Aboriginal Title

The Modern Jurisprudence of Tribal Land Rights

P.G. McHUGH

Reader in Law at the University of Cambridge and Fellow of Sidney Sussex College



OXFORD

Great Clarendon Street, Oxford 0x2 6DP

Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi Kuala Lumput Madrid Melbourne Mexico City Nairobi New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece Guatemala Hungary Italy Japan Poland Portugal Singapore South Korea Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press in the UK and in certain other countries

Published in the United States by Oxford University Press Inc., New York

© P.G. McHugh, 2011

The moral rights of the author have been asserted Database right Oxford University Press (maker)

Crown copyright material is reproduced under Class Licence Number C01P0000148 with the permission of OPSI and the Queen's Printer for Scotland

First published 2011

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior permission in writing of Oxford University Press, or as expressly permitted by law, or under terms agreed with the appropriate reprographics rights organization. Enquiries concerning reproduction outside the scope of the above should be sent to the Rights Department, Oxford University Press, at the address above

You must not circulate this book in any other binding or cover and you must impose the same condition on any acquirer

British Library Cataloguing in Publication Data
Data available

Library of Congress Cataloging in Publication Data Library of Congress Control Number: 2011933691

Typeset by SPI Publisher Services, Pondicherry, India Printed in Great Britain on acid-free paper by CPI Antony Rowe, Chippenham, Wiltshire

ISBN 978-0-19-969941-4

13579108642

Table of Contents

Table of Cases List of Abbreviations		xii
		xx
1		•
Ι,	Profile of a Modern Jurisprudence—An Idea whose Time had Come	1
2.	Common Law Aboriginal Title and its Pipers at the Gate of Dawn—Gestation (1970s) and Breakthrough (1980s)	25
3.	Doctrinal Pathways in Canada and Australia —The Devil in the Detail of a Maturing Jurisprudence	106
4.	Aboriginal Title in the New Century and New Contexts: Fraternal Impact, International Influence	189
5.	Aboriginal Title Within and Across Disciplinary Boundaries—Anthropologists, Historians, and Political Philosophers	240
6.	Aboriginal Title—Diagnosis and Prognosis	328
Se	lect Bibliography	341
In	Index	