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Native title-holders, development, and community development

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The issue I want to address is the broad land based policy and legal framework within which community development is carried out. I am critical of this and the obstacles it places in the way of community development but I should make it clear that I strongly support the many good things that organisations like the CLC's community development sections are doing. There should be a lot more of it in a lot more places.

Those of you who have read the 'White Paper on Developing Northern Australia: Our North, Our Future' (2015) will know just how important native title land is to the whole vision outlined in the paper. The first dot point in the list of ways to 'unlock the North's full potential' is 'making it easier to use natural assets, in close consultation with, and the support of Indigenous communities' (2015: 4). Attention is drawn to the size of Aboriginal land-holdings

across northern Australia (2015a: 2) emphasising the centrality of such lands to the development of the north.

However, as the report also emphasises, innovation and investment can be stifled by the complexity, uncertainty and time involved in native title processes (2015:5). It is therefore proposed to find ways to increase the efficiency and ease of dealing with land and native title issues and holders: by reforming pastoral leases so that a wider range of activities can be undertaken on them; by creating secure tradeable titles to land and water (2015:4); by carrying out land surveys to provide the basic building blocks for secure tenure; by increasing the number of township leases; and by finding ways to support long term leasehold arrangements for exclusive native title (2015:5). The report wants native title to be seen as a source of Indigenous economic opportunity so that native title land can be an economic asset as well as a cultural and spiritual one (2015:5). The vision includes the injection of $110 million a year over the next four years in the hope of finalising all existing native title claims within ten years (2015:10), consultation on new models to manage native title funds for development (2105:10), and a COAG Indigenous land review to investigate how Indigenous land administration and use can be improved to support Indigenous economic development (2015:6) including applying a less technical and legalistic approach to and a stronger policy focus on litigation (2015:7).

This vision and the specific matters identified in order to make possible its realisation raises a number of questions. In particular what is wanted from development; and what issues does using native title as a platform for development raise for community development. The issues I want to address here relate specifically to the social aspects of development as they affect improving the circumstances of Aboriginal people's lives and helping to support Aboriginal people in their life projects.

Native title

It is significant that it was politicians that first gave recognition to Aboriginal prior ownership of land in Australia through statutory legislation, 26 years before the legal system decided it could recognise such rights. The statutory legislation was beneficial legislation. Most obviously this was to benefit Aboriginal people but as beneficial legislation the clear intention was that it would also have a benefit for the wider society as well, by ameliorating to a degree, the legitimate Aboriginal grievance over land issues and to go some way to meeting the requirements of natural justice. It was also expected to contribute to meeting more general grievances by improving the circumstances of Aboriginal people socially, culturally and economically.

With the Mabo judgement in 1992 the courts acknowledged that the common law could recognise the existence of Aboriginal property rights in land that had their source in the precolonial period. While this is quite different from beneficial legislation, I think there is little doubt that there was at the time of the judgement, and that there is now, a general hope that recognising native title is another step towards ameliorating the legitimate grievance, meeting the requirements of natural justice in relation to land, and improving Aboriginal circumstances. Of course neither statutory land rights nor native title is perfect.

The recognition of Aboriginal property rights by the Australian legal system inevitably introduces changes to Indigenous systems. The Aboriginal systems and the mainstream system are related to quite different economic circumstances, have quite different characteristics and very different purposes. The Indigenous systems give recognition to social relations through ritual in small-scale networks with considerable flexibility, ambiguity, levels of contestation, and ideas of inalienability. Our system creates defined objects owned by define persons for the purposes of alienation which requires clear definitions and certainty. The consequence is entification.

Entification is a neologism meaning simply the creation of entities such as a royalty association or other corporate bodies or entities. Entification creates silos, which seemingly have a reasonable fit with the idea of unilineal descent groups. Classically unilineal descent groups are important in Aboriginal ritual life and relations to land, but in most areas there is also a complex interdependency of people in the descent group with people outside the descent group, most clearly with people often referred to as managers/kurtungurlu , but in a number of other ways as well. In everyday life, descent groups are not so important, rather the emphasis is on horizontal kinship and marriage ties.

As we have seen from the previous paper, legal thinking creates numerous entities, indeed we know that there are over 4000 such Aboriginal entities across the nation, which roughly means that there is one for every 75 adults. So how does entification work with development and community development (see Jagger 2011 for some central Australian case studies)?

Development and entification

The problem with both statutory and native title rights is that they are collectively held rights. Further they are inalienable. This is quite understandably what Indigenous people have asked for. It makes sense in the light of what has happened elsewhere when Indigenous

people have been given been given title at the household or individual level to land that is alienable, because the land has often been sold, with the long term consequence that subsequent generations are as poorly off as the previous generations before they got land rights. So in protecting the land base Aboriginal people end up with an inferior title from the point of view of the mainstream market economy: inferior, because it constrains individual choice and economic options. While the inalienability of the land can be accommodated for development purposes, such as by long term leases, or allowing for the conversion of inalienable land to ordinary freehold, as is the case in Queensland, and an option that the present Federal government supports (2015a: 11), the matter of collective ownership is more problematic. It is clear that in many situations collective ownership is a dis-incentive to sustained economic development activity in most situations. An excellent case study is provide by Richard Davis's (2004) comparison of two Aboriginal owned cattle stations in northwestern Australia.

There is a common but overly romantic view that challenges this critical view of collective ownership, imagining a dis-interested Aboriginal political field of community-oriented communalists, which as anthropologists, we know does not exist. So there is something of an impasse here. We have a process of entification that leads to siloing of segments of local populations or residential communities

on the basis of their narrowly defined property rights in land to make them legible by the mainstream legal system. On the other hand the size of the siloed segments weakens the economic incentives for individuals to become involved in sustained economic development.

One of the main ways that incorporated or entified bodies of statutory or native title holders become involved in development at this stage is as recipients of royalties and other monies. The Northern Territory situation raises the nature of these monies most clearly, but with implications throughout the continent. Are these royalties and other monies rent or compensation? If the monies come from Aboriginal Land Rights (Northern Territory) Act 1976 land, the monies from mining on such land come from foregone statutory royalties, which would normally have gone into consolidated revenue, and from the veto on exploration on Aboriginal land, a right that no non-Aboriginal people have. So it is clear that there is a public interest in them. Part of the intention in arranging for these monies to flow to Aboriginal people is so that their land has economic value but also in recognition that they are poor. These funds are expected to help make a difference to Aboriginal people's life circumstances and are not simply an entailment of property ownership for Aboriginal people to do with exactly what they like. Thus it can be said that they are not true rents. The situation of income from surface use of Aboriginal lands held under statutory or native title is different: that income is

properly described as rent, as it is money flowing from property ownership.

The prevalence of Aboriginal land owners as recipients of monies raises the question as to whether creating small entified sections of the Aboriginal populations as a privileged rentier class living on the income from rents and rent like compensation payments constitutes development? One difficulty is that simply being the recipient of fluctuating amounts of unearned income is not greatly different from being dependent on social security, especially where the income goes to consumption. Another is that native title across the continent, keeps creating small privileged groups among people who have been coresident for generations with its distinction between traditional owners and historical people.

Community development and entification

Although the origins of the community development approach can be traced to before the Second World War, and the term can be taken to mean several different things, this orientation to development really only took off following the War, as the West competed with Russia for the hearts and minds of the third world, and Britain prepared its colonies for independence. A principal focus of community developers was peasant populations and small-scale farmers across the globe, helping them to improve their yields to

feed growing populations and to raise their standard of living. In this context certain assumptions were generally justified about people's motivations. Individuals or households, it could be assumed, would leap at the chance to improve their situation, which was often quite precarious.

When we come to the situation in remote Australia it is rather different, because the kind of assumptions that were and are generally justified in the developing world do not hold in any straight-forward way here. The economic motivation to strengthen and improve household economic security are blunted by the social security system, the strong egalitarian nature of Aboriginal ontologies, and the relatively low consumer dependency that goes with the preparedness to accept poor material circumstance, if the trade-off is becoming locked into waged employment. Further many Aboriginal landowners live in remote, largely Aboriginal communities, where there is virtually no productive economy. These characteristics raise the question of the challenges that this places to effective community development if there is no productive economy? Or to put it another way, what are the motivations for sustained participation in development projects and community development programs in such situations? One answer, of course, is that not all community development is about economic development

but much of it is about ‘social’ issues. Nevertheless the question of motivation remains significant.

As anthropologists are particularly well aware the term ‘community’ in community development is ambiguous. Part of the ambiguity is the tension between its use to refer to coresidence versus its use to refer to groups with shared interests, and the way that people often slip between the two meanings unaware and unintentionally.

Aboriginal residential communities are only communities of interest in quite limited situations. So one question is, does the whole residential community have to be involved in a socially oriented community development project or is it alright if only some part of it is involved? Given that all members of remote communities are living in more or less the same poor material circumstances and that those material circumstances are recognised as a legitimate cause of complaint, helping to substantially improve the circumstances of just one section of the residential community might seem unjustified. Yet economic differentiation is central to mainstream Australia, and an important source of motivation in relation to individuals’ economic activity in that context. It could be argued that the emergence of inequality should be encouraged as it might intensify the motivation for sustained involvement in economic development. Indeed, is the concern for the development of whole communities simply a

manifestation of communitarian thinking? Economic differentiation has clearly emerged in the Aboriginal population in settled Australia and will surely do so at some time in the distant future in remote regions too. At the present time, however, egalitarian pressures in most circumstances prevent substantial economic differentiation emerging, muting commitment to long term involvement with wage labour that is the basis of most people's economic well-being.

The divided nature of Aboriginal residential communities poses problems for the emergence of civil society which entification entrenches. Even if the bonds of civil society, or what Robert Putnam means by social capital, are declining in Western society, certain levels of civil society are essential to the organisation of life in mass societies. Put at its most abstract civil society requires a degree of altruism in the running of voluntary societies and associations, and is necessary to the proper working of bureaucracies, community councils, and the like where need has to be put above relatedness and self-interest in the distribution of resources, which is clearly so very difficult in many Aboriginal contexts.

So we have a situation where the way in which we have granted native title reflects neither the fully functioning pre-colonial situation nor the kind of individual property arrangements that are essential to the workings of our market economy. Even if an appropriate way

were found to accurately recognise the pre-colonial system it would not solve the problem, as unsurprisingly a hunting and gathering property system is not well attuned to the requirement of a market economy. On the other hand imposing an individualistic alienable tenure on people would not only prove stressful but it is unlikely to have the beneficial effects which both Aboriginal and non-Aboriginal people hope for.

Community development and native title

I see two outstanding problems. The first is that in granting recognition to Aboriginal property rights very little thought has been given to the consequences of the way that we have done this or could have done it. We have just let our legal processes, practices and thinking run their course and only subsequently started to think about how these property rights can benefit Aboriginal people collectively. Legal thinking almost inevitably strains towards market style property rights, especially if there are transactions or benefits related to them, or there are disputes. Even if all native title land had been Aboriginal freehold (i.e. the same as freehold but inalienable) there would still be the random entification problem that affects many situations. By random I mean that for quite arbitrary and contingent reasons, one small group of traditional owners is advantaged simply because a mine or town is established on their land.

There has been a lack of forward thinking by all parties involved in Aboriginal policy making resulting in the native title process being largely legally driven without any thought given to any social consequences and objectives. One consequence is that community developers as we have heard spend an enormous amount of energy trying to persuade royalty receivers to share their money with outsiders. Another of the many consequences of this thoughtlessness is well illustrated by the fact that the Commonwealth, and other bodies, are now paying rents for public facilities, funded from the public purse, for the benefit of whole residential communities including the traditional owners, to those small groups of traditional owners who by complete accident happen to have a township built on their land. My own view is that this situation needs remedying by buying out the interests of the local land-owners and making the land owned and controlled by the residential community. As an anthropologist one can immediately point to the problem posed by the notion of inalienability in the classical land holding system, but this is precisely the point where policy, development and community development meet.

There is no culture free, non-interventionist, neutral position in such policy and development issues since whatever is done, including doing nothing has consequences of one kind or another. The normal,

and too comfortable academic position, which can be relatively neutral, of describing and explaining how things have come about, receives a dramatic jolt when faced with contemplating the future. Nor is it often possible to dodge such complex policy issues by the overly emphatic use of the pronoun, themselves – the people themselves must decide. This self-deluding shedding of any apparent responsibility, frequently obscures the complexity of actual situations where external political pressures, time constraints, legal complexities and limited understanding of the intended consequences and likely unintended ones, crowd in on Aboriginal people. Of course sometimes it is perfectly possible for 'the people themselves' to make decisions in their own time unpressured by external pressures and fully comprehending what they are doing, which is marvellous, but so often it is not. Here I see a very important role for anthropologists as team members in intercultural translation and collaborations with Aboriginal people, with policy makers, with lawyers and other specialists. As far as remote Australia goes I feel that there is an enormous need for many Aboriginal people to have a much better understanding of mainstream society than they have because it is or should be important to their decision making.

It remains an issue, however, how we gain recognition for this important role, in which we need to ensure that we are seen as positive in outlook, rather than stumbling blocks the effects of whose

recommendations is predictably to support the status quo. It is not that we have to be warriors for social change but we have to recognise the need for it in many situations. If we do not become involved in this way we will end up just being the creators of Aboriginal heritage and irrelevant to the future.

The policy field nearly always involves broad considerations of equity, workability, efficiency, cost, the import for development, the lobbying of pressure groups and other factors. Those anthropologists involved in social change and applied anthropology projects have to grasp the moral and existential nettle this poses: there is no all encompassing unified Aboriginal view to fall back on; nor is it possible to say it is only their affair. Further whatever transpires will be a compromise. But as co-citizens we are implicated and if we cannot contribute to the collective decision making in a cultural informed way to the shared future, who can?

References

Australia. 2015. Our north, our future: white paper on developing northern Australia: Developing the North. Canberra: Prime Ministers' Department.

Australia. 2015a. Our north, our future: white paper on developing northern Australia: Simpler land arrangements to support investment. Canberra: Prime Ministers' Department.

Davis, R. 2004. Aboriginal managers as blackfellas or whitefellas? Aspects of Australian Aboriginal cattle ownership in the Kimberley. Anthropological Forum 14(1): 23-42.

Jagger, D. 2011. The capacity for community development to improve conditions in Australian Aboriginal communities. Unpublished MPhil, Australian National University.

Martin, D., Bauman, T. and Neale, J. 2011. Challenges for Australian native title anthropology: practice beyond the proof of connection. Canberra: AIATSIS Research Discussion Paper No 29.

Putnam, R. 2000. Bowling alone: the collapse and revival of American community. New York: Simon & Schuster.