

**A different kind of 'subject:' Aboriginal legal status and colonial law in Western Australia, 1829 -1861.**

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## **Declaration**

I declare this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary educational institution.

Ann Patricia Hunter.

## **Abstract**

### **A different kind of ‘subject:’ Aboriginal legal status and colonial law in Western Australia, 1829-1861.**

This thesis is an examination of the nature and application of the policy regarding the legal status and rights of Aboriginal people in Western Australia from 1829 to 1861. It describes the extent of the debates and the role of British law that arose after conflict between Aboriginal people and settlers in the context of political and economic contests between settlers and government on land issues. While the British government continually maintained that the legal basis for annexation was settlement, by the mid 1830s Stirling regarded it as an ‘invasion,’ but was neither prepared to accept that Aboriginal people had to consent to the imposition of British law upon them, nor to formally recognise their rights as the original owners of the land. Instead, Stirling’s government applied an archaic form of outlawry to Aboriginal people who resisted the invasion. This was despite proposals for agreements in the 1830s.

During the early 1840s there was a temporary legal pluralism in Western Australia where Indigenous laws were officially recognised. However, by the mid 1840s the administration of British law in Western Australia was increasingly dictated by settler interests and mounting settler-magistrate pressure to modify the legal position of Aboriginal people which resulted in the development of colonial law to construct a landless subject status with minimal rights based on their value as a useful labour force for the pastoral economy. This separate legal status deliberately departed from ‘equality’ principles and corresponded with the diminished status of Indigenous laws and the abandonment of legal pluralism in settled districts, during a period of rapid

pastoral expansion in the 1850s. This entrenched discriminatory practice in colonial law would be the prelude to the 'protectionist' and discriminatory legislation of the early twentieth century which formalised inequality of legal status.

## Abbreviations

APS	Aborigines Protection Society.
AJCP	Australian Joint Copying Project.
BL	Battye Library, Perth.
BPP	British Parliamentary Papers.
CSR	Colonial Secretary Records, W.A.
CO	Colonial Office Records, London.
HRA	Historical Records of Australia
LL	Law Library, University of Western Australia.
ML	Mitchell Library, Sydney.
NLA	National Library of Australia, Canberra.
PRO	Public Records Office, London.
RL	Reid Library, University of Western Australia.
SRO	State Records Office of Western Australia
SRP	Swan River Papers.
WAGG	Western Australian Government Gazette.
WL	Wellcome Library, London.

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