Rethinking the design of indigenous organisations:
The need for strategic engagement

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Acronyms and abbreviations

AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ANU	The Australian National University
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIS	Aboriginal and Torres Strait Islander Services
CAEPR	Centre for Aboriginal Economic Policy Research
NARU	North Australia Research Unit
UN	United Nations
UNESCO	United Nations Educational Scientific and Cultural Organization

Abstract

This paper argues that a fundamental issue confronting Australian indigenous groups and communities is how to develop the capacity to engage strategically with the general Australian society, in particular with its political and economic dimensions. 'Strategic engagement' refers to the processes through which indigenous individuals, groups and communities are able to interact with, contribute to, draw from—and of course potentially reject—the formal and informal institutions of the dominant Australian society in a considered and informed manner that provides them with real choices as to where to go, and how to get there. It refers to a process, not an outcome.

This capacity for strategic engagement is dependent upon many factors, but effective governance mechanisms in particular are critical. Governance can be seen as the formal and informal structures and processes through which a group, community or society conducts and regulates both its internal affairs and its relations with others. This paper focuses on principles for effective governance within indigenous organisations. It argues that nowhere in Australia do indigenous people live in self-defining and self-reproducing worlds of meaning and practices; rather they inhabit complex and contested intercultural worlds.

Therefore, if institutions for more effective governance are essential to strategic engagement, then they must draw not only from indigenous values and practices, but also from those of the general Australian society, and indeed from relevant international experience. It is argued that it is no longer defensible to resort to the mantra of 'cultural appropriateness', nor solely to traditions and customary practices in determining principles by which effective indigenous institutions should be established and should operate. Rather, the challenge is to develop distinctively indigenous institutions which nonetheless facilitate effective engagement rather than limiting it. This paper suggests a set of principles for this task.

Acknowledgments

Introduction

This Discussion Paper has been developed within an applied anthropological genre which is based in the first instance on theoretical understandings of the nature of the engagement of indigenous individuals and groups with the institutions of the general Australian society, but which then moves to a consideration of how this engagement might be more effectively and productively structured for indigenous people than it is at present. Such an endeavour by its very nature must make value judgements, and is positioned in a highly complex and contested political and ethical domain. What should link this applied genre with its foundations in the academy is the commitment to rigour, ethical standards, and engagement in robust critique and debate (see Keen 1999 for a discussion of the relationships between applied anthropology and that practiced in the academy). What may distinguish it from the academy is a willingness to move beyond analysis to recommendations for action.

The focus of this paper is on indigenous corporations and the principles which inform their design. Unlike in New Zealand, Canada or the United States, the Australian colonial authorities and their successor national, State and Territory governments have never been willing to negotiate treaties or other such formal political instruments which recognise indigenous groups as possessing inherent sovereign rights. One outcome of this over recent decades is that the policy rubrics of 'self-determination' and (latterly) the more limited 'self-management' have been introduced as muted responses to indigenous advocacy for the recognition of more fundamental rights. Under these policies, successive Federal, State and Territory governments have established or utilised indigenous-controlled corporations of various kinds for purposes ranging from holding land or other assets, delivery of services including housing and health, representation and advocacy, and commercial enterprises. These indigenous corporations (totalling perhaps more than 6,000 nationwide) now include a plethora of associations incorporated under Federal, State and Territory statutes such as the *Aboriginal Councils and Associations Act 1976* (Cwlth), corporations established under the *Corporations Act 2001* (Cwlth), and a range of statutory entities such as the land councils established under the *Land Rights (Northern Territory) Act 1976* (Cwlth) and indeed the Aboriginal and Torres Strait Islander Commission (ATSIC).

The interstitial position of indigenous organisations, or as Sullivan terms it, their character of being 'intermediate systems acting as a conduit between cultures and...therefore themselves fundamentally ambiguous' (1996: 123), is an instance of a more general phenomenon; no longer can we meaningfully conceptualise the position of indigenous people in the general Australian society in terms of an articulation between distinct cultures. Merlan (1998) provides an insightful analysis here, characterising the engagement of indigenous and non-indigenous people in 'intercultural' terms, which I discuss later at more length. From this perspective, as intercultural phenomena indigenous organisations form important sites around which indigenous people's values and practices are brought to bear, but where these values and practices are also contested, adapted and

transformed. My concern in this paper with indigenous organisations and their governance arises from their significance as key sites of transformation and engagement between indigenous people and the wider society.

In order to develop a set of principles for the design of indigenous corporations, I first turn to a brief discussion of how we might conceptualise such entities and the complex domains in which they are located. I then situate the requirement for good governance in the need for indigenous groups and communities to 'strategically engage' with the dominant society. Next I critically evaluate the notion of 'culturally appropriate' governance. Finally, on the basis of this analysis I suggest some principles for designing indigenous organisations which take account of their character as 'intercultural', rather than solely indigenous, products.

Conceptualising indigenous institutions

Social theorists have been struggling for a considerable time to adequately conceptualise the complex position of indigenous peoples living within First World nation states. In part, this difficulty was accentuated by anthropology's original legacy of developing typically ahistorical accounts of 'tribal' peoples as if they were distinct entities ruled by unwavering traditions and essentially disconnected from the colonial societies which impacted upon them.

Having posited the distinctiveness and traditionality of indigenous peoples as the core focus of inquiry, anthropology in the first half of the twentieth century at least was severely limited in terms of how it was able to analytically encompass the ongoing processes of engagement between indigenous societies and those of the colonial settlers. Indigenous peoples' 'cultures' and 'customs' were either seen as being maintained, albeit partially, or (more usually) lost in the face of the overwhelming impact of settler and post-colonial societies. Paradoxically, of course, those same societies—from which anthropologists are almost invariably drawn—have themselves undergone, and continue to undergo, enormous social, political and economic changes. The unrecognised challenge to anthropological theorising lay well and truly at home.

We can now see the limitations of past analytical frameworks more clearly, and there are increasingly sophisticated attempts at conceptualising the social fields in which indigenous people live, perhaps most successfully in the Australian context by Francesca Merlan in *Caging the Rainbow* (Merlan 1998). Part of the problem has lain in the difficulty of establishing an appropriate terminology and framework with which to conduct our analyses.

Lawyer Christos Mantziaris and I, for example, have used the concept of the 'recognition space' for particular analytical and heuristic purposes in our published works on Prescribed Bodies Corporate, the bodies which the *Native Title Act 1993* (Cwlth) requires be established to hold or manage native title following a determination (Mantziaris & Martin 1999, 2000). This concept was derived from an earlier account of native title by Noel Pearson, Aboriginal lawyer

and intellectual, who used it to distinguish between the character and origins of indigenous connections to country on the one hand, and that of the 'native title rights and interests' recognised by the general Australian law on the other (Pearson 1997). I should note here that Pearson has now firmly resiled from this conception of native title. He now argues in part that it has led to the High Court in the *Ward* and *Yorta Yorta* decisions severely limiting the legal construction of native title, and strongly criticises the role of anthropology in supposedly promulgating this more limited understanding (Pearson 2002).

Weiner has also mounted a trenchant critique of the recognition space concept, arguing that it ignores the significance of native title as a 'total social fact' (Weiner 2003), rather than just as a legal construct. Sullivan (2002) characterises the recognition or 'translation' space as an instance of the more 'structural' accounts of the engagement of indigenous and non-indigenous life worlds. However, our endeavour was not to theorise the engagement of life worlds, but to clarify the important *legal* distinction between the subject of the legal recognition process involved in native title—that is, indigenous connections to country under traditional law and custom—and the product of the recognition process—native title rights and interests recognised by the general Australian law. We explicitly disavowed the utility of the 'recognition space' concept for analyses of the complex engagement of indigenous and non-indigenous peoples (Mantziaris & Martin 2000: 10–12). The 'recognition space' concept is indeed a limited and inherently structural one—precisely because it is a description of the process by which indigenous connections to country are recognised as native title, through a process of translation, in accordance with the highly structured principles of Australian law. To put it succinctly, the 'recognition space' provides an account of a particular legal process, not of the articulation of life worlds. While we used the recognition space device to analyse native title as a product of the legal recognition process, we adopted a broader analytical framework for our analysis of Prescribed Bodies Corporate as legal entities, which we recognised would take their place with the plethora of existing organisations that play significant roles within the contemporary indigenous polity (Mantziaris & Martin 2000: 258–348).

Of course no analytical language can be unproblematic. The concept of an indigenous 'hybrid' economy as developed by Altman (2001), seen as involving an amalgam of customary modes of extraction and utilisation of resources and those derived from the market and welfare economies, does have some analytical (and policy) utility in this domain of practices. However, it would be more problematic to try to use the concept for the analysis of the wider social field in which indigenous people, including those in remote regions, now live. 'Hybrid' seems to parallel the older term 'syncretic', as used for example of the particular forms taken by Catholicism amongst the indigenous peoples of South America, and while the notion of hybridity does suggest the production of new practices and values from heterogenous sources, it does not encompass the dynamism of the new forms. Nor does it capture the recursive manner in which they both are transformations of other practices and values (and not just those originating in some 'indigenous domain'), and in turn transform them.

A not unrelated concept of the 'frontier economy' was utilised by McDonnell and Martin (2002) in relation to identifying and explaining certain consumer issues under the *Trade Practices Act 1974* (Cwlth) for Aboriginal people, particularly those living in remote areas. The primary audience for that publication however was not the academy directly, but rather the policy makers and bureaucrats who work in the Australian Competition and Consumer Commission, its various State and Territory counterparts, and in indigenous advocacy and representative organisations. The notion of the 'frontier economy' was used as a heuristic rather than an analytical device to alert such individuals and their agencies to certain distinctive factors relevant to the functioning of the market in these remote regions, and to the potentially distinctive values which Aboriginal consumers in these areas may bring to bear on their interactions with that market. However, the concept of the 'frontier economy' is at best of limited general analytical utility.

Notions of 'culture' itself have been the mainstay of anthropology, this profession's commodity in the contested marketplace of ideas, but its utility as a device explanatory of social practice is problematic. We should now recognise that culture cannot usefully be conceived of as the bounded, self-defining and self-reproducing set of values and practices of a clearly identifiable (and itself bounded) group or society (see e.g. Merlan 1998). It is all too easy to use a relatively unexamined concept of 'culture' as a shorthand device to carry an inappropriate analytical load. The risk is that a concept which can mean everything to everyone ultimately means nothing to anyone. So, where can we go to find our new explanatory frameworks and tools?

In her important work *Caging the Rainbow*, Merlan has provided a theoretically sophisticated account of the 'intercultural' lifeworlds of the Aboriginal people of Katherine in the Northern Territory, exploring changes and continuities from a set of socio-spatial perspectives, including landed identity. She suggests that the shift in government policy from one of 'assimilation' to 'self-determination' marks a move from overt coercion to seeking 'to elicit from indigenous people what are taken to exist as their own modes of organization and to recast the management of Aboriginal affairs in what are seen to be indigenous terms' (1998: 149–51). Following Taussig (1993), she sees this as an imitative or 'mimetic' style, in which the representations of Aboriginality by others come to affect who and what Aborigines consider themselves to be. This 'imitative relation', Merlan argues, rests on the problematic assumption that Aboriginal cultural production continues to be autonomous from that of the general Australian society, which after all previously sought to encompass or displace it (1998: 150).

Merlan argues that an appropriate explanatory framework is to be found through problematising not difference, but rather the notion of autonomous indigenous domains within a modern state such as Australia, and characterises the engagement of indigenous and non-indigenous people in 'intercultural' terms. Merlan argues that anthropology needs to:

> ...cut across radical dichotomies between traditionality and (presumably) non- or post-traditionality, between persistence and change; to assume neither is more

> fundamental than the other, and to begin in the middle where both are relevant, rather than with notions of separateness and distinctiveness (1998: 233).

Nonetheless, we must also factor into our accounts and the language we use the very real and sometimes confronting sense of dissonance that people may experience in moving from one socio-spatial milieu to another; for example, from affluent suburb and air-conditioned office to Aboriginal fringe camp, from Cape York Aboriginal community to Cairns Base Hospital, or from Arnhem Land outstation to an art exhibition in New York. Furthermore, while the notion of an intercultural social field implies, correctly, that both indigenous and non-indigenous people are operating within a (more or less) shared domain, they may be doing so from distinctive positions, as Merlan observes (1998: 233). So, while cultures are clearly not bounded entities, and while our analyses must not simply reproduce the values and understandings of our subjects, we must find ways to incorporate this very real experience of difference that people bring to their involvement in these complex intercultural social fields.

Merlan's characterisation of the engagement between indigenous and other peoples in terms of an intercultural social field can bring important insights to bear on the conceptual and policy issues regarding incorporated indigenous entities, whether they be small associations established by close kin, Prescribed Bodies Corporate established to hold or manage native title, health and housing services, or indeed ATSIC itself. Of course, it is perhaps easier to accept the intercultural nature of indigenous organisations as a given, since they are of necessity incorporated under or established by statutes of the general Australian legal system.

However, this does not exhaust the extent of their intercultural nature. As has been argued elsewhere (see e.g. Mantziaris 1999; Mantziaris & Martin 1999, 2000; Martin & Finlayson 1996; Rowse 1992, 1993; Tonkinson 1985; Smith 1995; Sullivan 1988, 1996, 1997), these bodies cannot be seen simply as impositions by the state on indigenous groups and societies, although many of them have indeed been established in the first instance at the initiative of governments and to serve governmental purposes. They have also come to serve particular indigenous ends, typically operate through and mediate distinctive indigenous practices, and more generally have become fundamental constitutive and transformative elements within local, regional and national indigenous polities. They provide focal sites of engagement, appraisal, evaluation, contestation, competition, and appropriation amongst indigenous people themselves, and between them and non-indigenous people. This can be seen as constituting a form of 'dual incorporation', whereby such bodies are simultaneously legally incorporated under, or established by, statutes of the general Australian law and 'incorporated' into indigenous polities (Mantziaris & Martin 2000: 274). Such organisations of course, while they 'incorporate' indigenous practices and values, by their very nature frame and constrain them, and are thus sites of their transformation.

As such, I find Merlan's concept of 'social technology' suggestive (see e.g. Merlan 1998: 235–7). She extends the (Western) notion of invention in the material world to the social world, suggesting a parallel between the role of technological development in the transformation of Western societies, and that of certain contemporary phenomena in the transformation of indigenous societies. Technology implies both continuity (a society's technology is developed through application of its historically situated knowledge) and change (it transforms both material and social worlds). Indigenous organisations then are instances of social technology drawn from understandings and practices (indigenous and non-indigenous) within the intercultural social field and which transform that same field.

'Governance' and indigenous disadvantage

It has become a truism that indigenous people as a statistical grouping are overwhelmingly the most socially and economically marginalised in Australia, characterised by relatively poor health, low life expectancy, low education outcomes and low employment, and with relatively high levels of chronic social problems such as alcohol abuse and domestic violence (see e.g. Altman 2000). This is particularly (although not uniquely) the case in rural and remote regions. 'Economic development' is said to be one pathway—some argue the essential pathway—through which this disadvantage can be addressed (but see Martin 2001). Pearson for example argues that the move away from a 'gammon' or passive welfare economy to a 'real' economy is fundamental to addressing both social and economic disadvantage (Pearson 2000a, 2000b). Pearson further argues for a complete reshaping of the structural relationships between the Aboriginal people of Cape York Peninsula and the state, in part through a new institutional order, and for new forms of Aboriginal governance and leadership (Pearson 2000a, 2001).

The term 'governance' has considerable national and international currency in the development policy arena amongst others. 'Governance' and 'capacity building' or 'capacity development' are seen as fundamental precursors to addressing entrenched social and economic disadvantage in the developing world, and for so-called 'Fourth World' or indigenous peoples within developed First World nations (see e.g. United Nations (UN) 2002). For example, the Harvard Project on American Indian Economic Development asserts that its research demonstrates an unequivocal link between the general wellbeing and economic development of Native American nations and the existence of mature, politically robust, competent and culturally appropriate indigenous organisations (Begay et al. 1997; Cornell 2002).

This increasing focus on capacity building and governance as crucial prerequisites to addressing disadvantage and development issues has been rather more recently mirrored in the Australian context, not only by Pearson but also in a raft of recent conference papers, government inquiries, and research proposals.[1] Certainly, my own involvement in the 2002 review of the Gulf Communities

Agreement between Aboriginal groups and the Century zinc mine development in the Gulf region of Queensland demonstrated that one of the factors inhibiting the capacity of the Aboriginal people of the region to take advantage of various economic opportunities offered under the Agreement—employment, business development, and so forth—was the almost total absence of competent and broadly supported Aboriginal organisations in the region. At the same time, it must be said that it is not only indigenous capacity which needs to be built—that of government and its agencies is often a major limiting factor in addressing disadvantage (see Altman & Sanders 2002; Pearson 2000a).

I do not intend to explore these policy frameworks and their legitimating discourses in this paper, but the notion of governance itself is of some utility to my argument here. Governance can be seen as encompassing both formal and informal structures and processes through which a group, organisation, community or society conducts and regulates its internal affairs as well as its relations with others (Plumptre & Graham 1999). I suggest for this reason that the concept of governance provides a useful tool in the analysis of social and political process in the intercultural contexts of Australian indigenous groups. This paper focuses largely on formal institutions including incorporated associations and regional and national representative bodies, although the internal and external components of governance are necessarily interlinked.

If we can accept the argument, for my purposes here at least, that competent formal institutions are necessary precursors to addressing indigenous disadvantage, this nonetheless begs important questions. The 'capacities' (and thus the values and practices) which may need to be developed or built in order to achieve better governance, development and improved socio-economic outcomes may potentially derive from the cultural repertoire of the dominant society rather than those of the disadvantaged indigenous groups. For instance, it is important not to underestimate the difficulties in reaching agreement from Aboriginal people on what 'economic development' might mean, and whether it is even a desirable goal. As we know clearly from ethnographic research (see e.g. Macdonald 2000; Martin 1995; Peterson 1993; Sansom 1980; Schwab 1995), the values which Aboriginal people bring to bear on the 'economic' domain of practices, while transformations of those that previously existed, may still differ significantly from those of non-Aboriginal people. There may also be a conscious and clearly articulated rejection of the development ideology of the dominant society (see e.g. Trigger 1995).

It has further been argued, perhaps most forcefully in recent times by Sutton (2001), that certain indigenous values and practices may actually inhibit the kinds of social and economic changes which are arguably required to address disadvantage—or at least, those forms of it as measured by standard socioeconomic indicators. While such views have generated considerable attention and a degree of heated debate, the topic is far from novel; for example Brunton (1993), Cowlishaw (1998), Elkin (1951), Folds (2001), Martin (1993, 1995, 1998, 2001), Pearson (2000a) and Stanner (1979), as well as Sutton (2001), have all paid attention to similar or related themes.

My own view is that socioeconomic disadvantage, widespread social dysfunction, and fragile, conflict-ridden organisations have certainly resulted in part from the legacy of colonisation, including ongoing exclusion and discrimination. However, the vulnerability of indigenous organisations is exacerbated and reinforced by particular values and practices which indigenous people bring to bear in their participation in them. That is, there may be a contradiction between the requirements for 'effective' formal institutions on the one hand, and the robustness of informal institutions of a particular group or society on the other.

Nonetheless, to stress again a point central to this argument, while we can meaningfully and usefully attempt to delineate distinctive characteristics of the contemporary values and practices of particular indigenous groups, they have been produced, and are reproduced, through a complex process of engagement with those of the dominant society. This has involved not just subjugation to that society but also appropriation and incorporation of many of its forms. Furthermore, their production has also involved the 'mimetic' reflection of the constructions of indigenous people by the dominant society, as Merlan argues. To state an obvious but important truth, nowhere in Australia do (or indeed can) indigenous people live in self-defining and self-reproducing worlds of meaning and practices—rather, they always live in complex and contested inter-cultural worlds.

The need for 'strategic engagement'

In such circumstances, I find it useful in policy terms to examine the role of organisations in facilitating what I call 'strategic engagement'. By this I mean the processes through which indigenous individuals and collectivities are able to interact with, contribute to, draw from—and of course potentially reject—the formal and informal institutions of the dominant Australian society, in a considered and informed manner that provides them with real choices as to where to go, and how to get there. Strategic engagement refers to a process, not an outcome. It recognises that indigenous people are positioned within an intercultural domain which is constantly transforming, but also recognises that this position (as individuals and collectivities) is not fixed, but is influenced by a range of factors including individual proclivity and choice, as well as broader 'structural' factors.

By using this notion of 'strategic engagement', I am attempting to circumvent what I think is often a rather sterile public debate conducted in such terms as 'assimilation', 'cultural maintenance', 'tradition', 'economic independence', 'self-determination' and so forth. Like all terms of course, 'strategic engagement' is itself far from value free. However, I suggest that its advantage, at least for my purposes here, is that firstly it recognises that indigenous people are not living as part of self-producing and reproducing isolates, and that social and cultural transformations are realities for all groups and societies; and secondly it encompasses the important principle that the indigenous people concerned

should—within the limits imposed by the values of a pluralist society—have control over the terms of this engagement.

Thirdly, by being 'strategic' I mean that while there will always be consequences for those concerned arising from the terms of the engagement, some of them unintended or adverse, as far as feasible the engagement is structured so as to minimise the adverse effects and maximise advantage for the indigenous people concerned. I should add that there is a set of value judgements here, implicit but necessary—for who is to determine what is an adverse consequence, and on what ethical and political bases? However, if we accept that there is no such thing as an autonomous arena of indigenous values and practices, but rather a contested intercultural field of transforming and transformed practices and values, then I suggest it is simply inadequate to leave the construction and evaluation of such judgements solely to the indigenous people concerned and to a domain of supposedly uniquely indigenous values.

It is my view that developing the capacity to strategically engage with the social, cultural, economic and political dimensions of the wider Australian society is of fundamental importance in addressing the severe marginalisation and deprivation of many indigenous groups and communities. It is also fundamental to achieving meaningful self-determination, where desired, for indigenous groups and communities. This capacity for strategic engagement is dependent upon many factors, but mechanisms for effective governance, formal and informal, are particularly critical.

'Culturally appropriate' organisations

Indigenous organisations are necessarily intercultural products, as previously discussed, and sites of contestation and transformation of indigenous values and practices. If more effective governance is a core component of an increased capacity for strategic engagement by indigenous people with the dominant society, then it must draw not only from the values and practices of indigenous people, but also from those of the general Australian society—and indeed from relevant international experience, such as that of the indigenous peoples of Canada and the United States. While the possibility of distinctive values and practices must be accepted as a basic premise in institutional design, the essence of developing appropriate indigenous organisations does not lie in 'resolving' potentially conflicting values and practices; rather, it is to be undertaken through establishing institutional structures and principles which are robust enough to encompass and engage diversity, competition and conflict.

It is not defensible to resort to the mantra of 'cultural appropriateness', nor to those of 'Aboriginal traditions' or 'customs', in determining the core principles by which effective indigenous organisations should be established and operated. Mantziaris and Martin have argued in relation to the corporations established to hold native title (Prescribed Bodies Corporate), that the concept of 'cultural appropriateness' is a convenient 'ticket-of-leave' from a more rigorous analysis of the legal facilities that these corporations require to operate within the Australian

legal system (Mantziaris & Martin 2000: 293–4). The concept of 'cultural appropriateness' in relation to indigenous corporations assumes a domain in which indigenous values and practices are autonomous from those of the general Australian society, and a domain of operations of these corporations which is autonomous from the legal, political, and economic fields in which they are necessarily situated.

The more that attempts are made to reflect the complexities and subtleties of the values and practices of indigenous people in formal corporate structures and processes—for example, regarding such matters as authority and decision-making, or the various forms of the typically labile indigenous groupings and sub-groupings—the more there is the risk that over time the formal corporate structures and processes will supplant the informal indigenous ones—a process of the 'juridification' of social relations. While, as we have seen, the engagement of indigenous and non-indigenous people can best be understood in intercultural terms, 'juridification' takes this a step further, raising the problem of the underlying social relations being distorted or dominated by the legally enforceable expression of the same relations (Mantziaris & Martin 2000: 126–8).

From this perspective, there are compelling arguments for establishing indigenous corporations which leave as much social and political process as possible within the informal indigenous realm, and do not attempt to codify it within formal corporate structures or governance mechanisms. The focus in these corporations' design and management should be on such matters as developing procedures to ensure effective and accountable relationships and linkages between the corporation and the relevant indigenous group. Corporate governance would serve essentially to maintain a viable corporate entity as an interface between the group and the wider world. Indigenous self-determination through formal corporate structures may best be served, then, by developing institutions which present the minimum formal profile to the stormy political and regulatory seas in which they must sail.

Thus, the challenge is to develop distinctively indigenous organisations which nonetheless facilitate effective engagement with the dominant society rather than limiting it. From this perspective, appropriate organisations will not just draw their structures, operating principles, and goals from a nominally autonomous indigenous domain, but also from that of the general Australian system. While they must certainly take account of specific values and practices of the indigenous people who participate in them or whom they serve, to be truly 'culturally appropriate' they may also have to engage them directly—and even on occasion challenge and circumvent them.

Principles for the design of effective indigenous organisations

I now turn from this brief sketch of how we might most productively characterise the position of indigenous people and the social field in which they live and in which their organisations are situated, to examine some illustrative 'applied'

implications of these characterisations. Firstly, it is important to minimise the codifying of 'traditional law and custom' within formal corporate governance mechanisms. As discussed above, as much social and political process as possible should be left within the realm of informal indigenous social practices, not codified within formal corporate governance structures and processes. This minimises both the matters that can be properly subject to scrutiny or intervention by corporate regulatory authorities, and the processes of 'juridification' of social relations.

Arguments for 'cultural appropriateness' should not displace the overriding need for organisational structures and management processes to facilitate strategic engagement with the general society. Equally, arguments for indigenous 'self-determination' should not displace the necessity for competent management. It is typically assumed that the indigenisation of organisations equates to self-determination; certainly this is a pervasive rhetoric amongst indigenous people themselves, and also finds expression in, for example, aspects of a major restructuring of ATSIC in 2001–02.

However, I suggest that because such organisations do not lie within a distinct and autonomous indigenous realm but rather within a contested intercultural field, we are provided with a position from which to question this assumption. The presence of 'outsiders' in indigenous organisations is, in many circumstances, not just required because of the relative lack of relevant managerial and administrative capacities within many indigenous groups, but is a necessary correlate of the intercultural nature of these organisations. Skilled 'outsiders'—whether they be relatively better educated Queensland 'Murris' in Northern Territory organisations or non-indigenous people in Native Title Representative Bodies, health and legal services, and so forth—are necessary along with local indigenous people precisely because they can ensure that there is a diversity of perspectives and values brought to bear on an organisation's operations. This diversity is essential to strategic engagement.

Emphasis should be placed on developing robust relationships between the organisation and its clients or constituents, rather than on attempts to mirror customary practice in formal institutional structures and corporate governance mechanisms. That is, the focus in such corporations should be on developing procedures to implement internal accountability (Martin & Finlayson 1996), for example by ensuring effective and accountable relationships between the corporation and the relevant indigenous group or constituencies. It is in these relationships that principles of customary practice might be appropriately brought to bear in some circumstances, rather than in the formal procedures of corporate governance. These latter should serve essentially to maintain a viable legal entity as one formal interface between the group or community and the wider world.

Many indigenous associations are set up to deliver services to a broad community or region, but in practice are captured by particular groups within organisational memberships. There is therefore value for indigenous associations in deliberately

emphasising the distinction between the constituency or clients of an incorporated association and its formal membership. Overtly separating corporate membership from that of the organisation's constituency can assist in emphasising accountability to the latter and minimising the capacity of factions or sub-groups within the formal membership to control organisational resources. This is particularly important where the organisation concerned is delivering services to a constituency wider than its membership—for example, a housing association or health service.

Despite the principle of minimising the codification of indigenous practices within corporate governance, it is often essential to build in representational mechanisms for encompassing the diversity of groupings within the particular indigenous group, community, or region. Providing mechanisms to ensure that formal organisational elements, such as those of the Board, are broadly representative of diverse groupings within the relevant community or constituency can enhance the legitimacy of indigenous organisations. This can also reduce the capacity for particular individuals or groups to appropriate the organisation and its resources for their own ends, as discussed below. At the same time, it must be clearly recognised that the legal devices available to incorporate diversity, such as membership classes, are unlikely to accurately reflect the structuring principles of indigenous groupings (Mantziaris & Martin 2000: 307–10).

Where organisations are publicly funded to provide services to indigenous people, it is crucial to ensure that there are mechanisms to minimise the capacity for individuals and sub-groups to capture organisational resources. Effective and transparent administrative processes are essential. The common-law duty of care of Directors to the corporation itself, rather than (for example) to those members or constituents with whom they identify or whom they represent, can actually assist in the negotiation of agreed procedures to minimise the appropriation of collective resources for the aggrandisement of the few. Another important element here, drawn from the principles of both democratic government and of organisational management, is the 'separation of powers' between executive and management. Under this model, boards set policy and priorities; management implements them, but without direct and day-to-day interference by board members. Such a division may run counter to indigenous understandings of self-determination, but provides important checks and balances in ensuring that resources or services are equitably provided.[2]

A range of measures at the level of organisational structures can also be utilised to assist indigenous groups in dealing with some of the difficulties posed by standard corporate structures and procedures. For example, under many incorporation statutes, it is not required to nominate or elect a Chairperson of the organisation; instead, a rotating Chairperson of Board meetings can be nominated. This is often more in accordance with indigenous notions of hierarchy, and avoids the common problem of organisational resources being commandeered by a permanent Chairperson and his or her family. A further crucial mechanism is to separate out the responsibilities of management for day-

to-day running of the organisation from those of the Board for setting overall organisational policies and goals. Of course, this is often easier said than done.

Indigenous organisations should be seen as elements of the process of strategic engagement, not as ends in themselves. One of the new buzz phrases in indigenous affairs is 'capacity building'. In relation to indigenous organisations, this is held to involve educating Directors and management regarding their statutory obligations, and providing them with the administrative and other such skills to run their organisations effectively. This is important work. However, my argument has been that while in many areas it may be true that indigenous people lack the formal education and skills required to effectively run their organisations, a 'lack' of particular skills is not the sole reason for poor governance. Indigenous organisations are sometimes fragile precisely because people bring particular deeply held views to bear on their participation in them. To be truly effective then, 'capacity building' needs to be seen as a particular form of cross-cultural education, in which indigenous people's enhanced capacity to achieve self-determination through their own institutions provides an important bridgehead to strategic engagement with the institutions (formal and informal) of the wider society.

This paper has focused on one particular aspect of the relationship between non-Western law and indigenous governance in Australia; that relating to indigenous traditions and customs and their relationship to governance within the context of formally incorporated organisations. I have argued that indigenous laws and customs, like all social forms, naturally and inevitably both act as transformative agents and are themselves transformed. I have also argued that if governance is to become a key element of addressing indigenous people's marginal position in Australian society, as current policy rhetoric suggests, it must explicitly draw its principles and practices from diverse sources, not just from within a supposedly autonomous indigenous domain.

Notes

1. See, for example, the proceedings of the Indigenous governance conference organised by Reconciliation Australia (at http://www.reconciliationaustralia.org/graphics/info/publications), and the inquiry into capacity building in Indigenous communities being conducted in 2003 by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (at http://www.aph.gov.au/house/committee/atsia/indigenouscommunities/inqinde.htm).

2. A far-reaching example of instituting the separation of powers in an indigenous organisation is provided by the restructure of ATSIC announced in April 2003. Under this restructure, a separate entity, Aboriginal and Torres Strait Islander Services (ATSIS), will be established from 1 July 2003 under the *Public Service Act 1999* (Cwlth) and will be staffed by existing members of ATSIC's administrative arm. The elected ATSIC Board and Regional Councils will have the responsibility for setting broad policies and priorities. ATSIS will be required to operate in accordance with these priorities and policies and will report to the elected arm.

References

Altman, J. 2000. 'The economic status of Indigenous Australians', *CAEPR Discussion Paper No. 193*, CAEPR, ANU, Canberra.

—— 2001. 'Sustainable development options on Aboriginal land: The hybrid economy in the twenty-first century', *CAEPR Discussion Paper No. 226*, CAEPR, ANU, Canberra.

—— and Sanders, W. 2002. 'Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into Capacity Building in Indigenous Communities', Submission No. 25, 15 pp, 2002 (available on the www at http://www.aph.gov.au/house/committee/atsia/ indigenouscommunities/inqinde.htm).

Begay, M.A., Cornell, S. and Kalt, J. 1997. *Making Research Count in Indian Country: The Harvard Project on American Indian Economic Development*, Harvard Project on American Indian Economic Development and John F. Kennedy School of Government, Harvard University, Cambridge, Mass.

Brunton, R. 1993. 'Black suffering, white guilt? Aboriginal disadvantage and the Royal Commission into Deaths in Custody', Institute of Public Affairs, West Perth.

Cornell, S. 2002. 'The importance and power of indigenous self-governance: Evidence from the United States', Paper delivered at the Reconciliation Australia Indigenous Governance Conference, 3–5 April 2002, Canberra (available on the www at http://www.reconciliationaustralia.org/docs/speeches/governance2002/02_stephen_ cornell.doc).

Cowlishaw, G. 1998. 'Erasing culture and race: Practising "self-determination"', *Oceania*, 68 (3): 145–69.

Elkin, A.P. 1951. 'Reaction and interaction: A food gathering people and European settlement in Australia', *American Anthropologist*, 53: 164–86.

Folds, R. 2001. *Crossed Purposes: The Pintupi and Australia's Indigenous Policy*, University of New South Wales Press, Sydney.

Keen, I. 1999. 'The scientific attitude in applied anthropology', in S. Toussaint and J. Taylor (eds), *Applied Anthropology in Australasia*, University of Western Australia Press, Nedlands.

Macdonald, G. 2000. 'Economies and personhood: Demand sharing among the Wiradjuri of New South Wales', in G.W. Wenzel, G. Hovelsrud-Broda and N. Kishigami (eds), *The Social Economy of Sharing: Resource Allocation and Modern Hunter-Gatherers*, Senri Ethnological Studies 53, National Museum of Ethnology, Osaka.

Mantziaris, C. 1999. 'The dual view theory of the corporation and the Aboriginal corporation', *Federal Law Review*, 27 (2): 283–321.

—— and Martin, D.F. 1999. *Guide to the Design of Native Title Corporations*, National Native Title Tribunal, Perth.

—— and —— 2000. *Native Title Corporations: A Legal and Anthropological Analysis*, Federation Press, Sydney.

Martin, D.F. 1993. 'Aboriginal and non-Aboriginal homicide: "Same but different"', in H. Strang and S. Gerull (eds), *Homicide: Patterns, Prevention and Control*, AIC Conference Proceedings Series, No. 17, Australian Institute of Criminology, Canberra.

—— 1995. 'Money, business and culture: Issues for Aboriginal economic policy', *CAEPR Discussion Paper No. 101*, CAEPR, ANU, Canberra.

—— 1998. 'The supply of alcohol in remote Aboriginal communities: Potential policy directions from Cape York', *CAEPR Discussion Paper No. 162*, CAEPR, ANU, Canberra.

—— 2001. 'Is welfare dependency "welfare poison"? An assessment of Noel Pearson's proposals for Aboriginal welfare reform', *CAEPR Discussion Paper No. 213*, CAEPR, ANU, Canberra.

—— and Finlayson, J.D. 1996. 'Linking self-determination and accountability in Aboriginal organisations', *CAEPR Discussion Paper No. 116*, CAEPR, ANU, Canberra.

McDonnell, S. and D. Martin. 2002. 'Indigenous community stores in the "frontier economy": some competition and consumer issues', *CAEPR Discussion Paper No. 234*, CAEPR, ANU, Canberra.

Merlan, F. 1998. *Caging the Rainbow: Place, Politics, and Aborigines in a North Australian Town*, University of Hawai'i Press, Honolulu.

Pearson, N. 1997. 'The concept of native title at common law', in G. Yunupingu (ed.), *Our Land is Our Life: Land Rights Past, Present and Future*, University of Queensland Press, St Lucia.

—— 2000a. *Our Right to Take Responsibility*, Noel Pearson and Associates Pty Ltd, Cairns.

—— 2000b. 'Passive welfare and the destruction of indigenous society in Australia', in P. Saunders (ed.), *Reforming the Australian Welfare State*, Australian Institute of Family Studies, Melbourne.

—— 2001. 'Rebuilding Indigenous Communities', in P. Botsman and M. Latham (eds), *The Enabling State: People Before Bureaucracy*, Pluto Press, Annandale, NSW.

—— 2002. 'Native title's days in the sun are over', *The Age*, 28 August 2002 (available on the www at http://www.capeyorkpartnerships.com/media/articles/age-28-8-00.htm).

Peterson, N. 1993. 'Demand sharing: Reciprocity and the pressure for generosity among foragers', *American Anthropologist*, 95 (4): 860–74.

Plumptre T. and Graham J. 1999, 'Governance and good governance: International and Aboriginal perspectives', Unpublished paper, Institute of Governance, Ottawa (available on the www at http://www.iog.ca).

Rowse, T. 1992. *Remote Possibilities: The Aboriginal Domain and the Administrative Imagination*, NARU, ANU, Darwin.

—— 1993. *After Mabo: Interpreting Indigenous Traditions*, Melbourne University Press, Melbourne.

Sansom, B. 1988. 'A grammar of exchange', in I. Keen (ed.), *Being Black: Aboriginal Culture in 'Settled' Australia*, Aboriginal Studies Press, Canberra.

Schwab, R.G. 1995. 'The calculus of reciprocity: Principles and implications of Aboriginal sharing', *CAEPR Discussion Paper No. 100*, CAEPR, ANU, Canberra.

Smith, D.E. 1995. 'Representative politics and the new wave of native title organisations', in J. Finlayson and D.E. Smith (eds), *The Native Title Era: Emerging Issues for Research, Policy and Practice*, CAEPR Research Monograph No. 10, CAEPR, ANU, Canberra.

Stanner, W.E.H. 1979. 'Continuity and change among the Aborigines', in W.E.H. Stanner, *White Man Got No Dreaming, Essays 1938–1973*, ANU Press, Canberra.

Sullivan, P. 1988. 'Aboriginal community representative organisations: Intermediate cultural processes in the Kimberley region, Western Australia', *East Kimberley Working Paper No. 22*, Centre for Resource and Environmental Studies, ANU, Canberra.

—— 1996. *All Free Man Now: Culture, Community and Politics in the Kimberley Region, North-Western Australia*, AIATSIS, Canberra.

—— 1997. *A Sacred Land, a Sovereign People, an Aboriginal Corporation: Prescribed Bodies and the Native Title Act*, North Australia Research Unit Report Series No. 3, NARU, ANU, Darwin.

—— 2002. 'Tropes of structured intersection and the question of values in indigenous governance', Paper prepared for the session *Articulating Culture: Understanding Engagements Between Indigenous and Non-Indigenous Lifeworlds*, Australian Anthropological Society Annual Conference, 3–5 October 2002, Canberra.

Sutton, P. 2001. 'The politics of suffering: Indigenous policy in Australia since the 1970s', *Anthropological Forum*, 11 (2): 125–73.

Taussig, M. 1993. *Mimesis and Alterity: A Particular History of the Senses*, Routledge, New York.

Tonkinson, R. 1985. 'Councils, corporations and the Aboriginal polity', *Anthropological Forum*, 5: 377–84.

Trigger, D. 1995. 'Reflections on Century mine: Preliminary thoughts on the politics of indigenous responses', in J. Finlayson and D.E. Smith (eds), *Native Title: Emerging Issues for Research, Policy and Practice*, CAEPR Research Monograph No 10, CAEPR, ANU, Canberra.

United Nations (UN), 2002. Report of the World Summit on Sustainable Development: Johannesburg, South Africa 26 August–4 September 2002, UN, New York (available on the www at http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/636/93/PDF/N0263693.pdf?OpenElement).

Weiner, J.F. 2003. 'The law of the land: A review article', *The Australian Journal of Anthropology*, 14 (1): 97–110.

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