

HYPOTHETICAL: NATIVE TITLE RESEARCH CHALLENGES

TERRITORIAL SUCCESSION, GROUP MEMBERSHIP, CULTURAL CHANGE

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Scenario for consideration:

The ZZ native title claim covers approximately 3,000 sq km in a region with more than 150 years of multiple land uses. The claim area includes pastoral leases, a large mine, a national park, a predominantly Aboriginal town, and a smaller town with a mixed population. The boundary of the native title claim in the south runs along a pastoral lease border while on other sides the claim boundary is linked to topographic features including a river and line of hills.

EACH DISCUSSION GROUP SHOULD ADDRESS THE ALLOCATED ISSUE BELOW.

ISSUE 1: Where should the geographic boundaries of the claim lie, in light of disagreement among claimants and challenge from two adjacent claim groups? [GROUPS 1 & 2]

ISSUE 2: Should some members of a large extended family be accepted as claim group members, in light of the form 1 group description that descent (via ancestry or adoption) from a forebear who had a ZZ identity is a necessary criterion to inherit traditional rights in country? The family members are descended from a person some say was not a ZZ person though others argue the deceased forebear was incorporated into the ancestral group. [GROUPS 3 & 4]

ISSUE 3: What kinds of change in lifestyle and beliefs constitute adaptations from previously existing traditions amidst enormous other changes derived from engagements with the wider Australian society? [GROUPS 5 & 6]

In relation to each ISSUE, the following QUESTIONS are suggested for consideration & discussion by researchers and others.

ISSUE 1: Resolving geographic boundaries

Is the ethnographic record, including Tindale's boundaries, adequate in understanding current assertions among ZZ claimants and adjacent groups?

What kinds of change have occurred due to frontier conflict and then congregation of Aboriginal people from different areas at rural properties, small scale mining locations and towns? Are the ZZ people asserting an identity derived more from their forebears' permanent movement to new locations over at least 3 generations than from their ancestral connections at the time of establishment of British sovereignty?

Have new forms of large family connection to areas developed from earlier forms of social organisation? How do we explain this as analysts of cultural change and continuity?

Is the issue of customary 'succession' useful in explaining the apparent demise of a previously documented language group and 'takeover' by new arrivals over time? Have there been any 'succession events' that can be said to mark the transition to new boundaries of identity groups in the region? If not, how do we know that succession has been 'licit' in terms of traditional law and custom?

How have recently growing perceptions among the ZZ group and adjacent claim groups about desired financial benefits from mining influenced current arguments about whose country extends in which directions? If so, how does the researcher address such matters?

How do we separate decisions about boundaries that are made on the basis of what is understood as 'law and custom' from decisions based on political factionalism driven by other issues (including arguments over control of money)?

ISSUE 2: Resolving membership disputes

How much consensus is needed on whether the deceased forebear was a ZZ person in order to admit their descendants to membership of the native title group? Are views among adjacent claim group members just as significant in the decision making as the views of ZZ persons?

How do we explain why some descendants of this person choose membership of the ZZ group but not others? Is it possible for 'law and custom' to allow membership in more than one rights-holding group? Are ZZ persons expected to choose a primary claim in which to assert tradition-derived rights and interests?

Can a deceased forebear recorded during his or her life as affiliated with another identity group be regarded as an 'apical ancestor' for the ZZ group through any process of customary 'incorporation'? On what basis can 'incorporation' occur?

How do researchers best deal with accusations that members of the extended family have got too much non-Aboriginal ancestry to be accepted? E.g. comments such as 'you mob got too much Chinaman in you'.

How might researchers address histories of 'exemption' from legislation concerning Aboriginal people on the part of this family with mixed Aboriginal/European/Asian ancestries? Assuming the argument is successful that the apical ancestor was a ZZ person, is there any basis for suggesting that some family descendants chose to distance themselves from traditional 'law and custom' in earlier generations and hence forfeited the rights of people now seeking membership of the claim group? What is the importance of the requirement in some jurisdictions that exemption entailed no or reduced social connections with other Aboriginal persons?

ISSUE 3: Resolving continuing connection in light of cultural change

Is the ZZ identity label new in that it has arisen from change across a region with previously documented 'language-named' groups? If so, is there an anthropological explanation for this change as adaptation of traditions?

Do those with less 'traditional' lifestyles, or less knowledge of and participation in 'law', have less connection to country? Why would ZZ claimants at times make that assertion?

Is factionalism about agreement making with the big mining company and/or the national park authorities relevant? What is the best anthropological (and more generally social science) approach to assertions about some people having less 'law'? Is it different when this proposition is put forward by claimants from when it is suggested by respondent parties?

What are sophisticated anthropological analyses of the relationship between cultural change and continuing tradition-derived rights in land and waters?

Is a general connection across the entire ZZ ('tribal') claim area less customary or less derived from earlier traditions than families who can articulate specific 'estate' or 'estate'-like connections via intimate histories of residence around particular pastoralists' stations or regional towns?

Does less kinship connectedness with the broad claimant membership indicate less recognised social inclusion in the ZZ group, and if so, is this relevant to inherited rights in country?

Given the development over time of cognatic ties to forebears and country, how can the anthropologist respond to some claimant proclamations that rights in land must be inherited solely from either paternal or maternal forebears?

How do researchers engage with legitimate desires for economic development among ZZ claimants, including chosen lifestyles with less involvement in customary practices, when this is a matter of dispute among families and individuals? What does an anthropologist say about the proposition that families whose forebears were removed or left the region of the ZZ claim voluntarily now have only a 'vague' connection to country?