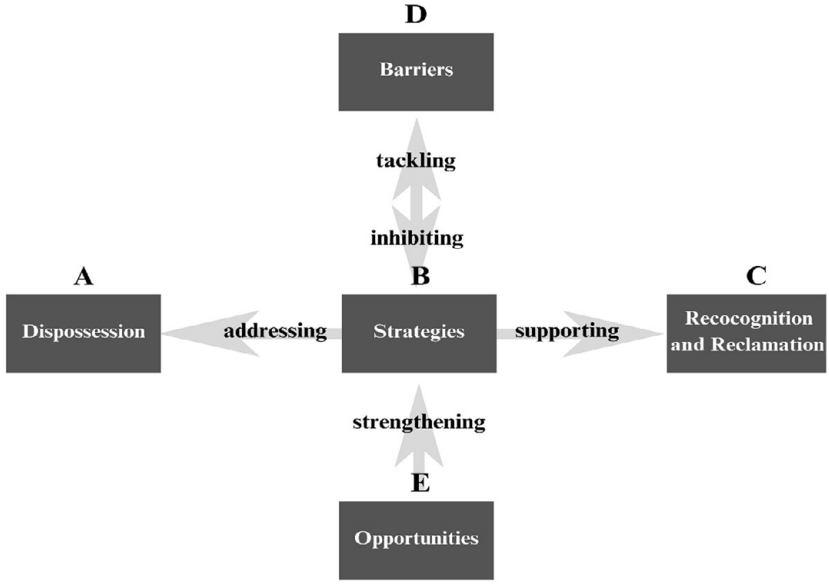

Figure 1.1 Land rights recognition and reclamation conceptual framework

activated **Recognition and Reclamation** processes (point C). There are **Barriers** (point D) to securing land rights, such as power dynamics and populist politics, which can restrict this transition to **Recognition and Reclamation**. The **Strategies** applied can directly address the **Barriers** that prevent land rights (reflected in a two-way arrow between these dimensions), and counter-strategies can be employed by those threatened by land rights (such as the natural resource and agriculture sectors). The **Opportunities** (point E) are those pathways to strengthen **Strategies** and **Recognition and Reclamation** processes, and to mitigate **Dispossession**.

Overview of the Collection

The book is organized into three sections to reflect the "common ground" between jurisdictions: Latin America; Australia, Canada, and New Zealand; and Africa and Asia.

Latin America

The Latin American countries typically recognize Indigenous Peoples and their customary land ownership in constitutions. *The Elusive*

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

Promise of Indigenous Land Rights in Paraguay: Achievements, Challenges, and Current Trends, by Joel E. Correia, Rodrigo Villagra-Carron and Marcos Glauser, traces the country's major legal achievements on land rights. They note that despite these protections, 2021 saw record violent dispossessions of Indigenous Peoples in the country. The authors develop the term "pendulum policies" to trace the shifts in state-Indigenous relations from "violation" to "justice" and then back to "violation," highlighting a persistent "implementation gap" in land rights laws. The role of international law and strategic litigation has pushed the pendulum towards "justice," yet serious threats, from land renting to direct violence, remain.

Article 231 of Brazil's constitution guarantees Indigenous Peoples the collective right to return to and occupy their traditional lands, consistent with international obligations. Professors Fernanda Frizzo Bragato and Jocelyn Getgen Kestenbaum write in *Recognizing and Reclaiming Indigenous Peoples' Constitutional Land Rights in Brazil: Challenges and Opportunities* that despite this constitutional guarantee, there has been an active campaign of land grabs and violence that has undermined the country's land rights framework. Indigenous Peoples have litigated to reclaim and protect their lands, but the courts have applied a "temporal framework doctrine" ("*tese do marco temporal*") to deny Indigenous People their rights to ancestral lands if they did not occupy and control those lands at the creation of the 1988 Brazilian Constitution. A new political administration may reverse this trend.

In the chapter *Indigenous Peoples and Territorial Rights in Colombia: Advances, Challenges, and Setbacks in Implementation,* Omaira Bolaños and Ricardo Camilo Niño (Arhuaco) describe how the country's 1991 National Political Constitution (NPC) recognized Indigenous Peoples and their collective rights. However, most of the 33 million hectares of collectively held lands in Colombia occurred prior to 1991. A persistent internal armed conflict stalled land justice in the post-1991 period, fueled by land conflict. A 2016 Peace Accord sought to resolve land ownership disputes and maintain civil stability. The authors explore the legal framework and historical context that sustains land injustice in Colombia.

Chile does not have constitutional recognition of Indigenous Peoples – a situation that two recent constitutional reforms and referenda sought to remedy. Both of these referenda failed, and Indigenous Peoples and their land rights continue to be governed by the Indigenous Law of 1993. This statute has been slow to deliver land justice for Indigenous Peoples in

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

Chile. Against this background, Alexandra Tomaselli's chapter, *Indigenous Land Rights in Chile: Dispossession, Misrecognition and Litigation*, details how litigation, combined with direct action, has been an important and sometimes effective strategy for safeguarding Indigenous lands from development pressures.

Australia, Canada, and New Zealand

Australia, Canada, and New Zealand are among the common-law settler countries that have sought to reconcile with Indigenous Peoples and integrate them into their constitutional orders. In the chapter *Aboriginal Land Rights in Australia: Neither National nor Uniform*, Dr Francis Markham and Professor Heidi Norman (Gamilaroi Nation) argue that the return of an Aboriginal presence across all Australian landscapes since the 1960s is a significant transformation in the colonial geographic imagination and the dominant narratives of absence, erasure and denial. The chapter weaves together the fragmented approaches and innovations for recognizing and reclaiming Indigenous land rights across the country.

In *Dispossession by Treaty, Dispossession by Statute: Indigenous Title in Eastern and Western Canada*, Professors Daniel Diamond and Douglas Sanderson, both from the Opaskwayak Cree Nation in Canada, document how the Torrens land titling system, developed in Australia and adopted in British Columbia, was used to dismantle Aboriginal title, and enhance the fungibility of land to settlers. Most of the valuable land was appropriated through the Torrens system in British Columbia, where it has remained ineligible up to this point in time for Aboriginal title claims.

In *Māori Land Law in Aotearoa New Zealand: Recognising Land as tāonga tuku iho*, Carwyn Jones (*Ngāti Kahungunu*) and Sandra Cortés Acosta document a "legislative" approach to Māori land rights, which narrows their scope and leaves these rights vulnerable to changing political whims. They examine the development of the *Te Ture Whenua Māori/ Māori Land Act* 1993 and the *Marine and Coastal Area (Takutai Moana) Act* 2011, which restricts customary or native title (focusing on recognition rather than reclamation), and thus are inconsistent with Māori relationships to *whenua* (land) and *tikanga* (law, values and practices). Jones and Cortés Acosta argue that a constitutional approach for recognizing and safeguarding land rights is critical for nurturing Māori relationships to land characterized as *tāonga tuku iho* (a treasure that connects current generations with their ancestors and future generations).

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

Africa and Asia

The concept of Indigeneity is contested across much of Africa and Asia. However, Indigenous Peoples across these continents are advocating for recognition as distinct peoples and for the return or protection of their lands. In his chapter *Land Rights of Indigenous Peoples in the Democratic Republic of Congo: "First Come, Last Served,"* Lassana Koné writes that the Democratic Republic of Congo's (DRCs) constitution enshrines a "legal dualism" that recognizes both state and customary laws to land ownership. Yet, land laws continue to deny Indigenous Peoples a registered and indefeasible title to their lands, meaning they remain vulnerable to dispossession. Without secure tenure, several *Batwa* communities have procured community forest concession licences, which while only an incremental step towards land justice, offer some form of jurisdiction and standing over their territories. But accessing these concessions can be complex, limiting the effectiveness of this strategy for many Indigenous communities across the DRC. In 2022, the Law on the Protection and Promotion of the Rights of Indigenous Pygmy Peoples was passed, which aims to strengthen the land rights of Baka, Bambuti, and Batwa peoples. This law took effect in 2023, and while it is too soon to evaluate its performance, experience suggests implementation will be problematic.

In *San Land Rights in Botswana: A Critical Analysis*, Robert Hitchcock, Maria Sapignoli and Smith Moeti (*G//ana San*) document that the country's 60,000 San peoples continue to hold fragile land and resources rights. While they are not legally recognized as Indigenous Peoples in Botswana, some lands have been set aside for the San people, like the remote area settlements. These communal lands are inalienable, though there are no guarantees to safeguard them. San have actively organized to strengthen their land rights through non-government organizations, lobbying for their rights nationally and internationally, and litigated in the High Court, where some cases have been successful. The Central Kalahari San legal decisions have in fact set international precedents for human rights to water. However, the Botswana government has not honored many of the High Court judgments, leaving San in a precarious position.

The *Amazigh* Peoples of Morocco's High Atlas region are considered as the Indigenous Peoples of the region. Over millennia they have maintained their cultural identity as well as the *agdal* customary system, which governs their lands, pasture, water, and forests in an unforgiving climate. In the chapter by Ahmed Bendella (*Amazigh*) and colleagues,

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

entitled *Rights over Land among Amazigh Peoples in Morocco: The Case of the High Atlas*, the authors examine the oral-based *agdal* system, which is embedded in a deep "socio-ecological" interdependency, and guided by the *j'maa* (local community assemblies) and customary law. They provide insight around the resilience of the *agdal* system in the face of shifting social, political, cultural and ecological forces.

The Indian constitution recognizes *Adivasis*, or India's Indigenous Peoples. However, drawing from land tenure evidence, Professor Jagannath Ambagudia, in *Adivasis and Land Rights in India: Dispossession and the "Implementation Gap,"* shows the landholding patterns of *Adivasis* have been altered across the country, and land alienation has accelerated, leading to *Adivasi* insurgencies. To address this, Professor Ambagudia calls for a strengthened land rights framework in India, grounded in customary institutions and in the principle and process of free prior and informed consent.

In *Legal Privileges and the Effective Recognition of Indigenous Land Rights: Lessons from Malaysia*, Yogeswaran Subramaniam documents the diversity in constitutional privileges afforded to the Peninsular Malaysia Orang Asli, and the natives of Sabah and of Sarawak. While Malaysia's courts have guarded the rights of these three recognized Indigenous Peoples, they have also been reluctant to expand these rights to reflect changing international Indigenous norms, such as free prior and informed consent, with implications for land rights. Subramaniam argues that a full implementation of land rights laws, combined with free prior and informed consent, is critical to protecting land rights in Malaysia.

In Cambodia and Thailand, Indigenous Peoples have used the political system to build support for their recognition and to assert collective land rights. But, according to Ian Baird in *Indigenous Peoples and Electoral Politics in Thailand and Cambodia: One Strategy to Secure Land Rights in Contested Spaces,* there has been mixed success through this strategy – though it appears to be the most effective option in contexts where Indigeneity is a contested concept.

A concluding chapter entitled *Reclaiming Land Rights Under the Pressure of Nation States – Insights and Future Directions from Sápmi*, written by Sámi lawyer Oula-Antti Labba, weaves together the key themes throughout the book, drawing on the Sámi experience. The conclusion traces the shared histories and modern realities of dispossession, processes for recognition and reclamation, strategies to reclaim lands, and persistent barriers to land rights, reflected in an "implementation gap." The conclusion also offers directions for practice and future research on land rights.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

Looking Ahead

Indigenous Peoples living with stronger forms of tenure security, such as on the Northern Territory's Aboriginal freehold lands, and who are actively stewarding their lands in their own ways, show reductions in lifestyle-related and chronic diseases (Burgess et al., 2005; Garnett et al., 2009; McDermott et al., 1998), and are better able to maintain their language and culture (Biddle & Swee, 2012).[15] However, powerful voices continue to assert that Indigenous land rights are divisive and stymie resource development (Kirkwood et al., 2005; Aiken & Leigh, 2011; Nikolakis et al., 2014). This situation has been playing out in Brazil, where safeguards to protect Indigenous lands have been reduced, leading to conflict, violence and deforestation (Begotti & Peres, 2019; Ferrante & Fearnside, 2019).

Those Indigenous Peoples who can secure land rights are not, in many instances, resourced to fully implement them, and the challenges for leveraging economic benefits from collective and inalienable lands are well documented (Altman, 2004; Nikolakis, 2008, 2010; Nikolakis et al., 2016). Further, despite the enormous wealth generated from Indigenous-held lands – particularly the minerals and energy sectors – many Indigenous communities live below the poverty line (Cornell, 2005; Langton & Longbottom, 2012; Stavenhagen, 2006). Because of this, it is common that Indigenous Peoples living on their lands remain dependent on the state in many ways (Alfred & Corntassel, 2005). Yolŋu elder Galuwruy Yunupingu, who was a young man during the signing of the Bark Petition at Yirrkala in 1963, was quoted in 2013 as saying "We have looked forward to the land rights giving us something . . . The land rights is for Aboriginal people but the land ownership and use of land . . . is not for Aboriginal people, it's for mining companies. For white fellas" (Laughland, 2013).

The next phase for many Indigenous Peoples after reclaiming their lands is to revitalize and strengthen their governance, and to take control of their lands and their futures, which can be equally as big a challenge as winning Land Back (Nikolakis and Nelson, 2019). This challenge is

[15] It must be acknowledged that despite a coordinated "whole-of-government" focus, there has been little progress made in Australia in "closing the gap" between Indigenous and non-Indigenous populations on life expectancy and child mortality. The gap is widest in remote and very remote communities, where Indigenous Peoples more often than not live on their own lands (Australian Government, 2020). Despite decades of attention, the most recent Closing the Gap report in 2023 showed that only four of fifteen targets to close the gap on Indigenous socio-economic disadvantage, which included life expectancy, adult imprisonment, housing, early childhood development and language retention (among others), were on track to be met (Productivity Commission, 2023).

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

reflected in the words of a member of the Tsilhqot'in Nation from British Columbia, Canada: "Because now that we have proven land rights, now the next step is, what do we do with title? And I think that's the big question now, where do we go with it? And what does that mean?" (personal communication, 2021).

While land rights alone are insufficient to address the deep-seated challenges Indigenous Peoples face, they are foundational, a first step. In designing land rights, the space must be created for Indigenous Peoples to be themselves, or what Leanne Simpson refers to as *biskaabiiyang* in *Anishinaabemowin*, or the act of "returning to ourselves" (Simpson, 2017, p. 17). Without this space, any land rights framework will simply replicate the colonial project of dispossession.

References

Aiken, S. R., & Leigh, C. H. (2011). Seeking redress in the courts: Indigenous land rights and judicial decisions in Malaysia. *Modern Asian Studies*, 45(4), 825–875.

Alfred, T., & Corntassel, J. (2005). Being Indigenous: Resurgences against contemporary colonialism. *Government and Opposition*, 40(4), 597–614.

Altman, J. (2004). *Sustainable development options on Aboriginal land: The hybrid economy in the twenty-first century*. Canberra: Centre for Aboriginal Economic and Policy Research, Australian Natural University.

Anaya, S., & Williams, R. (2001). The protection of Indigenous Peoples' rights over lands and natural resources under the Inter-American Human Rights System. *Harvard Human Rights Journal*, 14, 33–86.

Australian Government. (2020). Closing the gap report 2020. Canberra: National Indigenous Australians Agency. https://ctgreport.niaa.gov.au/sites/default/files/pdf/closing-the-gap-report-2020.pdf

Baragwanath, K., & Bayi, E. (2020). Collective property rights reduce deforestation in the Brazilian Amazon. *Proceedings of the National Academy of Sciences*, 117(34), 20495–20502.

Barume, A. K. (2010). *Land rights of indigenous peoples in Africa*. Copenhagen: IWGIA.

Begotti, R. A., & Peres, C. A. (2019). Brazil's indigenous lands under threat. *Science*, 363(6427), 592.

Benzeev, R., Zhang, S., Rauber, M. A., Vance, E. A., & Newton, P. (2023). Formalizing tenure of Indigenous lands improved forest outcomes in the Atlantic Forest of Brazil. *PNAS nexus*, 2(1), 287.

Biddle, N., & Swee, H. (2012). The relationship between wellbeing and Indigenous land, language and culture in Australia. *Australian Geographer*, 43(3), 215–232.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

Blackman, A., Corral, L., Lima, E. S., & Asner, G. P. (2017). Titling indigenous communities protects forests in the Peruvian Amazon. *Proceedings of the National Academy of Sciences*, 114(16), 4123–4128.

Blackman, A., & Veit, P. (2018). Titled Amazon indigenous communities cut forest carbon emissions. *Ecological Economics*, 153, 56–67.

Borrows, J. (2006). Ground-rules: Indigenous treaties in Canada and New Zealand. *New Zealand Universities Law Review Journal*, 22(2): 188–212.

Burgess, C. P., Johnston, F. H., Bowman, D. M., & Whitehead, P. J. (2005). Healthy country: Healthy people? Exploring the health benefits of Indigenous natural resource management. *Australian and New Zealand Journal of Public Health*, 29(2), 117–122.

Clarkson, C., Jacobs, Z., Marwick, B., Fullagar, R., Wallis, L., Smith, M., Roberts, R. G., Hayes, E., Lowe, K., Carah, X., Florin, S. A., McNeil, J., Cox, D., Arnold, L. J. Hua, Q., Huntley, J., Brand, H. E. A., Manne, T., Fairbairn, A., Shulmeister, J., Lyle, L., Salinas, M., Page, M., Connell, K., Park, G., Norman, K., Murphy, T., & Pardoe, C. (2017). Human occupation of northern Australia by 65,000 years ago. *Nature*, 547, 306–310.

Coombs, H. C. (1993). *Issues in dispute, Aborigines working for autonomy*. Darwin: Australian National University, North Australia Research Unit.

Cornell, S. (2005). Indigenous peoples, poverty and self-determination in Australia, New Zealand, Canada and the United States. In R. Eversole, J-A. McNeish, & A. D. Cimadamore (eds.), *Indigenous peoples and poverty: An international perspective* (pp. 199–225). London: Zed Books.

Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. Minneapolis, MN: University of Minnesota Press.

Daes, E. I. A. (1996). *Working paper on the concept of indigenous peoples* (UN doc. E/CN. 4/Sub. 2/AC. 4/1996/2). New York: United Nations.

Dorsett, S., & McVeigh, S. (2012). Conduct of laws: Native title, responsibility, and some limits of jurisdictional thinking. *Melbourne University Law Review*, 36(2), 470–493.

Fa, J. E., Watson, J. E., Leiper, I., Potapov, P., Evans, T. D., Burgess, N. D., . . ., & Garnett, S. T. (2020). Importance of Indigenous Peoples' lands for the conservation of intact forest landscapes. *Frontiers in Ecology and the Environment*, 18(3), 135–140.

Ferrante, L., & Fearnside, P. M. (2019). Brazil's new president and 'ruralists' threaten Amazonia's environment, traditional peoples and the global climate. *Environmental Conservation*, 46(4), 261–263.

Foley, G. & Anderson, T. (2006). Land rights and Aboriginal voices. *Australian Journal of Human Rights*, 12(1), 83–108.

Garnett, S. T., Burgess, N. D., Fa, J. E., Fernández-Llamazares, Á., Molnár, Z., Robinson, C. J., Watson, J. E. M., Zander, K. K., Austin, B., Brondizio, E. S., Collier, N. F., Duncan, T., Ellis, E., Geyle, H., Jackson, M. V., Jonas, H.,

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

Malmer, P., McGowan, B., Sivongxay, A., & Leiper, I. (2018). A spatial overview of the global importance of Indigenous lands for conservation. *Nature Sustainability*, 1(7), 369.

Garnett, S. T., Sithole, B., Whitehead, P. J., Burgess, C. P., Johnston, F. H., & Lea, T. (2009). Healthy country, healthy people: Policy implications of links between Indigenous human health and environmental condition in tropical Australia. *Australian Journal of Public Administration*, 68(1), 53–66.

Gilbert, J. (2013). Land rights as human rights: The case for a specific right to land. *SUR: International Journal on Human Rights*, 10(18), 115–135.

Gover, K. (2010). Comparative tribal constitutionalism: Membership governance in Australia, Canada, New Zealand, and the United States. *Law & Social Inquiry*, 35(3), 689–762.

(2015). Settler–state political theory, 'CANZUS' and the UN declaration on the rights of indigenous peoples. *European Journal of International Law*, 26(2), 345–373.

Government of Canada. (2020). Treaties and agreements, Ottawa, Canada. www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231

Ivison, D. (2003). The logic of Aboriginal rights. *Ethnicities*, 3(3): 321–344.

Kirkwood, S., Liu, J. H., & Weatherall, A. (2005). Challenging the standard story of indigenous rights in Aotearoa/New Zealand. *Journal of Community & Applied Social Psychology*, 15(6), 493–505.

Langton, M., & Longbottom, J. (eds.). (2012). *Community futures, legal architecture: Foundations for Indigenous peoples in the global mining book*. Oxon: Routledge.

Larsen, P. B., & Gilbert, J. (2020). Indigenous rights and ILO Convention 169: Learning from the past and challenging the future. *The International Journal of Human Rights*, 24(2–3), 83–93.

Laughland, O. (2013, July 10). Land rights are empty, Yolngu elder tells Rudd on bark petition anniversary. The Guardian. www.theguardian.com/world/2013/jul/10/land-rights-empty-yolngu-rudd

Martinez Cobo, J. (1986–87). *Study of the problem of discrimination against indigenous populations*. New York: United Nations. www.un.org/development/desa/indigenouspeoples/publications/martinez-cobo-study.html

McDermott, R., O'Dea, K., Rowley, K., Knight, S., & Burgess, P. (1998). Beneficial impact of the Homelands Movement on health outcomes in central Australian Aborigines. *Australian and New Zealand Journal of Public Health*, 22(6), 653–658.

Morphy, F. (2008). Enacting sovereignty in a colonized space: The Yolngu of Blue Mud Bay meet the native title process. In D. Fay and D. James (eds.), *The rights and wrongs of land restitution: 'Restoring what was ours'* (pp. 99–122). New York: Routledge-Cavendish.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

Morphy, H. (2005). Mutual conversion? The Methodist church and the Yolngu, with particular reference to Yirrkala. *Humanities Research*, 12(1), 41–53.

Morris, M., Garavito, C. R., Salinas, N. O., & Buriticá, P. (2009). *La consulta previa a pueblos indígenas: Los estándares del derecho internacional*. Bogota: Universidad de los Andes.

Neate, G. (1989). *Aboriginal land rights law in the Northern Territory*. Sydney: Alternative Publishing Co-operative.

Nikolakis, W. D. (2008). *Determinants of success among Indigenous enterprise in the Northern Territory of Australia* (Doctoral dissertation, University of South Australia).

Nikolakis, W. (2010). Barriers to indigenous enterprise development on communally owned land. *Global Business and Economics Review*, 12(1–2), 85–99.

Nikolakis, W., Akter, S., & Nelson, H. (2016). The effect of communication on individual preferences for common property resources: A case study of two Canadian First Nations. *Land Use Policy*, 58, 70–82.

Nikolakis, W., & Hotte, N. (2020). How law shapes collaborative forest governance: A focus on indigenous peoples in Canada and India. *Society & Natural Resources*, 33(1), 46–64.

Nikolakis, W., & Nelson, H. W. (2019). Trust, institutions and Indigenous self-governance: An exploratory study. *Governance*, 32(2), 331–347.

Nikolakis, W., Nelson, H. W., & Cohen, D. H. (2014). Who pays attention to indigenous peoples in sustainable development and why? Evidence from socially responsible investment mutual funds in North America. *Organization & Environment*, 27(4), 368–382.

Povinelli, E. A. (2002). *The cunning of recognition*. Durham, NC: Duke University Press.

Productivity Commission. (2023). Closing the gap. Annual Data Compilation Report July 2023. Australian Government, Canberra. www.pc.gov.au/closing-the-gap-data/annual-data-report

Rights and Resources Initiative. (2015). *Who owns the world's land? A global baseline of formally recognized indigenous and community land rights*. Washington, DC: RRI.

(2023). *Who owns the world's land? Global state of Indigenous, Afro-descendant, and local community land rights recognition from 2015–2020*, 2nd edition. Washington, DC: RRI.

Roughan, N. (2009). The association of state and indigenous law: A case study in 'Legal Association.' *University of Toronto Law Journal*, 59(2), 135–178.

Russell-Smith, J., Cook, G. D., Cooke, P. M., Edwards, A. C., Lendrum, M., Meyer, C. P., & Whitehead, P. J. (2013). Managing fire regimes in north Australian savannas: Applying Aboriginal approaches to contemporary global problems. *Frontiers in Ecology and the Environment*, 11(s1), e55–e63.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

Schuster, R., Germain, R. R., Bennett, J. R., Reo, N. J., Arcese, P. (2019). Vertebrate biodiversity on indigenous-managed lands in Australia, Brazil, and Canada equals that in protected areas. *Environmental Science & Policy*, 101, 1–6.

Sen, A. (1981). Rights and agency. *Philosophy & Public Affairs*, 11(1), 3–39.

Sieder, R. (2016). Indigenous peoples' rights and the law in Latin America. In D. Short & C. Lennox (eds.), *Handbook of indigenous peoples' rights* (pp. 414–423). New York: Routledge.

Sikkink, K. (2005). The transnational dimension of the judicialization of politics in Latin America. In R. Sieder, L. Schjolden, & A. Angell, A. (eds.), *The judicialization of politics in Latin America* (pp. 263–292). New York: Palgrave.

Simpson, L. B. (2017). *As we have always done: Indigenous freedom through radical resistance*. Minneapolis, MN: University of Minnesota Press.

Soley, X., & Steininger, S. (2018). Parting ways or lashing back? Withdrawals, backlash and the Inter-American Court of Human Rights. *International Journal of Law in Context*, 14(2), 237–257.

Stavenhagen, R. (2006). Indigenous peoples, land and territory. In P. Rosset, R. Patel, & M. Courville (eds.) *Promised land: Competing visions of agrarian reform* (pp. 208–219). Oakland, CA: Food First Books.

Sze, J. S., Carrasco, L. R., Childs, D., & Edwards, D. P. (2022). Reduced deforestation and degradation in Indigenous Lands pan-tropically. *Nature Sustainability*, 5(2), 123–130.

Tully, J. (2000). The struggles of indigenous peoples for and of freedom. In D. Ivison, P. Patton, & W. Sanders (eds.), *Political theory and the rights of indigenous peoples* (pp. 36–59). Cambridge: Cambridge University Press.

Walker, W., Baccini, A., Schwartzman, S., Ríos, S., Oliveira-Miranda, M. A., Augusto, C., Ruiz, M. R., Arrasco, C. S., Ricardo, B., Smith, R., Meyer, C., Jintiach, J. C., & Campos, E. V. (2014). Forest carbon in Amazonia: The unrecognized contribution of indigenous territories and protected natural areas. *Carbon Management*, 5(5–6), 479–485.

Weir, L. (2013). "Time immemorial" and Indigenous rights: A genealogy and three case studies (Calder, Van der Peet, Tsilhqot'in) from British Columbia. *Journal of Historical Sociology*, 26(3), 383–411.

Whyte, K. P. (2011). The recognition dimensions of environmental justice in Indian country. *Environmental Justice*, 4(4), 199–205.

Woodward, E. (2005). *One brief interval: A memoir*. Melbourne: Melbourne University Publishing.

Xanthaki, A. (2007). *Indigenous rights and United Nations standards: Self-determination, culture and land* (Vol. 52). Cambridge: Cambridge University Press.

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press

https://doi.org/10.1017/9781009521581.002 Published online by Cambridge University Press