

# Permits, private property, and cultural survival

F. Morphy<sup>1</sup> & H. Morphy<sup>2</sup>

1. Fellow, Centre for Aboriginal Economic Policy Research, College of Arts and Social Sciences, Australian National University, Canberra; e-mail: [frances.morphy@anu.edu.au](mailto:frances.morphy@anu.edu.au)

2. Director & Professor, Research School of Humanities, Australian National University, Canberra; e-mail: [howard.morphy@anu.edu.au](mailto:howard.morphy@anu.edu.au)

This article was first published in *The Age Online* on 10 October 2008.

The permit system was the mechanism by which the traditional owners of freehold land held in fee simple under the *Aboriginal Land Rights (Northern Territory) Act 1976* controlled access to their land and to their communities—that is until the Northern Territory Emergency Response (NTER) removed it from public areas in prescribed communities. Chair of the Northern Land Council Wali Wunungmurra, in Canberra recently to lobby for the reinstatement of the permit system, was quoted by the ABC on 16 September as saying: 'The permit has a very important role, it's about our cultural survival. Aboriginal land is private property and we would like to keep it that way.'

Like many other Australians, Aboriginal people living on Aboriginal land want to have control over the degree, nature and purposes of their contact with others. The removal of the permit system from the 'public' areas of communities has weakened their ability to do so. The division between 'public' and 'private' spaces in such communities is not as clear-cut as in other places. For example areas of a settlement, including public spaces such as the shop or the offices of organisations, may be closed following a significant death. The permit system allows the community to manage such occasions. And at most communities there are restricted areas of sacred or ceremonial significance that local people know about but that are invisible to the uninformed visitor's eye. During the NTER there have been at least two cases where such places have been disturbed by outsiders, the most notorious of which was the installation of a pit toilet on a men's ceremonial ground.

Most Australians respect the right of others to privacy in their own homes, and many Australians have the power to control who enters their community—gated suburbs and secure apartment blocks are becoming more and more common. People want to live in such places to protect themselves and their property from the world outside. Nobody seems to object, and indeed most Australians would find it intolerable, and would object strongly, if their right to exclude uninvited visitors from their private space was removed. The right to exclude does not preclude contact with the world outside—but it gives the right holder some control over the degree, nature and purposes of that contact. Nor do we hear that living in such a community precludes participation in the wider economy.

---

**NTER:**

Northern Territory  
Emergency  
Response

---

The irony, in face of current attacks on the permit system, is that Aboriginal people have often been very generous in allowing outsiders onto their country and into their communities, and they have not seen land ownership—or the permit system—as a barrier to developing relationships or business enterprises. For example Djambawa Marawili, one of the successful applicants in the Blue Mud Bay case, had this to say when he heard of the success of the case in the High Court that, in effect, extended the permit system to intertidal waters: 'There has to be real contact with the landowners so both Yolngu and whites are looking after the land, doing hand-in-hand, partner-to-partner, together' (Djambawa Marawili, cited by Wali Wunungmurra on ABC Online, 14 August 2008).

This attitude is hugely magnanimous. For years Djambawa's community has had to watch as commercial barramundi fishermen knowingly defiled his clan's sacred sites with their nets. Knowingly, because they had been asked not to. Aboriginal people in remote Australia constantly face this kind of disrespect for their culture from a segment of the local settler population. They do not want people like this to have unsanctioned access to their communities, but it does not follow that they reject all contact with outsiders or that they are unwilling to contemplate economic development and business activities in their communities.

At the beginning of the NTER, the then government argued that it was necessary to remove the permit system in prescribed communities because it allowed child abuse to flourish in such places, and it implied that such abuse was endemic and ubiquitous on Aboriginal land. It conveniently ignored the fact that a number of categories of public servants, including the police and social workers, had never required permits to enter Aboriginal communities. No evidence of such a widespread epidemic has emerged over the past year, and, even if the permit system is reinstated, journalists have been added to the list of those who may enter such communities at will. This argument for abolition has collapsed, but the opponents of permits persist. They have shifted their ground, and now argue that economic development is hindered by the permit system.

This is a furphy—one of the many that has characterised the rationalisations for the NTER and its related measures. Economic development in remote Aboriginal Australia has been hindered by – remoteness. That, and the failure by successive Commonwealth and Territory governments to address the developmental aspect of the Community Development Employment Program that is the major employer of Aboriginal people in such areas. Aboriginal people are now being told that underdevelopment is due to the rights in land that they have fought so hard for, to *their* lack of 'capacity', and to their desire to ensure the integrity of their culture.

Aboriginal people in remote Australia have plenty to say about solutions to their problems, but they struggle to be heard. Opponents of the permit system deny the agency of Aboriginal people and portray them as victims. The struggle over the permit system is in part a struggle over its symbolic value. To those who oppose it, it symbolises a barrier to 'progress', and for some their opposition is also an expression of resentment that members of the colonising society do not have the 'right' to go anywhere they please. To Aboriginal people it symbolises their right to maintain their distinctive cultures, and to control the nature of their engagement with the encompassing settler society.