Chris Davies

Conquered, Ceded or Settled?: The Legal History of Customary Land Title in Australia and Wales

---

Traditionally there were three methods as to how land was acquired by imperial powers, namely conquered, ceded or settled. Up until the High Court of Australia's decision in *Mabo v Queensland* (1992) 175 CLR 1, the enlarged notion of terra nullius had been applied to Australia on the grounds that, as it was practically unoccupied with no land under cultivation, it could be considered as a settled country with no recognition of the customary law. In *Mabo*, however, this enlarged notion of terra nullius was overturned and, from a legal perspective, Australia was considered to be the equivalent of a conquered country. This then meant that customary laws survived until overruled by laws from the 'conquering' country. In Wales, meanwhile, the country had been conquered by England in 1285, though it was not until the sixteenth century that English law was made to apply to Wales. However, special exceptions were made in regard to three counties in North Wales, and as a consequence there is a legal argument that some customary land law may still survive.

Dr Chris Davies is an Associate Professor at the School of Law, James Cook University. His main research areas are Sports Law and Cultural Heritage and Property Rights. He has many journal publications in both areas, is a co-author of Sports Law and the author of Property Law Guidebook Series.