Traditional owners and 'community-country' *anangu*: distinctions and dilemmas

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Abstract: *In some contexts, including those that require concrete and locally specific knowledge, the term 'traditional owner' has come to mean something different from its original statutory definition, in daily discourse, in the routine operations of settlement life and the administration of the* Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA). *It has also become a common referent for Aborigines resident in remote areas, rather than a specific term for land-holder. I will begin to unpack the nexus between this category and the reality of decision making by persons whom I term 'community-country' anangu. To this end, this post-settlement sociopolitical category is examined to contrast it from the definition of traditional ownership under the ALRA. This will highlight the tensions between the functional legal operations of the ALRA—its obligation to consult with traditional owners—and the reality of those persons who tend to be consulted about development proposals. The emerging issue of the regionalisation of remote settlements also plays directly into this issue of defining traditional owners.*

It is 21 years since Ken Maddock went 'In search of Aboriginal owners' in the text *Your land is our land* (1983). Considerable change has taken place since then in the demographic landscape of Indigenous settlement patterns and thus in the political and social landscape of remote areas. This article is concerned with the ways in which these patterns of settlement have encouraged a shift in attachments, identifications and decision-making processes as these may be oriented towards lived locality. Although acknowledging classical definitions of traditional ownership in ways that may be patrilineal and cognatic, I am interested here in exploring the elaborations on attachment to place that have constructed another form of traditional owner. That is the one who appears to know, the one that non-Aboriginal persons often go to first, the one who has lived there for a long time, the one who no longer has to put him or herself forward, but is sought out. This is the Whitefella's Traditional Owner. I will examine something of the context within which this traditional owner is used and consider who this person is through the concept of 'community-country' *anangu*, *'anangu'* being the Western Desert term for Aboriginal person. These are the persons who, in some contexts, may be conflated with traditional owners by the Central Land Council (CLC), for instance. I will also problematise another category, referred to as 'traditional elders', by the Northern Territory government in a proposed regionalisation strategy in this same desert region. What are the areas of intersection between these new forms of identification with place and the administrative burdens that channel residents into these categories?

As a work in progress, this article derives specifically from ethnography undertaken in the Northern Territory on Aboriginal Land that was scheduled under the *Aboriginal Land Rights (Northern Territory) Act 1976*, the Haasts Bluff Land Trust. In other words, like Arnhem Land, it was automatically granted the status of Aboriginal Land when the Act was first legislated. The work is informed by my experience as a regional staff anthropologist for the two major Northern Territory land councils and most recently as a consultant for the CLC in several

communities within this Land Trust; Papunya, Haasts Bluff and Mt Liebig. It was on this most recent field trip, in May last year, that this troublesome imposed category of traditional owner raised itself again as a problematic. Under the ALRA this is the category of person I was to identify, so that the CLC could convene a meeting to consult with traditional owners under s.42 of the Act. This section states that land councils have to consult with traditional owners over the area of land affected by all proposed development, over which traditional owners have the power of veto. The land councils then have to take instructions on the basis of informed consent or veto.[1]

The work that I was required to undertake involved establishing who these persons were who had to be consulted, or who the legal decision makers were. In local anthropologese this was known as a 'Traditional Owner Identification'. This was required for consultation over a series of exploration licence applications on areas surrounding three of the four communities on this Land Trust (those in the east, above), as well as several outstations. Section 42 also allows for consultation with 'affected Aboriginal communities or groups'. This important aspect of the Act encourages wider consultation. However, it leaves open the question of what rights these 'affected' persons have in this decision-making process.

Under the ALRA, the definition of 'Traditional Aboriginal Owner' is as follows:

> Traditional Aboriginal Owners, in relation to land, means a local descent group of Aboriginals who:
> (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and
> (b) are entitled by Aboriginal tradition to forage as of right over that land.

Because the Haasts Bluff Land Trust is Schedule 1 land, there are no 'lists' of traditional owners, as are made when a land claim is heard and the commissioner makes findings for traditional ownership. Prior to an amendment made to the Act based on recommendations by Justice Toohey (in 1984), the land councils were required to keep a register of traditional owners. However, for a multitude of reasons, many of which are summarised by Smith (1984), this provision was repealed so that land councils were no longer obliged to undertake the enormous task of compiling such a list. Thus, the word 'shall' was substituted with 'may' for this register compilation (Toohey 1984:55). This early requirement of defining a finite list of persons who conform to a certain set of criteria at a certain point in time is akin to compiling a site register. Though useful in theory, both 'lists' are contested realms of political activity that cannot conform to a singular or static moment; they are evolving categories that are also informed by the research that records them. As Smith stated (1984:93), 'the Register [would] always in some respects be out of date'. Thus, the information recorded is often context-specific and regularly needs to be reinvigorated with new research. This new research tends to be driven by specific research needs in fulfilling the requirements of the Act, such as that outlined above. So in this pragmatic way the 'register' is kept updated, as required.

Until very recently none of my friends and 'informants' in the Haasts Bluff Land Trust had been a claimant in a land claim. This experience, as Peterson (1995:8 in Morton 1997:87) has examined, 'ultimately forces people to be explicit about their claims'. It is a political expression as much as an expression of 'tradition' that consolidates understandings of rules of inclusion and exclusion. The recent (1998) land claim hearing, under the ALRA, was for a pastoral station on the northern border of this Land Trust. Research prepared, and the hearing and subsequent findings for traditional owners, catalysed elements of my reinterpretation of the land tenure in this area to the south, as well as the claimants.

For the first time for many of the claimants, public expressions of their affiliation to land and to kin were in a non-resource-driven environment. Land claim research is not apolitical. However, in this region, negotiation over land had previously revolved around access to perceived benefits from the potential of exploration and mining. So jostling for a right to be heard and included on the 'list' became a contested and individuated process. The land claim research formalised this process of ascertaining inclusion into this category, so that exclusion was not about *lack* of access to tangible benefits. There was a sense that the voice of the jural public was active in firming up the category of traditional ownership that permeated discussions to the south.[2]

This Luritja region is known for its labile form of land tenure. It is a region that is not exemplified by a classic 'type'; rather, it is bounded and influenced by the three neighbouring forms of land tenure. Thus, the forms of affiliation to land in this region are neither identical to those of the Western Desert, as exemplified by the Pintupi (per Myers 1986), nor to

those of their eastern and south-eastern neighbours; they are different from those of the Western Arrernte (per Strehlow 1947, 1970), and to those of their northern neighbours, the Warlpiri (per Meggitt 1962).[3] Myers indicated that Pintupi land tenure stresses the individual and negotiable means of tracing affiliation to land, that it is not patrifilially driven but based fundamentally on a person's conception site. By contrast, Arrernte land tenure is, according to Strehlow, based on 'totemic clans' or patrifilial recruitment, which, he argued, is linked to strictly delineated and bounded areas. Although these land tenure types are classical, somewhat reified, categories they still have resonance today, though they may be regarded as 'ideal'.

These two somewhat radically different forms of affiliation are tempered by Warlpiri land tenure, which is perhaps the most strongly influential in this region, as the southern, or Ngaliya, Warlpiri succeeded to significant areas in this Luritja country. By following Dreaming tracks south, the concept of 'company relationship' is called upon, whereby patrilineal 'owners' from one section of a track can take responsibility for another section of the track on the basis of patri-couple affiliation.[4] This occurred in this region because many of the Dreaming tracks are associated with important regional ceremonies. Nevertheless, the apparent indeterminacy that is said to typify this region has played a major role in the difficulty in making clear statements about the primacy of one form of affiliation over another, and thus one family's or individual's rights over another. Like the logic of Pintupi land tenure, claims to land among the Luritja are also the site of negotiation, and the most apparent tensions in Luritja land tenure could be understood as between Pintupi and Warlpiri land tenure 'types'.

However, over the last several years in the Luritja region, it seems that the significance of father's country and affiliation to Tjukurrpa (Dreamings) through the company relationship has firmed up perceptions of rights to country and traditional ownership. This is the result of several issues: the land claim mentioned earlier, and the death of several knowledgeable and outspoken men who held closer to a politicised Pintupi model of customary tenure. Along with their death and that of other older knowledgeable persons, the decline in the importance placed on conception and birth as a primary form of attachment to land has also reduced options for debating landed affiliation. Today, very few residents are born or conceived 'out bush', so this form of individualised affiliation has been replaced with the generic form of conception on the community and birth in the Alice Springs hospital. Hamilton, in fact, predicted that in regions where conception played an important part in defining affiliations to land, sedentism would encourage the emergence or consolidation of a patrilineal ideology (1982:104).

This sets something of the background to this question of defining a set of traditional owners for the purposes of administration of the ALRA and for consultation concerning rights and responsibilities for development issues on Aboriginal land. A recent issue to emerge in this Land Trust is the proposal for a regional council or authority to replace the four local community government councils of Papunya, Haasts Bluff, Mt Liebig and Kintore. This amalgamation of the local councils with a regional council is proposed to counter duplication of resources and the issues of economies of scale through a regional program of service delivery. This regional authority, known as the Wangka Wilurrara (Western talk) Council, consists at this stage of an Aboriginal steering committee of four persons from each community with the aim of developing and implementing this new structure. This proposal is an element in a Northern Territory–wide regionalisation strategy that the Northern Territory Minister for Community Development, John Ah Kit, has launched. It is known as the 'Building Stronger Regions—Stronger Futures' policy (2003). At this early stage, 22 regional geographic 'possibilities' across the Northern Territory have been suggested based on areas 'with a reasonable degree of common purpose, identity, geography, issues or challenges' (2003:4). The approach taken to 'development' in each region will, thus, apparently be somewhat specific. However, it appears to hinge on the overall strategy of regional authorities taking over from local community councils.[5]

An element that was being explored for the proposed structure of the Wangka Wilurrara regional authority is referred to informally as the 'separation of powers'. This refers to the identification of traditional owners from within the regional council, as the decision-making body that has reference to the allocation of resources. This 'separation' is perceived as necessary by some in order to prevent the control of local council resources by local traditional owners—specifically those persons who are traditional owners for the land on which the community happens to reside. This apparent monopoly of resources by a

persistent few is a pattern that this new scheme appears to be considering as an issue through a bicameral approach (cf. Arthur 2001; Sutton 1985).

The proposal entails that the so-called 'traditional elders' (by whom is presumably meant older traditional owners) sit outside the regional authority body. It was suggested that the operations of this body of traditional elders be along the lines of an Upper House, dealing with issues such as customary law but not party to decisions of resource allocation or administrative function. So they represent another layer of authority. However, unlike the Upper House (Senate) and its relationship with the Lower House (House of Representatives), they will not have veto over decisions that the council makes. So the parallel would appear to be a slight one. While the council is proposed to meet at least six times each year, the traditional elders have no set meeting timeframes and, it would seem, nothing set to meet about.

I suggest that there is a difficulty in demarcating those who have the rights and capacity to deal with 'customary law' in general terms, as this law may be called upon in contentious and unforseen circumstances—it is not formalised or predictable. Likewise, such law may not be isolable to this Land Trust and thus this body of Land Trust residents. Like Dreaming tracks that pay no heed to Land Trust boundaries, networks of kin also tend to be widely dispersed. Thus, there is the potential issue of demarcating rights solely based on residency, and so excluding those who may have traditional rights to land and relatives on this Land Trust, but who live elsewhere. This issue of defining a group of persons—traditional elders—to act as an authoritative body for an area of land defined by administrative process strikes at the heart of the limitations on attempting to Aboriginalise a regionalisation model. This model may have its potential place in service delivery and governmental instrumentality—but its broader application to include, and bind to it, issues specific to Aboriginal people invites complication and potentially incompatibility. As do Westbury and Sanders (2000), I query why a regional authority that is dealing specifically with service delivery needs to deal with issues of land and customary law, particularly when it is on Aboriginal land and hence where land councils have the statutory responsibility to deal with such issues.

This suggestion of exclusion of the traditional owners/elders from the proposed regional council structure would appear to be pushing aside the rights of traditional owners and encouraging the power of others who have no, or lesser, Indigenous rights. Will these new appointees necessarily have the interests of the 'community' and the new region at heart any more than the monopolising traditional owners before them? There appear to be, at least, two issues here that need to be unpacked. One is the cyclical way in which a small group of traditional owners tend to get voted in as community president and vice-president and thus the monopoly they have over the role, irrespective of whether they are individually perceived as effective in these roles, though note that the degree of this monopoly varies between communities. The second issue concerns the local understanding of the role of president and vice-president by these individuals, their families and the larger community. The tendency for atomisation, or for placing the interests of family (however it may be constructed at the time) above the interests of the community group, is a fundamental tension in the Indigenous polity. Sutton (2001b) has also termed this 'public kinship'. This is irrespective of whether the person voted in is a traditional owner of the land on which the community happens to be situated. Thus, attempting to break the monopoly will not resolve this issue.[6]

A key question is how the Department of Community Development, Sport and Cultural Affairs[7] proposes to establish who the traditional owners are, and thus who should serve on the new regional council and on the associated body of 'traditional elders'. The CLC does not have a 'register' of traditional owners; although a solid body of research material exists on the relationships of individuals and family groups to land in this area, laying it open to public scrutiny would probably not be advised. How is it proposed, then, that each community decide who is going to be on the list of potential candidates for this new regional council? Do those who are currently on the steering committee decide who the traditional owners are? Or will they simply be self-identified in some way? A problem with this is that there are already a number of traditional owners (under the ALRA definition), as far as I can informally ascertain, on the steering committee set up to establish this council. The proposed structure, however, suggests that an individual cannot be on both the council and on the 'traditional elders' group. Yet, on the other hand, if there were no traditional owners, of the community land, on the steering committee one might question its local credibility.

This corralling of the 'traditional elders' from the general body of the community, and thus Land Trust 'settlers', appears to be a neat way of containing and isolating 'politics' from decision making and resource distortions: akin to the 'separation of powers' that was at issue with ATSIS/ATSIC. But an additional question is raised here: Who are these persons who are now also 'elders'? The concept of Traditional Owner is a problematic one, so including the term 'elder' adds another dimension to this category. Are 'elders' restricted to the old men and women—the Tjilpi and the Urlkumanu—whose authority derives from esoteric knowledge and life experience? Or does it also include the younger men and women in their 40s and 50s who are also conversant in English and have some administrative skills? These are the individuals who tend most consistently to hold the positions of community president and vice-president. Is there a role for them at all in this proposed scheme?

At the Building Effective Indigenous Governance conference in Jabiru in November 2003, the Director of the CLC, David Ross, delivered a paper advocating that the government not lose sight of the crucial role of traditional owners in the decision-making process on communities. He voiced concern about the potential sidelining of traditional owners' interests in any new governance scheme and noted the 'complex situation...requir[ing] urgent [research] attention [to] the relationship between traditional owners and historical residents on Aboriginal communities'. The ethnographic research of Sutton (1999) and Martin (1999) was drawn on, to illustrate the precedence that customary law (traditional owner) rights have over rights that may arise from historical occupation. I agree that, in principle, there is a case to be made on such grounds. However, what is lost in the ready demarcation of these two 'categories' is the shifting ground within them, ground that is especially volatile post-settlement. It is this shifting ground that the more complex category of community-country *anangu* hopes to capture, as will be explained.[8]

Aboriginal persons who are often glibly referred to as 'traditional owners' (or more simply TOs) tend to be people in the category I have termed community-country *anangu*. Community-country *anangu* are often those who are sought out by visiting non-Aboriginal service workers such as, in some circumstances, CLC staff. However, these are the residents who are most likely to be the suitable candidates to stand for election if the proposed regional authority structure is premised on identifying traditional owners. This conceptualisation of 'community-country' *anangu* is based on both sentimental and political processes. The means by which an individual gains attachment to and, hence, potential decision-making rights to the country on which the community is situated pivot around them looking after their country of chosen residence. A major aspect of 'looking after' country is through ritual—in this case, ritual that is from the Tjukurrpa (Dreaming) that is close to the community. Tjukurrpa for which they do not have primary rights to, but for which they may be following the concept of company relationship. However, a series of attributes are necessary in order for an individual to be defined as a community-country *anangu*:

- history (often through parents) of long-term residence;
- continued chosen residence;
- conception and/or birth of children on the community or neighbouring outstations;
- death/burial of parents in the area or neighbouring communities;
- active knowledge of Tjukurrpa relevant to the land on which the community lies, and willingness to maintain this knowledge;
- consistently representing the community in regional ceremony (women's law and culture meetings) and sports (at carnivals);
- for the three communities of Haasts Bluff, Papunya and Mt Liebig also maintaining actively that Luritja is the community language and speaking that language, though many people are polyglots.

Thus, in relation to development proposals that impact on communities these persons have also come to play a role. In some cases this may even be understood as a de facto role as the traditional owners may simply not be active. Many may have passed away, or do not have children; their children may be living elsewhere, or they may yet be too young to take responsibility. Nevertheless, if one is to follow the legislative requirements of the ALRA, then it seems to me that the role of community-country *anangu* needs not only to be investigated but also acknowledged. As the issue may be that their active roles, in relation to decisions concerning land, should as far as possible be limited to assisting the decision-making process that should be led by the traditional owners, even though tracing the residence of some of these traditional owners is likely to be a significant task, if not simply unrealistic. The line drawn between consulting 'affected others', as these community-country *anangu*

are, and taking instruction from traditional owners, can be a fine one. This is made all the more difficult in areas where succession is involved and different forms of affiliation compete.

During field research conducted for the 2003 CLC consultancy, it seemed necessary to explain to informants/CLC constituents that I understood that there were now two stories that impact on this issue of ascertaining those with primary rights to land. These are the old, or the first, story of the traditional owners as the ancestors of these persons existed prior to settlement, and the new post-settlement story of who looks after country today. Are there any descendants of the old persons, that is, of traditional owners or their children, left? When this question is asked, there is recognition that there have been significant shifts and re-alignments in relationships to land, even though the extent of this recognition is beyond any one individual to know. This simplistic 'story' belies the fact that the level of migration in this region has been such that any sense of 'original' ownership can only be understood as a continuum. This fluidity of local organisation was due to the constant migration in this region, so that life was in a 'state of flux' (Hamilton 1982:93, following Elkin 1940).[9]

Those defined here as the community-country *anangu* are part of this second story of post-settlement. By virtue of their residence, they will automatically be included in discussions about land that surrounds the community because that is where consultations initially take place. As a public spokes woman for Papunya indicated, these persons may be consulted because of the convenience in doing so. Thus, she stressed, although many senior traditional owners may have died, many did have families and they should be included and consulted. However, in attempts to trace what appear to be the original, or at least pre-settlement, family groups of the area, an element of salvage anthropology or perhaps even social reconstructionism may be at play. And there is the developing or increasing tension between the rights of traditional owners and community-country *anangu* to have an active voice over the country on which the community is situated and surrounded. So, although I have attempted to delineate and, in some sense, reify these two categories for the purposes of understanding, the boundaries are shifting. This is especially apparent in Mt Liebig where succession processes have occurred, but this issue is another paper.

Community-country *anangu* are not part of a 'local descent group' (per the ALRA). In the first instance, this community-country category is exclusive, as it is dependent on the shared and lived experiences of individuals. So siblings of residents living elsewhere do not have rights to be consulted about specific issues concerning the community land. Second, the degree to which a community-country *anangu* will be heeded on the community in relation to wider decisions concerning land, such as exploration and mining, will also rest on the level of responsibility they hold for ceremony that derives from Tjukurrpa that pass by the community. However, under the terms of the Act, they are gaining 'primary spiritual responsibility' for the Dreaming tracks that pass through this country. They also have to the rights to 'forage', another prong of the Act.

These older residents—who act as community-country *anangu*—are still consulted over their fathers' and, to some degree perhaps, their mothers' country (depending on their level of ceremonial knowledge), which may be 100 km or more away. However, their children and grandchildren may not have that opportunity. Thus, these elderly men and women living away from their country often, nevertheless, hold knowledge for it, even if as Jackson (1995:35), suggested it is 'better to avoid mention of the way allegiances shift. Better to forget defunct identities... or discrepancies between the place you hail from and the place you make home'. Maddock's (1983:45) definition of Aboriginal ownership of land also blurs the distinctions: 'ownership...has to do with control and use of a territory and its resources, whether natural (mineral, vegetable and animal products) or spiritual (totem centres)'. This 'ownership', however, can be further hierarchised into primary and secondary categories (cf. Peterson et al. 1977; and Sutton's 'core and contingent rights' 2001a, 2003).

Conclusion

Under the definition of the ALRA, it would be reasonable to suggest that all Aboriginal people of desert Central Australia are traditional owners of some place or another. The issue here, however, is locating that place within the utilisation of the term 'traditional owner' and recalling its meaning. It is only by attempting to give this term local definition that one appreciates that it is both slippery and complex. There are not just traditional owners and others. Long-term residents of communities—who fit

the community-country *anangu* category—are also gaining rights to be heard. But where do these rights end?

ACKNOWLEDGMENTS

This paper was originally given at the annual Australian Anthropological Society conference in October 2003 in the 'Cultural Innovations' session; it was redrafted for presentation in the AIATSIS seminar series 'Regionalism, Indigenous Governance and Decision-Making' in May 2004. I am indebted to my friends in Papunya and Mt Liebig who have been very patient in their willingness to share their knowledge with me, particularly Elsey Gory Nampitjinpa. I also benefited from comments by Diane Smith, Jon Altman and Ben Scambary and feedback from the AIATSIS seminar.

NOTES

1. Section 42: Response of Land Council and Minister to application (ALRA):

(2) The Land Council shall not consent to the grant of the licence unless it has, before the end of the negotiating period, to the extent practicable:

(a) consulted the traditional Aboriginal owners (if any) of the land to which the application relates concerning:
   (i) the exploration proposals; and
   (ii) the terms and conditions to which the grant of the licence may be subject; and

(b) consulted any Aboriginal community or group that may be affected by the grant of the licence to ensure that the community or group has had an adequate opportunity to express to the Land Council its views concerning the terms and conditions.

2. While some others who were not actively involved in the ethnographic research for this claim found that their status was configured differently from their previously held understandings.

3. Discussing a classic 'type' in these terms is, of course, not an accurate reflection of the dynamics of claiming affiliation to land, as this is ultimately a political process and has changed post-settlement. The models that these ethnographies elucidated do have value today, although the *processes* by which individuals construct these types of affiliations and structures of attachment require as much care in elaboration as the structures themselves.

4. Patri-couples refer to the father–son subsection categories, such as Tjakamarra/Tjupurrula. There being eight subsections and thus four patri-couples. These socio-centric categories specify inherited kin relationships and, in the case of the Luritja and Warlpiri, also relationships to land. So that one speaks of 'owning' and 'managing' patri-couples for specific Dreaming tracks and thus the areas of land they create and/or traverse.

5. Since writing this paper in late 2003, I have been informed that the negotiations over this regional council that have been going on for several years have stalled. Apparently steering committee members, and perhaps by extension members of their respective communities, have felt pressured by the Northern Territory government into accepting this new governance and service delivery arrangement. So it has, to quote one of the sources, 'fallen in a heap'. Analysing the reasons for this would require another article. Nevertheless, the issues raised here about the implications of some aspects of regionalism are still relevant and possibly also reflective of issues in other potential 'regions'.

6. The tension between the cycling around of the same one or two residents in the role may have its negative impacts. However, it can also be positive in the build-up of 'corporate knowledge' within individuals. Furthermore, the size of these communities does not offer a broad scope from which to choose potential candidates. Perhaps changing the council constitution to ensure that the same individual cannot serve as council president or vice-president consecutively might assist. Then the exclusion of local landowning traditional owners from the role might not be such an issue.

7. This department incorporates the former Department of Local Government.

8. Sutton is, of course, alert to the exceptions to this rule of customary law rights over historically gained rights, as he qualifies it as such: 'Aboriginal tradition *usually* makes a clear and quite profound distinction between traditional affiliations to countries and residential associations with settlements and districts' (1999:41, emphasis added). He also makes problematic the relation between the two further into his paper.

9. Holcombe, 'The politico-historical construction of the Luritja and the concept of tribe', *Oceania* 74(4):257–75.

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