White Women, Indigenous People  
and the Commonwealth Vote 

Friday 17 May 2002, 9.30 am to 4 pm 

University of Melbourne 
Gryphon Gallery (1888 Building, Grattan Street, Parkville) 

‘What Did the Vote Mean to Yorta Yorta Peoples?’ 

Subtext: ‘The vote was here and there but Yorta Yorta land justice has always been there’ 

Introduction: 

Recognise Wurundjeri and Kulin nation as the traditional occupants and owners of the land we are on today. Also thank History and Political Science Departments at the University of Melbourne, John Chesterman, Pat Grimshaw for inviting men to take part in today’s symposium, which marks a centenary of Australia's first national franchise law. 

My paper focuses on the franchise and its application to those states that border the Yorta Yorta -Victoria and NSW. This will be the context for examining the meaning of the vote and its significance in the Yorta Yorta struggle for basic Indigenous and civil and political rights. It will be argued that the vote was not as important as the issue of land justice and empowerment through parliamentary representation, equity in the administration of Indigenous affairs, including racial equality, and inclusion in the delivery of State/Commonwealth social security entitlements. 

I will use this framework to examine the disenfranchisement of Yorta Yorta rights to land and resources and to assert that the application of tide of history euphemism in the Yorta Yorta case has replaced terra nullius as a trope for illegal dispossession (figure (of speech), trope, metaphor). It will be argued that the tide of history as construed by Justice Olney in Yorta Yorta v State of Victoria & Ors (1996-2002), unless overturned by the High Court, has the potential of disenfranchising Indigenous native title holders in 21st Century south eastern Australia.
As the YYNTC is poised before the High Court it is a good time to reflect on the struggle for fundamental rights including the right to vote. The uppermost issue in the minds of Yorta Yorta at this point in history is the appeal, which is the culmination of over a century of political, struggle. I will examine the vote in relation to its meaning for CUMMERERA, which was established before the turn of the 19th Century and has continued till present. Being located on the borders of NSW/VIC the Murray River, at least until 1851, was never considered a political boundary for the Yorta Yorta Yorta. In geographic and political terms, Cummera was located on the NSW side of the river. It was some 500 miles from Sydney, but only 150 miles from the seat of the Victorian government. The river became a significant political boundary for both administrations, each passing the buck for the responsibility of the Yorta Yorta. The Victorian Administration of 1860 played the boundary card by requesting the New South Wales Government to take responsibility and the New South Wales Government refused to provide assistance until its Protection Board was established in 1883. It was through the experience of having to deal with so many layers of State/Federal/Local Governments, that the Yorta Yorta became very astute in Local, State, National and border politics. Indeed many Yorta Yorta people lived and worked on both sides of the river and many would have voted in Victoria.

The epitome of border politics is exemplified through the 1938 Cummera walk off, in which most Cummera residents moved across the river and camped on the Victorian side. This was in protest of the oppressive nature of the reserve system and the denial of basic rights.

In their analysis of Yorta Yorta political history Heather Goodall and Jack Horner, make passing mention of the ‘right to vote’. This perhaps demonstrates that while the right to vote seems to have been there, it did not assume greater significance than other rights that were being asserted before and after Federation (Goodall, 1996:165,175; Horner, 1974:156). Will come back to this.

In exploring the issue of the Indigenous vote I think that there are some general
points of agreement. There seems to be a consensus that there is no single watershed moment which can be used to describe changes bought about by the Indigenous struggle for civil and political rights. The struggle was gradual and piecemeal and the achievements need to be measured, in their own unique context, and against the evolving nature of Indigenous society and the struggle itself.

Points of departure however would appear to be not so much a question of how, when and where Indigenous people were enfranchised but one of degrees and extents to which the vote empowered Indigenous people in local state and national politics. Other matters that I’m interested in is the space that the right to vote occupied in the broader Indigenous political agenda.

The Yorta Yorta case will hopefully illuminate these questions.

The Commonwealths removal of the last of its barriers to Indigenous enrolment in 1962 seems to be the generic point of Indigenous enfranchisement in Australia (Chesterman, 2000:499). Before this and in relation to those states that border the Yorta Yorta there was a patchwork of laws that varied from state to state. The overarching right of the Federal Constitution s. 41 appears to have enabled some Victorian and New South Wales Kooris to exercise the right to vote in Federal elections. According to the evidence, it was under these arrangements that some Victorian Kooris, at least in theory may have held concurrent rights to vote in State and Commonwealth elections. Enfranchisement in these circumstances, is said to have put Indigenous votes in the ballet box before the turn of the 20th Century (Chesterman, 2000:500).

The obvious question is what did this mean for the Yorta Yorta community?

One of the key barriers to having a voice at the local level was not so much the Federal/State jurisdictions but that of local government. Goodall explains that
many Kooris were disfranchised by the administration of local government laws. Local Governments could arbitrarily deny Kooris the vote as residents within a local government area by manipulating its ward boundaries to exclude Kooris. This meant that those Kooris living on reserves, under the administration of the state through is oppressive Protection Board regimes, became what Goodall describes as isolated ‘islands’ in the middle of the municipality. The changes to ward boundaries effectively disenfranchised residents of reserves, and supported the notion of the ‘out of site out of mind policy’ of the reserve system. It is unclear how this would have affected the Yorta Yorta who manipulated state borders to enjoy entitlements to social security and voting rights. A key issue however, particularly in light of Indigenous numbers, was the effectiveness of the Indigenous vote in bringing about change. Key questions confronting Yorta Yorta people of the time are likely to have been not such much the vote but; who was representing Yorta Yorta interests in parliament; and Indigenous parliamentary representation itself. Looking back this was not achieved until Senator Bonner was the first Aboriginal person to gain entry to Federal Parliament in 1971. Since then there are many other Indigenous people who have become members of Federal, State and Territory Governments.

The occupation space of the vote in the Yorta Yorta political agenda in the early 20th century is illustrated through the work of Maloga and Cummera (1876-2002) leaders (MAP). Their achievements culminated in two significant events which are known in the Indigenous calendar as the ‘Petition to the King’1935 and the ‘Day of Mourning in 1938’. These are complimented by the chronology of attempts to gain land justice on the basis of prior and inherent rights.

Have a look at these to highlight the issues being asserted by Indigenous leaders before the Federal Franchise of 1962.

- Formation of Political Movement- AAL, APA, and Issues
- Petition to King 1935
• Day of Mourning 1938
• List of attempts to gain land 1860-2002

As indicated in the Petition, the Day of Mourning and the history of attempts to gain land and reparation, the vote was far from those matters being asserted. Land justice, formal equality and the need for the Commonwealth to have control of Aboriginal Affairs occupied the main space in the Yorta Yorta agenda. These demands were shaped from the discriminatory experiences of State Governments. The other issue was one of providing equity for Indigenous people in the make up of state administrative structures, responsible for Indigenous affairs. These structures were no more than paternalistic overlords that were run by public servants and so called experts in Indigenous culture. Indeed many Indigenous people including myself would argue that vestiges of these structures still dominate Indigenous affairs today.

The struggle was a combination of Indigenous based rights and civil and political rights which became immortalised as Universal Human Rights. Other key rights that run parallel with these, are rights of autonomy, self-determination and the creation of mechanisms that will entrench and protect Indigenous based rights.

As we've seen in the YYNTC, the application of the tide of history has constructed another barrier to land justice, which has replaced terra nullius. Like those political and legal processes that denied Aboriginal people civil and political rights including the vote, the tide idea has been invoked as tool of disenfranchisement. Despite the apparent gains Indigenous people have made in the struggle for rights there are still a number of ideological, and politico-legal impediments that stand in the way of the recognition of rights arising from prior occupation.

In summary the Yorta Yorta have been disenfranchised of their inherent rights to land and their entitlements to reparation for the loss of land by the application of the tide of history. Yorta Yorta history demonstrates that while the vote was
there it was more about empowerment through parliamentary representation, racial equality and equity within the system. Underpinning these aspirations however was the land justice issue, which stayed on the front of the political agenda. As we are now poised before the High Court our minds are focused on whether or not the tide of history will remain a barrier to Indigenous land justice in 21st Century Australia.

Bibliography:

Articles on Yorta Yorta Land Justice:


Cooper, W. Biography < http://webraft.its.unimelb.edu.au/166038/pub/Cooper.html>


