CULTURES OF GOVERNANCE
AND THE GOVERNANCE OF CULTURE:
INDIGENOUS AUSTRALIANS AND THE STATE

By
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The cover illustration is by David Mowarljarli entitled ‘Bandaiyan: The Body of Australia’, and drawn in the early 1990s. It appears in the *Macquarie Atlas of Indigenous Australia* (Arthur & Morphy 2005: 24) with the comment:

The artist envisions the whole continent as a human body, with the navel located near Uluru. The squares represent Indigenous communities, linked together by a grid of lines to show spiritual and social connections.
Statement of Authorship

The current draft guidelines of the Australian National University state that a PhD ‘Thesis by publication’,

in part or in whole comprises published papers, perhaps with additional material explaining the context of, and relationships between, these papers. Such a thesis is known as a thesis by publication, a thesis by published articles or a contextualised thesis.

The guidelines further state that the thesis by publication,

must have an introduction and conclusion drawing together the published papers in a cohesive manner [and] the candidate should address how the individual publications link to the theory and methodology adopted and evaluate the contribution that the research in the submitted publications makes to the advancement of the research area. The thesis may also include relevant appendices containing additional papers that are not relating to the main thrust of the thesis, raw data, programs, questionnaires and other material as deemed appropriate for each discipline.

Accordingly, I hereby state that the whole of the published works, together with the Introduction, Thematic Overviews and Conclusion which have been newly written and are submitted here as the “Thesis by Publication”, are entirely my own original work. No co-authored papers have been submitted. Where I have coordinated major research projects with other researchers, I have submitted publications that draw entirely upon my own ethnographic research and analysis. All the papers have been published and independently refereed in books, professional journals and series.

Given the period of time over which they were written, the published papers vary in format according to the styles required by respective journals and book publishers. For the sake of a more uniform ‘thesis’ appearance, and for ease of reading, the main body text of the original publications has been reformatted into a single style, and follows a sequential page numbering system.

The original page numbering is indicated at the beginning of each published paper. Each publication retains its own discrete set of published references and diagrams, and the numbering for diagrams, notes and references have stayed in their original format in
order to avoid having to make major corresponding changes to the original text of the publications. On the other hand, extraneous journal advertising, author photographs, abstracts, tables of contents, acknowledgements, and editorial pull quotes have been omitted from each of the reformatted papers. Importantly, no changes whatsoever have been made to the text or content of any published work. This ‘original content’ status means that no corrections have been made to any published grammatical or spelling mistakes that found their way into the original published versions.

In respect to the newly written Introduction, Thematic Overviews and Conclusion, the relevant bibliographical references have been placed collectively, at the end of the overall thesis; as are the related endnotes.

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Abstract

This PhD Thesis By Publication poses two concepts — ‘cultures of governance’ and the ‘governance of culture’ — as tropes by which to analyse the contemporary condition of Indigenous governance. The thesis publications enable a theoretical understanding of Indigenous governance as being a culturally self-referential field of meshed nodal networks, and as also influentially shaped by its intercultural articulation with the governmentality of the Australian state. In doing so, concepts of governance, governmentality, field, power, agency, legitimacy, network, culture and intercultural are investigated and theoretically refined.

Eight published papers are presented which have valuable synergies between them. They are laid out under five Parts which focus on particular aspects of governance and governmentality. The publications provide extensive ethnographic evidence and analyses derived from long-term fieldwork undertaken over a period of 37 years in rural, urban and remote Indigenous locations across Australia, as well as with governments and their departments. These provide the bases upon which a cohesive theoretical framework is newly developed by way of the thesis Conclusion. On a more pragmatic level, the Conclusion also highlights the significance of that framework for the ongoing relationship between Indigenous Australians and the state, and their practices of governance and governmentality.
Acknowledgements

A PhD Thesis by Publication is a strange beast and this one has been stranger than most. Along the way, many people gave me their intellectual and personal support; too many to remember in my dotage, let alone list down. But several people deserve as much acknowledgement and appreciation as I can muster. Nic Peterson and Mary Edmunds persevered over a long time with my evident reluctance, encouraging me to ‘just do it’, and then continued to offer useful advice about how to negotiate Australian National University procedures. My dear friend Mary also acted as my unofficial supervisor, stalwart support, and introduced me to Zygmunt Bauman, for all of which I am in her debt.

When the University procedures became so shambolic that it felt very much as if I was *Alice in Wonderland*, John Taylor stepped in to carve a pathway of common sense through the University’s surreal process. He also took on the role of my official University supervisor in early 2010, at a time when he was himself taking over the reins as Director of the Centre for Aboriginal Economic Policy Research. I cannot say how much I appreciate his generous support and efforts on my behalf.

My official ‘supervisory panel’ of John Taylor, Mary Edmunds and Francesca Merlan was only formed in early 2010, in order to satisfy changing University procedures. They generously gave their time to read the entire thesis (two of them for the first time), then duly met together in October 2010 and provided me with helpful feedback based on their combined and considerable professional experience. Will Sanders and Howard Morphy also contributed by generously acting as short-notice referees for my ‘enrolment as a candidate’, to accord with the more standard PhD approach.

In other respects, this was probably the best way for me to do a PhD. I had the space and time to indulge myself by sitting back, thinking and reading. And I have been able to draw upon my field research conducted over a period of 37 years, in order to mull over data, ideas and intuitions. In undertaking this journey, a number of friends and family gave me their insightful assessment of various drafts written by way of introduction and conclusion to the thesis. In particular Michael Dillon, Mary Edmunds, Neil Westbury and Peret von Sturmer provided detailed critiques which helped clarify my thinking on several issues. I appreciate their frankness and am greatly indebted to them.
Several colleagues made thoughtful comments on various stages of the draft text and proposed layout. A number have engaged with me in spirited conversations over the years, in different parts of the country and abroad. I would particularly like to thank Toni Bauman, Maggie Brady, Stephen Cornell, Anne Daly, Mick Dodson, Jason Glanville, Janet Hunt, Bill Ivory, Frances Morphy, Neil Sterritt and John Taylor for their insights over many years; from very different but equally valuable perspectives.

Back in October 1998, I co-convened (with Julie Finlayson) a specialist workshop of the Australian Anthropology Society, to explore the implications of recent Canadian legal cases, for the implementation in Australia of the Native Title Act 1993. We raised funds from ATSIC to bring Neil Sterritt from British Columbia to Canberra as the keynote speaker. He generously introduced me to the governance issues facing his own Gitxsan First Nation, firstly through his extraordinary contribution to the Delgamuukw case, and then more widely via his writings, innovative governance workshops, and our many conversations here in Australia and during a road trip adventure around BC and the Yukon with he and his wife, Barb Sterritt (Dawson City will never be the same). He remains an inspiring mentor.

That early friendship with Neil and Barb led me to Stephen Cornell who generously shared another set of governance stories and experiences from Native American Tribal Governments. Since Stephen’s influential participation in Reconciliation Australia’s conference on Building Indigenous Governance in Canberra 2002, he and his partner Maura Grogan have been enthusiasts for all things Australian; including a good red. Like Neil Sterritt, Stephen has made a remarkable contribution to the robustness of debate about Indigenous governance in Australia, and continued to inspire and mentor many people here; including myself. Given the parochial tendencies that sometimes narrow down academic and policy horizons in Australia, Stephen and Neil’s openness with their ideas has been a breath of fresh air.

I would also like to acknowledge my important institutional debt to the Centre for Aboriginal Economic Policy Research and my colleagues there. Over many years, the Centre enabled me to lead a very privileged research life, spending a great deal of time working on the ground with Indigenous people across Australia; and directly engaging with the wider government, political and policy contexts shaping Indigenous lives.

As part of that professional experience, I was able to play a central role in instigating the Indigenous Community Governance Project at CAEPR, in partnership with Jason Glanville at Reconciliation Australia. We were lucky to draw together a fine team of
experienced and emerging researchers, and benefit from the hard work of an extremely able research manager, Janet Hunt. I would like to acknowledge them all for the intellectual energy they bought to our project research. In particular, I thank Jason Glanville for his steadfast support during that project, his tireless leadership on issues of Indigenous governance in Australia, and for the many ‘governance gigs’ we have enjoyed together around the country; including a memorable discussion in Broome and a best-forgotten night of governance karaoke in Mt Isa.

In regard to my recent fieldwork, Bibinj simply wants to say thanks to Harry Appo, Leanne Evans, Luthor and Margie Siebert, Ronald LamiLami and James Marrawal — the WCARA mob — for their friendship, resilience under fire, and for the bad jokes and Santa Claus. The same deep thanks go to Leah Armstrong and the Yarnteen mob in Newcastle — for opening their doors to me and offering a privileged insight into an extraordinary; and for the line dancing. Sometimes ‘fieldwork’ is just plain fun.

My late academic journey into PhD territory has only been possible because my ‘other half’, Neil Westbury, without complaint, took on the major responsibility for earning our crust while I sat in my ivory tower. He not only supported me financially, but also shared his own remarkable expertise and deep intellectual insights into Indigenous Affairs, while remaining patient and good humoured. Thank you.

And to my son, Peret von Sturmer, what can I say. He accompanied me as a young two-year old boy on my first, long period of field research. We lived on a remote Cape York outstation and he made no fuss about sleeping in a swag and cooking over a fire, and then subsequently spending his early years travelling in ‘troopies’ around distant parts of West Arnhem Land and Cape York. He also accompanied me on this present journey, placing regular phone calls to me from the ‘department of equivocation and malingering’ to make sure I was keeping to schedule. Thank you.

Finally I would like to thank Kitty Eggerking and Hilary Bek who proofread the new text written specifically for the thesis; and Karen Clark and John Hughes who undertook the major challenge of re-formatting the original published papers into a single format to accord with University style guidelines. Given all that input, any inaccuracies or failures of argument and understanding are, most certainly, entirely my own.

This thesis is dedicated to Peret Arkwookerum and his family, and to Nugget Coombs.

Diane Smith
# Table of contents

Statement of Authorship.................................................................i
Abstract ...........................................................................................iii
Acknowledgements.......................................................................iv

## Introduction: Indigenous Governance, State Governmentality and Their Intercultural Articulation — Research Scope, Problems and Layout

Introduction — A Professional Turning Point....................................3
Research Scope and Layout.............................................................5
The Research Problematic ..............................................................7
What Kind of Anthropology Do We Need? ......................................13
Summary..........................................................................................14

## Theme One: Researching Governance and Governmentality — Methodological and Conceptual Foundations

Thematic Overview..........................................................................17

## Theme Two: The State of the Australian State in Indigenous Affairs

Thematic Overview..........................................................................81
Paper 2: From Cultural Diversity to Regionalism: The Political Culture of Difference in ATSIC.........................................................89

## Theme Three: Seeing Indigenous Cultures of Governance

Thematic Overview..........................................................................134
Paper 4: Valuing Native Title: Aboriginal, Statutory and Policy Discourses About Compensation .........................................................146
Paper 5: Indigenous Families, Households and Governance ................181
Theme Four: A Society of Organisations? .......................................................... 203
  Thematic Overview ......................................................................................... 205
  Paper 6: Representative Politics and the New Wave of Native Title Organisations ................................................................. 213

Theme Five: Governance and Governmentality in the Intercultural Space ................................................................................................. 267
  Thematic Overview ......................................................................................... 269
  Paper 8: Cultures of Governance and the Governance of Culture: Transforming and Containing Indigenous Institutions in West Arnhem Land ................................................................. 275

Conclusion: Towards a Conceptual and Theoretical Framework .......... 318
  Theorising Governance ................................................................................. 320
  Culture Matters ............................................................................................ 321
  Theorising Power and Agency ...................................................................... 322
  Theorising the Australian State and Governmentality .................................. 324
  The Radical Specificity of Indigenous Governance ....................................... 329
  Theorising the Intercultural Space ................................................................ 344
  Conclusion .................................................................................................... 351

Appendices
  Appendix A: Curriculum Vitae with full list of publications....................... 354
  Appendix B: A Regional Governance Environment in Central Australia....... 372
  Appendix C: Regional Governance Models ................................................ 376

Figures
  Figure 1. A simple Indigenous network with five nodes ........................... 135
  Figure 2. The strength of weak or loose coupling ..................................... 334
  Figure 3. The strength of strong coupling ................................................. 335
  Figure 4. The recursive mechanism of Indigenous mesh nodal networks .... 338
  Figure 5. Governing nodes and circuitries ................................................ 341
Maps
  Map 1: Fieldwork locations of the Indigenous Community Governance Research Project

Notes

References
Introduction:

Indigenous Governance, State Governmentality and Their Intercultural Articulation — Research Scope, Problems and Layout
Introduction: Indigenous Governance, State Governmentality and Their Intercultural Articulation
— Research Scope, Problems and Layout

Introduction — A Professional Turning Point

Late in 1972, as an undergraduate in my final year of studies at the University of Queensland, I had the good fortune to be employed over the summer by the Aboriginal Cultural Foundation.¹ My job was to work with Mirriwung-Gajerrong Aboriginal people living on the newly-created Mirima Reserve² on the outskirts of Kununurra, Western Australia, and assist them in hosting a bungall, or ‘dance festival’, attended by Aboriginal groups from surrounding Kimberley communities.

Over the course of working for three months with Aboriginal residents of the reserve, I witnessed what I then concluded to be a peculiar process of misguided good intentions mixed with misunderstanding. Three years earlier, a local Catholic priest and welfare officer³ living in Kununurra had created a new ‘Aboriginal organisation’ — the Mirima Council — to represent the growing reserve population. The organisation was based entirely on western organisational structures, democratic decision-making processes and norms of accountability. The priest and government officer selected Aboriginal people to hold the positions of secretary, treasurer and chairman; though the organisation was effectively directed by the priest.

From my short period of participant observation it seemed apparent that Aboriginal people on the reserve had their own ways of organising and ordering their lives; something we now call ‘governance’. People appeared to get things done, collectively and individually. Issues were discussed, disagreements and alternatives considered, problems settled and sometimes not, and action taken or not. The Aboriginal members of the visiting dance groups were quickly incorporated as ‘family’ into local kin and social networks. In the context of organising the bungall, several men and women took on visibly prominent leadership and decision-making roles. As one old man succinctly put it to me: ‘We all have our own bosses who tell us what to do’ (von Sturmer (nee Smith) 1976: 186).

Yet this Aboriginal arena of networked relationship and authority remained largely invisible to external government and church officials. They carried out their local administration of Aboriginal life ‘barely touching an underground movement … an
“other life” continuing within the Aboriginal groups … of Aboriginal decisions and leadership’. I concluded at the time that there literally seemed to be ‘two worlds [which] remain mutually, and often deliberately, unintelligible’ (ibid: 200). In many ways, this current PhD thesis by publication represents the research outcomes of my ongoing professional investigation of these distinctive ways of governing, and the consequences of their mutual incommensurability.

That experience provoked me to write an Honours Thesis in 1974 (von Sturmer (nee Smith) 1976) in which I used Kununurra as a case study to investigate Aboriginal modes of leadership and decision-making, and the colonial and academic conditions contributing to their illegibility to outsiders. I concluded, in part, that the case study highlighted:

- the grave dangers of imposing European structures and mechanisms on Aboriginal situations. [Noting that] decision making powers, once highly personalised and operating within the context of distinct, autonomous local groups, have become submerged and depersonalised under the bureaucracy of various European-administered or dominated life situations (von Sturmer (nee Smith) 1976): 199).

I also suggested that one consequence of such submergence was that:

- In the midst of an imposed European organisation, the Aboriginal men of authority remained silent [and] … when the priest left town, the Council virtually ceased to exist (ibid: 172).

Not surprisingly, I had more questions than answers to provide at that time. I made several suggestions for refining methodological practice for an anthropology of leadership and decision making. And I rather grandly declared that part of the analytic difficulties for anthropologists lay in the blind spots perpetuated by their ‘lingering assumptions of European social-evolutionist paradigms’ (ibid: 4). That colonial paradigm had cast Australian Indigenous societies as a museum of primeval humanity, lawless and leaderless. It is a paradigm that continues to remain influential today.

The Kununurra experience was a professional turning point for me; of the kind Emirbayer and Mische (1998) associate with agency and events that give direction to one’s life, and which Andrew Abbott (2001: 250, 258) perceptively referred to as ‘those rare transitions that take us between different probability regimes … a random, but major disturbance intervening in the life course’. After that experience I went on to
carry out numerous research projects which continued to question the ways in which the lives of Indigenous Australians and their modes of governance were being intimately shaped by the Australian state. Such research investigations have encompassed Indigenous systems of land-tenure, social organisation, land rights and native title, socioeconomic status and development, family life and developmental cycles, women’s roles and responsibilities, and the formation and operation of specialist Indigenous organisations (see Appendix A for a full list of my professional publications on these topics).

Woven through each project has been the warp thread of ethnographic investigation and anthropological analyses of Indigenous leadership, power and authority, decision making, dispute resolution, compensation, the cultures and effectiveness of organisations, identity politics, and the relevance of cultural geographies to rural, remote and urban Indigenous groups. These are arguably all elements of what I now refer to more holistically as ‘Indigenous governance’; a concept which lies at the heart of this thesis and which is problematised and elaborated in the remainder of this Introduction.

The weft thread woven through my research projects has been the investigation of the Australian state’s encounters with Indigenous Australians and their cultures of governance. To follow that thread, I have undertaken extensive ethnographic fieldwork over several decades in the corridors of the Australian state, observing its technologies of power, policy formulation and implementation processes, bureaucratic cultures, rationales, languages and institutions. These are aspects of what I refer to below as the Australian state’s ‘governmentality’; a concept which is also problematised and elaborated on below.

**Research Scope and Layout**

It is the warp and weft of articulation between Indigenous governance and the Australian state’s governmentality, and the consequences of that for all involved, with which this thesis is most centrally concerned. The fabric of that articulation is not a natural or seamless one; despite the efforts of some actors to naturalise preferred power relations, modes of interaction and kinds of relationship as the accepted conditions of articulation.

To better elucidate the pattern of that interwoven fabric, the thesis poses two concepts — ‘cultures of governance’ and the ‘governance of culture’ — as tropes by which to analyse the contemporary condition of Indigenous governance as being a self-
referential field of social order-organisation, as well as influentially shaped by its intercultural articulation with the governmentality of the Australia state.

As suggested in the preliminary “Statement of Authorship”, the layout of a “Thesis by Publication” is more complicated than that of a standard PhD thesis. An Introduction, five short Thematic Overviews and a Conclusion have been newly written for the purposes of contextualisation, evaluation of research contribution, and the coherent advancement of an overall theoretical argument.

Eight original papers have been selected for inclusion as the ‘thesis by publication’. They cover a 13 year period between 1995 and 2008, and understandably, in a collection written over such a period there is some overlap in the ethnography and literature reviewed. Nevertheless, each paper stands on its own, providing a vantage point from which to more closely examine different aspects of Indigenous governance, state governmentality, and their articulation. The papers represent a much smaller subset of the significant body of the anthropological field research and analyses I have undertaken and published on this broad topic. (My complete Curriculum Vitae is attached at Appendix A where approximately 60 publications have been highlighted that directly deal with issues of Indigenous governance and state governmentality.) However the selected papers reflect my evolving theoretical consideration of this subject that spans a longer period of more than three decades.

The published papers have been chosen because there are valuable analytic synergies between them. To further elaborate on those, particular papers are located together under five Thematic Parts, each of which addresses a component of the overall thesis analysis. This arrangement enables a finer analysis of issues within each theme, at the same time as facilitating the progressive development of a broader thesis argument.

A new Thematic Overview sits at the beginning of each Theme. These have been written in order to contextualise the research content and draw out the specific contribution of each paper to the particular thematic issues being examined and to the overall thesis argument.

The five Thematic Parts are:

- **Theme One**: Researching Governance — Methodological and Conceptual Foundations
- **Theme Two**: The Australian State in Indigenous Affairs
- **Theme Three**: Seeing Indigenous Cultures of Governance
• **Theme Four**: A Society of Organisations

• **Theme Five**: Governance and Governmentality in the Intercultural Space.

It is worth noting here that while individual papers have been placed under different themes, each is directly relevant to the broader issues discussed in other themes. This overlap is not a disadvantage. Often an insight from one period of field research and its related publications has been re-examined in subsequent research and papers. Some of these investigative journeys have led to research hypotheses being abandoned; others have revealed ‘swarms of possibilities’ that have led to further insights and understandings (Ingham 2009).⁹

But perhaps most importantly for the purposes of this ‘thesis by publication’, the theoretical implications of the combined papers and their thematic analyses are greater than their individual research parts. The combined evidence and analyses provide a unique platform from which to synthesise an overarching theoretical and conceptual meta-framework — one which affords a more integrated orientation to the varied approaches and vantage points of the themes and their papers.

This meta-framework is provided in the newly written **Conclusion** which sits, in more standard fashion, at the very end of the thesis. The framework does not assert an all-encompassing normative theory of governance. Rather, the Conclusion progressively lays out a set of more abstracted comprehensions that are designed to explain the phenomenon of Indigenous governance, state governmentality, their underlying conditions and intercultural articulation — abstractions which not only have internal consistency, but demonstrate a high degree of external consistency with the long-term and diverse field observations and examples laid out in the thesis publications. On a more pragmatic level, the Conclusion also highlights the significance of that framework for the ongoing governance relationship between Indigenous Australians and the state.

**The Research Problematic**

Several interrelated research problems and concepts lie at the heart of the thesis publications. These are summarised below and are subsequently investigated in greater ethnographic detail and from different vantage points in the selected publications. They are as follows:
Problematising governance

At the heart of the collected works lie the general problem of understanding how ‘governance’ as rule and order are organised over time within Indigenous Australian societies, and conversely, how disorder and decay are conceived of and managed. How do things get done collectively and individually in groups? Is there a specificity to Indigenous governance? Does it evidence an internal cultural logic in the way it is constituted, represented and practised? Is it uniform or heterogeneous in its mode of practice? How can the position of Indigenous governance and organisations be understood in the context of the surrounding governance environment within which they are now encompassed?\(^\text{10}\) The published papers, their Thematic Overviews and the thesis Conclusion indicate how such questions might be addressed.

Problematising governmentality

The second research problem addressed by the publications is that of understanding the Australian state’s own ‘governmentality’; that is, its organised institutions, practices, modes of power and regulation used to govern a society. For analytic purposes, the papers locate this specialist field of state-work within what is variously known as ‘Aboriginal affairs’, ‘Indigenous affairs’ and the ‘Aboriginal industry’.\(^\text{11}\) The papers collectively argue that an ongoing project of the Australian state, pursued via its various policy and political guises over several decades, has been to shape and direct Indigenous culture and its governance in distinctive ways.

Under the ethnographic lens provided by the papers, Michel Foucault’s (1991: 87–104) concept of governmentality will be critically evaluated and refined. For instance, is the concept of governmentality sufficient to explain the Australian state’s conduct of Indigenous affairs? How is the state’s governmentality configured, represented and practised? To what extent does the concept differ from ‘governance’? The thesis papers, Thematic Overviews and Conclusion indicate how such questions can be addressed.

A problem with culture?

A common analytical thread running through the two research problems above is the question of culture; a problem which anthropologists have been, on the whole, ambivalent towards (see Fischer 2007). I take culture to mean the ways in which a group of people imagine and give practical effect to their collective lives, including their ideas and modes of thought, the different ways in which those are externalised or made accessible to them, and the social distribution, shared practice and representations of
those ideas and meanings across the group. In short, the complexity of culture resides not only in the head and heart, but also in grounded individual and collective practice (Kirsch 2001: 179).

While research studies of Indigenous societies are replete with considerations of culture, the post-modernist persuasion in anthropology has seen culture rejected as hopelessly subjective and indeterminate, and thereby relegated to the closet like an embarrassing family relative. Theories about the state have tended to detour around culture, more commonly looking to institutional, economic, political and global-systems analyses. But, as is its wont, culture keeps creeping out of the theoretical closet, insisting on our attention.

In this context, Nicolas Peterson’s recent criticism of trends in Australian anthropology holds equally true for the profession’s approach to Indigenous governance and statist governmentality; namely,

social relations, social institutions, social organisation and social context have all come to be relatively neglected by many field workers … [who] overlook the significance of structures and norms in all societies, as well as beliefs and feelings, for both the people themselves as well as for the institutions of the Australian nation-state (Peterson 2008: 194-5).

Accordingly, the third research problem addressed by the thesis involves treating the issue of culture as a phenomenon to be explained and integrated into a broader analysis of the Australian state and its governmentality of Indigenous affairs; not simply relegated to an exoticised Indigenous sideline. This implies that researching the state’s governmentality should be productively receptive to ethnographic methodologies and analyses, and lend insight into the nexus of state-culture and Indigenous-culture and their articulation with each other.

Such an approach highlights several related research problems that need to be interrogated. On the one hand, the papers report that many Indigenous people perceive and assert they have a distinctive and autonomous Indigenous way of being, doing and thinking; which includes their way of governing. Cultural difference is valued and reinforced — in relation to both neighbouring Indigenous groups and other Australians — and markers of difference are used as designators of distinctive Indigenous group identities.
Over the past 20–30 years, Australian anthropologists have recognised Indigenous perceptions of difference (both internally, and in respect to other Australians) through the trope of ‘domain’; that is, that there is a distinctive and heterogeneous Indigenous sphere of knowledge, thought and action. And yet there is also a widespread Indigenous recognition of there being valued commonalities underlying their own internally diverse cultures; a recognition that is often succinctly expressed by Indigenous people as ‘we all the same but different’.

How then is Indigenous cultural difference and commonality, and Indigenous autonomy and relatedness to be understood given the seemingly dense penetration by Australian culture and the state’s governmentality into Indigenous lives? And what are the implications for Indigenous modes of governance? Not surprisingly, the analytic shortcomings of the concept of a neatly bounded and separate Indigenous ‘domain’ have been reassessed in recent years by Francesca Merlan (1997, 1998, 2005), Melinda Hinkson and Ben Smith (2005) and Janet Hunt et al (2008). The work of Merlan, and Hinkson and Smith in particular, has promoted a conceptual move away from the term ‘domain’ to that of the ‘intercultural’.

My own papers presented in this thesis record a similar conceptual journey away from ‘domain’, albeit a journey that has led me to a slightly different analytic conclusion. In summary, the thesis position argues that while the anthropological turn to the intercultural is welcome as a more nuanced conceptualisation of entangled lives, the scholarly move away from the understandings captured by the concept of ‘domain’ risks losing the ethnographic insight and weight flowing from Indigenous self-perceptions of there actually being ‘a difference’ between Indigenous and other Australian cultures (and especially between their modes of governing). For example, the published papers provide robust ethnographic documentation that not only is there an intimate entanglement of cultural differences that routinely occurs in the intercultural encounters between Indigenous governance and state governmentality, there is also a distinctive cultural logic to Indigenous arrangements.

To introduce greater clarity of language at this early point, this Introduction conceptually poses both Indigenous governance and statist governmentality as fields; and specifically as self-referential and self-organising fields. These characteristic conditions are explored by the thesis papers. The ethnographic data provided in the publications indicate that an elaborated concept of ‘field’ holds more analytic value and application than the term ‘domain’, which remains vague in respect to issues of internal
Indigenous contestation and negotiation of its own boundaries of difference. Furthermore, the concept of ‘field’ enables a more nuanced consideration of the interplay between culture and the intercultural. Specifically, the ethnographic evidence requires us to treat Indigenous and statist fields as cultural formations constituted through a body of learned beliefs, institutions (rules of the game) and values, with a repertoire of practices and capital and, as a consequence, preferred ways of organising social order and exercising power and agency.

This approach enables refinements to be made to Pierre Bourdieu and Loic Wacquant’s concept of field as a system of agents and their social positions internally structured by power relationships, hierarchy and associated forms of capital (Bourdieu 1993, 1999; Bourdieu & Wacquant 1992: 100, 104, 1993: 72, 1999). As cultural formations, fields are not only social positions, but also have organisational, political, symbolic and economic positionality that need to be unpacked as part of an analysis of governance and governmentality. Importantly, the evidence of the thesis papers suggests that any field must be conceived of not only as a terrain of contestation and hierarchy, but as also encompassing potential rapprochement, alignment and transformation.

The challenge taken up by this thesis is that our current terminology and theoretical frames appear inadequate to the task of accounting for the complex entanglement and strain towards autonomy of such cultural fields.

**Problematising the intercultural**

This leads to the fourth research problem addressed by the thesis papers. If Indigenous governance and state governmentality can be posed as culturally configured fields, how might we account for their intercultural articulation and self-referential autonomy? The concept of the ‘intercultural’ is particularly under-developed and in need of ethnographic and theoretical elaboration. This thesis draws on the benefit of the ethnographic depth and timeframe of the published papers to address this gap and develop a conclusion that affords a more cohesive conceptual and theoretical account.

The papers show that the intercultural can be conceptualised as an emergent, adaptive space of articulation. The emergent quality of the intercultural moment does not mean it is ever-present in people’s lived experience, or even perceived to be present. Furthermore, the cultural specificity of the fields of governance and governmentality does not negate their capacity for relationality in an intercultural space, nor the struggle that may be required of each to protect that specificity or negotiate potential alignments.
across the fields. Accordingly, the papers suggest that distinctive fields and the intercultural space can be viewed as being in dialectic tension, part of an emergent continuum rather than an oppositional dualism.

In which case, the thesis papers can be read as elucidating that continuum of unfolding moments when boundaries of difference and similarity, engagement and aversion are made manifest, interpreted and acted upon. In this way, the papers collectively unpack the concepts of ‘culture’ and the ‘intercultural’; albeit without wanting to reify either as *sine qua non* determinants of the fields of Indigenous governance and statist governmentality.

**Problematising power and agency**

In many contemporary accounts of the state, concepts such as power and governmentality are invariably posed in counterpoint to those of local resistance and disadvantage. This has led to Indigenous society being characterised (and contained) in terms of oppositional dualisms; for example, continuity/loss, individualism/collectivism, tradition/modernity, and functional/dysfunctional. Such dualisms situate Indigenous people in contradictory ways that are beyond their limits; as the powerless objects of victimisation or intervention by a punitive state; as dependent and dysfunctional subjects experiencing overwhelming ‘suffering’ through their own inability to enter into modernity; or as heroic agents engaged in defiant practices of resistance and self-determination. In all such representations, their condition is reduced to the consequence either of unassailable power differentials, or the cultural failure of their own modes of agency.

However, culture is treated in the published papers as consequential — a thing of power and agency that affects weighty individual and collective issues. From this vantage point, it is not surprising that in the encounters between Indigenous and statist fields, culture itself becomes a subject of contestation over meaning, value and power. While power differentials are properly part of the analytic meat of investigation into such encounters, the ethnographies presented in the thesis publications suggest that a preoccupation with power differentials serves to hide occasions when the supposedly powerless are simply ungovernable, remove themselves from scrutiny, or use cultural difference as a buffer to ward off the intrusive state.

Numerous occasions are described in the papers when Indigenous people exercise their exit option, performing ‘the art of not being governed’ (Scott 2009; see also
Peterson 2009, 2010) and ‘keeping the state away’ (Shah 2007; Pierre & Peters 200:208). But the papers also document occasions when Indigenous people deliberately and strategically engage, asserting what could be called their niche agency and power; for example, as forms of ‘grassroots’ and cultural politics, and more recently through policy debates about culture carried out in the public media.15

The consequences of these varied forms of Indigenous agency are of the same kind identified by James Ferguson and Akhil Gupta (2002); namely, they inadvertently call into question the ability of the state to sufficiently spatialise its authority over Indigenous people. The state’s power may be substantial, but it is not always present or effective in Indigenous lives.

Accordingly, part of the project of this thesis is to problematise power and agency within and across the two fields. The issue of agency is interrogated by the thesis papers not only in terms of people’s ability and willingness to accomplish things in the world they inhabit, but also in terms of the conditions and constraints acting upon them, including their relative and differently configured power. The papers describe processes and events where there are mutual efforts on the part of the state and Indigenous Australians to govern each other in subtle and insinuating ways not always apparent to the other. In such ways, both may be transformed in unexpected ways, at multiple points over time.

This is not to suggest that the conditions and practise of Indigenous governance and the Australian state’s governmentality are of the same kind. Rather, that we need to rehabilitate the complex nexus between power and agency, and their particularistic cultural moorings and range, back into our analyses of the intercultural.

What Kind of Anthropology Do We Need?

The research problems summarised above raise the question of what kind of anthropology is sufficient to the research. In following my own admonition from 1973 to stay close to the insights afforded by Indigenous self-representations and ethnographic evidence, the question can be reframed accordingly: Can abstracted comprehensions (theory) be developed through what Veena Das (2008: 248–9) calls ‘a descent into the everyday’,16 as the ground from which we can then move towards the sites of state power and governmentality, Indigenous power and governance, and their intercultural articulation?
The collected papers arguably confirm that we cannot provide an intercultural account of Indigenous governance without ethnographically mapping and understanding the state’s own cultural field of governmentality in Indigenous affairs; and vice versa. Hence the papers call for an anthropology of ‘being there’ as the foundation stone of robust theory.

This means pursuing a fine balance (ethical and intellectual) between what Loic Wacquant (2001: 3) appropriately refers to as the ‘cool’ analysis of ‘hot’ experience. More than that, the anthropological position espoused in the papers is that theory and ethnography are, and should be, intimately interwoven. In order to model Indigenous and statist intercultural encounters, we must realign our ethnographic and analytic pathways so that field research becomes, minimally, an equal order (not lower-order) ground upon which our abstract understandings develop, ‘continue to be refined and empirically tested, and made intelligible to others’ (Smith 1997: 10). The Conclusion to this thesis of publications acts upon that position, developing an integrated set of abstracted understandings that nevertheless remain firmly rooted in Indigenous realities and documented ethnographic observations.

**Summary**

In pursuing these insights and research problems, the papers selected for this thesis elaborate my professional stance developed over many years; namely, of keeping analytically open the future of Indigenous Australians in the context of a purportedly post-colonial Australian state in which both Australian and Indigenous cultures are deeply mythologised. It is a stance which, above all, neither tries to reconstruct the ethnographic pastoral (Clifford 1986) of a romanticised cultural form of Indigenous governance or altruistic agency, nor reduce Indigenous life to one of terminal suffering, fragmentation or corruption. Rather, the collected papers highlight the encultured agency of Indigenous people in constituting and interpreting (consciously and unconsciously; productively and destructively) the meaningful conditions of their own self-governance. Those insights are then extended into the intercultural space where Indigenous agency and power are challenged and contested.
Theme One:

Researching Governance and Governmentality —
Methodological and Conceptual Foundations
Overview of Theme One: Researching Governance and Governmentality: Methodological and Conceptual Foundations


The research problems outlined in the Introduction are ambitious and raise significant issues of research practice. This challenge, combined with the relatively under-theorised nature of governance, has encouraged an experimental methodology, the elements of which have been drawn together in Paper 1. The paper was written to provide an overarching framework for a major Australian research project on Indigenous Community Governance (ICG) which I was instrumental in instigating and subsequently coordinating. The other published papers that are included in this thesis consider particular conceptual and methodological aspects of that framework, from different vantage points. Their insights are also integrated into the thematic overview below.

The currently small body of anthropological literature on Indigenous governance is reviewed in Paper 1. The paper highlights the lack of in-depth discussion of the methodological question of how one actually ‘studies’ governance. This is similarly evident in the growing anthropological literature on the governmentality of the modern state. Paper 1 sought to address that gap for the purposes of the ICG Project which was national in its coverage and long-term in its field research by a multi-disciplinary team who investigated:

1. the diverse conditions of governance — cultural, social, economic, legal, institutional and historical — of governance in local organisations, communities and across regions;

2. the various models of governance (established and emerging), and the institutions, leadership, decision-making processes, structures, powers and capacities involved;

3. the factors determining the cultural legitimacy of governance arrangements;

4. the assets and gaps in community governance capital; and
5. the nature and impacts of the wider ‘governance environments’, including the role of governments, the private sector and so on.

Between 2003-2008, ICG Project researchers conducted ongoing field research with 12 Indigenous communities and their leaders, with Indigenous representative and service delivery organisations, and also with governments and their departments (including the Australian, State, Territory and local governments) (See Map 1).

Map 1: Fieldwork Locations of the Indigenous Community Governance Project.

As a Chief Investigator of the ICG Project, I also undertook extensive field research of my own with remote, rural and urban Indigenous communities, their leadership, service-delivery and enterprise organisations, and related public sector stakeholders. I carried out long-term fieldwork with the Yarnteen Aboriginal and Torres Strait Islander Corporation in Newcastle, New South Wales (see Paper 8 and also Smith 1996); with Aboriginal leaders, communities and organisations in West Arnhem Land, Northern Territory (NT) (see Paper 9 and also Smith 2007); and with the NT and Australian Governments (see Paper 9 and also Smith 2004, 2008).
My research coordination role included supervision of PhD students and other members of the research team, as well as undertaking comparative analyses of the project’s diverse fieldwork data. Alongside published papers, I also produced an extremely large body of reports, case studies, evaluation and policy papers, conference and seminar presentations under the project (both as sole author and collaboratively). These publications are available on Project website at:
http://www.anu.edu.au/caepr/projects/governance.php. The final edited publication from the ICG Project, *Contested Governance: Culture, Power and Institutions in Indigenous Australia* (Hunt, J. & Smith, D.E et al 2008) has been particularly influential. It is published by the Australian National University’s EPress and to date there have been over 50,000 electronic downloads of the entire book.

The ICG Project utilised a participatory approach and ensured the findings were widely communicated. As part of that approach I authored and collated a substantial body of practical governance tools, best-practice examples and information in order to develop the *Indigenous Governance Toolkit*; a web-based resource that is hosted by Reconciliation Australia at: www.reconciliation.org.au/governance.18

**Conceptual Innovations: Governance**

The parameters for reconceptualising several foundational terms that lie at the heart of the thesis papers are examined in *Paper 1*. The search for a cohesive definition of governance has bred its own academic debate, leading to a plethora of definitions oriented to particularistic modes and contexts, but with only a small sub-set considering its Indigenous forms.19 The definition of governance that emerges from the thesis papers (set out in detail in *Paper 1*) is that of a dynamic system of order, control and power by which people collectively organise themselves to accomplish their desired ends and negotiate their rights and interests with others.

The governance of Indigenous Australians must also contend with influential conditions and agents within the wider environment. When writing *Paper 1* for the ICG Project, I coined the term ‘governance environment’ to refer to that surrounding combination of things, agents, conditions, institutions, influences, networks and relationships within which Indigenous governance is situated and encapsulated.

In Australia, this wider governance environment contains a shifting multiplicity of overlapping, powerful fields of governmentality and governance; both Indigenous and non-Indigenous. Appendix B provides a partial snapshot of such an environment in Central Australia. It is not surprising that Indigenous people often identify this
conglomeration *en masse* as all being ‘government people’, ‘from government’. In respect to the place and standing of Indigenous governance within this wider environment, the papers document both its culturally self-referential modes of power and agency, *and* its encompassed positionality that is especially shaped by the meta-governance capital and powers of the Australian state.

The concept of the governance environment has important implications. First it is a powerful methodological injunction that local expressions of governance and governmentality cannot be adequately analysed without being alert to the wider set of conditions, agents and practices. Second, it provides added assurance that important governance factors and processes are not overlooked. Third, it highlights the multiple sources of power, agency and meaning involved. Fourth, it makes clear that the state is not apical and removed ‘up there’, but spatialised and dispersed across the governance environment. This in turn highlights the wider front of the state’s encounters with Indigenous peoples.

Importantly, the concept also points to the dispersal (albeit uneven) of Indigenous people throughout the layers of the state’s governmentality. Indigenous individuals appear, for example, as bureaucrats employed by government departments and agencies; as elected representatives of statutory authorities established under government legislation; as Indigenous leaders sitting on government committees, tribunals, commissions and inquiries; and as experts providing an Indigenous perspective into government. This constitutes a significant intercultural penetration by Indigenous people into the body of the state; an issue addressed in several of the published papers.

**Paper 1** demonstrates that this extended conceptualisation of governance provides a valuable frame of reference enabling a more cohesive analysis. Firstly, the concept of governance pinpoints important historical and global issues influencing Indigenous Australians’ encounters with the state; issues which have previously been tackled in a piecemeal manner. Second, it encourages a coming to grips with the relational, interactional and diversely imagined modes of governing power and agency involved. Third, it serves as an alert to the cultural standards and values invoked by people to assess the legitimacy of governance arrangements and outcomes. Fourth, it identifies the need to consider the end issues at stake and the consequences for real people in their lives of the exercise of both governance and state governmentality. Finally, the ethnographic evidence in the thesis papers confirms the need for a more nuanced
concept of governing power and agency so as to discern not only their heterogeneous forms, but also their negotiated limits and shifting constraints.

This more sophisticated approach to governance is examined from various vantage points throughout the thesis papers and is summarised below.

**Conceptual Innovations: Governmentality**

A common concern throughout all the papers is the investigation of Indigenous governance as a site for the ongoing business of contesting and negotiating relationships of power and identity between Indigenous Australians and the Australian state. In that respect, *Paper 1* argues that the term ‘governance’ is not synonymous with ‘government’ or ‘governmentality’.

Michel Foucault’s (1991) influential concept of ‘governmentality’ is generally understood as the ensemble of organised institutions, practices, tactics and technologies of power and regulation which states deploy to render a society (constructed as a ‘population’) governable. The concept is taken to be constituted by the linking of governing (*gouverner*) and modes of thought (*mentalite*) (Lemke 2001: 2, 2004). However, Foucault’s conceptualisation has been overly determined by its association with the historical emergence of the European nation-state. This does not fit well with either colonised minorities, or the purported ‘hollowing out’ (Jessop 1994, 1999) and de-bordering of the nation state’s territorial sovereignty as a more recent consequence of globalisation and the transnational flows of capital.

Collectively, the ethnographic evidence and analyses of the thesis publications promote a conceptual refinement of ‘governmentality’ to encompass a broader, threefold meaning:

Firstly, the governmentality of the Australian state is shown to imply its governmental*ility*. As with Foucault, this comprises its rationales, logics, and ways of thinking (see also Smith 1993a, 1993b, 2002a, 2002b).

Secondly, the term is also shown to infer the Australian state’s organisation of governing as *government*-ality. This highlights the progressive *government*-alisation of the state through its particular modes of structural power, administrative technologies, bureaucracies, institutions and hierarchies. For example in Australia, the state, parliamentary democracy, federalism and its jurisdictional modes of governmentality are now arguably coexistent and co-dependent (see also Smith 1992a, 1992b, 2002a).
Thirdly, the term necessarily implies a dimension that has not been commonly recognised under the concept of governmentality; namely, the state’s own internal ‘governance of government’ wherein it governs its own conduct of others’ conduct. The state’s own self-governance is comprised of a distinctive internal culture, relations, networks, values, ways of making decisions and holding itself accountable (see also Smith 2004, 2008).

This conceptual and theoretical insight argues that governance matters for governmentality. It matters not only in respect to the state’s own need for self-governance, but also to its exercise of power. While researchers such as George Steinmetz (1999: 11) are correct in concluding that globally the state is hardly ‘withering away’, the papers demonstrate that the coherence of its governmentality (and hence of the Australian state itself) is vulnerable to the growing dispersal of statist powers and responsibilities to other agents within the wider governance environment. This trend has significant ramifications for Indigenous governance.

**Innovative Methodological Practice**

Research into Indigenous governance, state governmentality and their articulation requires innovative methodology. **Paper 1** describes such an approach used for the ICG Project, and the subsequent thesis papers also contain examples. This Thematic Overview summarises the key elements of an overall methodological framework that has enabled a robust research approach to this complex topic.

**Multi-sited ethnography**

The thesis papers document one of my central methodological strategies; namely, the multi-sited investigation of Indigenous governance and state governmentality. Similar to the approach advocated by James Clifford (1997) and George Marcus (1995, 1998), mine has had the advantage of many years of fieldwork and an extensive coverage of ‘field’ sites spanning Indigenous cultural geographies as well as political and jurisdictional scale (see also Dodson & Smith 2003; Smith 2004, 2007, 2008). The considerable benefits include affording multiple vantage points from which to examine encounters between Indigenous governance and the Australian state. For example, the thesis papers document examples of my research:

1. ‘studying with’ Indigenous Australians (undertaking participant observation of, and living with, Indigenous families and groups in a wide range of settings);
2. ‘studying up’ (by undertaking anthropological and applied field research in the corridors of government, and through observant participation (Nader 1972; Wacquant 2001) as a member of official government inquiries, commissions, tribunals, and committees); and through

3. ‘studying in’ (by undertaking paid employment in Indigenous organisations and government departments and statutory authorities, and carrying out Indigenous-commissioned internal reviews and evaluations of their organisations).

I have treated all of these as fieldwork sites where each has benefitted from the use of anthropological research tools and analysis.

**A comparative and longitudinal approach**

Anthropological research in Australia has commonly been through one-off case studies, usually as fieldwork with a single community, or a sub-group within it. As Paper 1 notes, while such research can be valuable in the description and analyses of local issues, it tends to lack broader application because of a lack of any comparative methodology. As a result, the conclusions of research in a single location or with one group are rarely seen to be valid for others.

Earlier comparative work by Australian colonial researchers was hampered by naive social Darwinian assumptions and simplistic implementation (see Herzfeld 2001; Moore 2005). The marginalisation of comparative approaches has also inadvertently been reinforced by the analytic primacy given to the cultural heterogeneity of Indigenous societies; i.e. they are purportedly too different to be compared.22

In recent decades there has been a renewed interest in comparative methodologies (Marcus 1995; Moore 1987). An important aspect of my research has been the design of methodological strategies to promote greater validity of comparative analysis and insights across diverse sites. Key components of that approach are described in the thesis papers and summarised here.

Firstly, an *Indigenous Governance Field Manual*23 was developed for use by the ICG Project research team (see Paper 1: 8, 28-9; and also Hunt & Smith 2006, 2007). The manual laid out a comprehensive set of research questions that were investigated by all researchers during repeated fieldwork. It proved an invaluable tool for facilitating comparative validity across the several case studies which were diverse in their governance histories, scale, arrangements and location.
Secondly, I also developed, tested and administered standardised interview and survey questionnaires which were repeated at intervals with similarly sampled populations and groups in different locations (see also Smith 1996, 2001a & 2001b). Another valuable source of comparative data I have used are time-series quantitative data; e.g. for organisations, communities and aggregate individual-level across different locations (see Hunter & Smith 2000; Smith 2001b, 1994a 1995b, & 1995c).

Longitudinal case studies have proven especially useful for documenting the ‘governance histories’ of different Indigenous communities, organisations and government departments; their changing patterns of leadership and decision-making processes; as well as the longer-term developmental cycles of organisations, networks and government departments.

Fourthly, important insights have been obtained by mapping the genealogies of government discourse, institutional architecture and bureaucratic language in Indigenous affairs, including their slow shifts and dramatic turnarounds (Papers 2 & 4). Lastly, the ethnographic documentation of chains of related events as they unfold over time has provided rich insights into the influential factors, rationales and agendas at play in intercultural encounters (Papers 8 & 9, Smith 1993a, 1993b, 1996).

These techniques have facilitated what Sally Falk-Moore calls a ‘time conscious anthropology’ (1987, 2005:3). It enables comparative analyses to be refined over time and provides greater assurance that short-term conditions are contextualised within broader developments and debates, and not inflated above their importance.

**A focus on governance events**

A shared concern of the thesis papers is to discern and understand the intercultural moments of articulation between Indigenous governance and state governmentality; moments where, as Alberto Jimenez (n.d.: 27) eloquently puts it in The Form of the Relation, there is an ‘unveiling [of] the processes through which the invisible reveals itself’. At such moments hidden worlds of value, meaning and interpretation collide, setting off different trajectories. The papers document and analyse many such unfolding moments which, rather less eloquently, I refer to as governance events.

Marshall Sahlins (1985: 153; 1990) suggested that an event is not just ‘a happening in the world’, but a relation between a certain happening and a given symbolic system. An event ‘is the empirical form of system’. Furthermore, as Harold Garfinkel (1967) reminds us, knowledge is occasioned, it is the outcome of a social situation and
interaction. Governance events therefore are performed and observable interactions, revealing governance knowledge and expertise in particular situations, and exposing incommensurable meanings, values and representations. Not surprisingly governance events in the intercultural space can foreground contestation over preferred kinds of power and agency. It is through observation of such close-quarter events that persistent efforts to control persons and processes can be detected.

The thesis papers demonstrate that particular kinds of events are important sources of diagnostic information about the intercultural articulation of governance and governmentality. They include acts of decision-making and consensus-moulding; public disputes and their management; negotiation and mediation processes; public acts of compensation; elections; land claim hearings; board, council and departmental meetings; meetings between Indigenous leaders and government bureaucrats; interventions on the ground by governments; as well as public ‘performances’ by leaders, politicians and Ministers.

I have been able to follow chains of such governance events over many years, and across organisational and political layers of the governance environment. Several are analysed in the thesis papers.

**The art of governance**

An overlooked methodological tool is the artistic depiction of Indigenous fields of governance. With apologies to Claude Levy-Strauss and Dundiwuy 2 Mununggurr’s similarly elegant phrasing of this insight — art is not just beautiful to look at, it is also beautiful to think with:

In the old days Yolngu people lived within the pattern of laws which were passed down through the generations and are still with us today. The patterns that go through songs, dances, art, ceremonial and sculpture all relate to each other. Pattern is the beginning, middle & end of Yolngu life. Patterns can be Yolngu or Balanda e.g. stripes, dots, lines, curves, rectangles, diamonds, squares, circles. But our Yolngu law patterns tell us a story. … My [art] print is about the various patterns that we Yolngu use in our art. Dundiwuy 2 Mununggurr, Yolngu artist talking about his painting *Miny’oji* (See: http://www.yirrkala.com/prints/gallery/index.php?cp=30&mxnr=89).
Indigenous Australian art often provides a highly sophisticated exposition of governance in Indigenous terms. Dundiwuy notes when talking about his painting Miny’tji (Yolngu Patterns) that there is a pattern to Yolngu ‘law’, to its governance. Where there is a pattern of social order there is a system of rules, relationships, knowledge, practice, meaning and values. Such patterns can be comprehended, created and mobilised by people. Documentation of Indigenous peoples’ visual depictions of their governance arrangements is used as a methodological tool throughout my thesis and other published papers. My own diagrammatic efforts also provide a way of rendering the underlying governance patterns of Indigenous organisations (see examples in Appendix C).

**Summary**

The methodological ensemble summarised above is uncommon in Australian anthropology and makes a valuable contribution to the study of governance. Importantly, it has enabled not only the internal differences but also the commonalities underlying Indigenous governance to be identified more clearly, and their implications considered. The thesis papers argue that particular governance commonalities are broadly relevant across Indigenous Australia as a whole. This argument is further investigated in the subsequent themes and their papers.
Introduction

This paper sets out the methodological and conceptual framework for the Indigenous Community Governance (ICG) Project on Understanding, Building and Sustaining Effective Governance in Rural, Remote and Urban Indigenous Communities.

Researching governance is challenging because of its complex nature, overlapping dimensions, different cross-cultural meanings and expressions, and the multiple agents involved. Given these characteristics, and the paucity of comparative research on Indigenous governance in Australia\(^1\), this methodological framework is itself experimental. The framework is likely to be refined over the course of the research—through ongoing guidance from the ICG Project Advisory Committee, from the participation of community organisations and research collaborators, and through the input of government and non-government agencies engaged with the Project.

The methodological approach is designed to:

- elicit valid and meaningful information about the diverse conditions and attributes of Australian Indigenous community governance arrangements;
- help elucidate the culturally-based foundations of Indigenous governance;
- promote comparative analysis and insights across different community locations and governance arrangements; and
- support the applied contribution of the research by generating broadly relevant principles of what constitutes effective, legitimate Indigenous governance, and by identifying transferable lessons and innovative Indigenous practice.

The methodological framework draws on the multi-disciplinary expertise of ICG Project team members and community research collaborators, in areas of anthropology, political science, demography, policy and legal studies, linguistics, and community
development. The benefit of such an approach is to counter what Rowse (2001: 111) has called an ‘unfortunate discipline-based division of labour in studies of Indigenous Australian’s political activism’.

**Project Research Aims and Questions**

**The focus of research**

At the heart of the Project is a focus on:

- the key governing bodies operating within ‘communities’;
- the cultural systems within which Indigenous governance is embedded; and
- the wider ‘governance environment’ (local, regional, state, territory and national) within which Indigenous governance operates.

**Key research issues and questions**

Over a period of several years at different locations across Australia, the Project aims to investigate the following issues and questions:

(a) **The concept of governance.** If the concept of ‘governance’ is to be a useful organising perspective for bringing together core issues and dimensions for analysis, then its many different meanings and uses need to be clearly articulated. For example; is ‘governance’ a cross-cultural category? What is the language of governance being used in policy contexts, and in Indigenous contexts? What do the terms ‘community governance’, ‘regional governance’, and the ‘governance environment’ mean? How are ‘cultural legitimacy’, and ideas of ‘good’ and ‘bad’ governance being conceptualised, both in Australia and in the international governance literature? The aim here is to unpack the conceptual underpinnings of the Indigenous and non-Indigenous categories and, if possible, extricate more universal principles.

(b) **The diversity of governance arrangements at the community level.** This will involve investigating the specific circumstances of community governance arrangements, including their different cultural, political, social, economic, demographic, legal, policy and service delivery settings. The ‘governance histories’ of each participating Indigenous organisation and its community will be documented. Important research questions here are: What are the specific dimensions and attributes of governance on the ground? What are the influential conditions, relationships, institutions, and processes involved? What is the form
and role of local leadership? How do these influence governance effectiveness and legitimacy? What works and what doesn’t work? What conditions facilitate or impede the practice of governance on the ground?

(c) **Emerging models of governance.** What kinds of organisational structures and systems of representation have been established or are emerging in communities? Are there underlying principles which inform different governance solutions? To what extent are these emerging models based on protecting localised autonomy or exploring governance structures at a greater regional scale? What issues of scale emerge as organisations struggle to develop and maintain effective capacity, continuity of staffing, and to deliver outcomes for their members? Are there ways of simultaneously addressing and balancing issues of autonomy and scale (e.g. through aggregation, dispersed subsidiarity, or decentralisation)? How are some organisations and communities achieving such a balance? Is it possible to expand the scale of governance beyond the local, by particular mechanisms of representation and accountability?

(d) **Cultural foundations, geography and match.** The current form and role of traditional systems of Indigenous governance in local, community and regional arrangements. How do organisations operate across inter-cultural governance domains? Are there areas of match or mismatch? What does the concept of ‘cultural match’ mean for Indigenous Australians and others engaged in practical efforts to design governance arrangements? What processes do Indigenous organisations have in place to deliver both culturally-based internal accountability, and external accountability to other stakeholders? How are Indigenous governance structures and processes responding to the culturally heterogeneous composition of many contemporary communities?

Another central research question here is what are, or what might constitute, the most effective and relevant Indigenous units for community governance? In other words, who constitutes the ‘self’ in self-determination at the local level? What are the Indigenous bases of collective identity, relevant boundaries and units for governance? Does a cultural geography of governance facilitate or impede political representivity? The project will explore this ‘cultural geography’ of governance in each community, including its scale, relationships, institutions, values and logic.
(e) **Scope of control and power.** What is the extent of Indigenous self-determination at the community and organisational level? What sources and forms of jurisdiction, power, authority, and control do governing bodies have to make and exercise laws, resolve disputes, or carry on public administration and community development? What types of dependence and independence do they exhibit? To what extent is the organisation or group actually exercising power and control at the local level and ‘calling the shots’ in wider environments (e.g. regional, state or federal)? To what extent can they assert and exercise informed choice?

What forms of Indigenous leadership operate in organisations and in the community? What kinds of power do they exercise? How have leaders been chosen? Are there contending expectations of Indigenous leaders? What impact do government policy, service delivery, funding and prevailing jurisdictional arrangements have on the scope of Indigenous governance control and power at the community level?

(f) **Institutional form and effect.** What institutional ‘rules of the game’—values, norms, traditions, regulations, rules, codes of conduct, constitutions, policies, etc.—support Indigenous governance at the community level? Are there contending expectations of these? What is the extent of constituents’ and outsiders’ confidence in and support of these? What is the extent of constituents’ participation and voice in community governance arrangements? To what extent do the institutional modes used by organisations reflect local culturally-based ideas of what constitutes legitimate or ‘proper’ governance. To what extent do institutional modes facilitate practical capability and outcomes? Do they contribute to, or impede, Indigenous peoples’ capacity to self-determine?

(g) **Resources and resource governance.** What cultural, human, technological, economic, financial and natural resources or assets do communities and their organisations have at their command? What resources are absent or under-developed? How are resources made available or delivered to the community? How are resources managed and used?

In conjunction with this, the project will test a related hypothesis—namely, that sustainable economic performance within communities and regions is a governance issue. To what extent do governance arrangements contribute to, or impede, sustainable economic development in each community? What kinds of
governance instruments might be established in order to capture community and regional development aspirations in all their diversity.

(h) The nature and impact of the ‘governance environment’. Indigenous governance operates within a complex environment that stretches across community, regional, state, territory and federal levels. Power, authority, resources and decision-making are distributed unevenly across these layers of the governance environment. What is the position of Indigenous organisations and communities within this wider governance environment? What are the influential relationships, networks, organisations, agents and stakeholders which have an impact upon local Indigenous governance arrangements? Do they support or hinder community governance? Do Indigenous groups and organisations have mechanisms for managing those impacts, and for resolving conflict with external entities?

How does the ‘governance of governments’ affect Indigenous governance arrangements on the ground? For example, what is the nature and impact of state/territory and federal government policy and funding frameworks? What is the relationship between government service delivery arrangements, and the effectiveness of community governance? Do governments have ‘downward’ accountability, communication and agreement-making mechanisms which support Indigenous governance-building on the ground? Are there government policy, funding and service delivery frameworks which might better support Indigenous governance initiatives?

(i) Effectiveness of governance. A central research issue concerns the effectiveness of governance arrangements in meeting Indigenous peoples’ objectives, in facilitating representation, participation and legitimacy, and in meeting external demands. How can the effectiveness of Indigenous governance be evaluated? What might constitute valid and meaningful measures (qualitative and quantitative), and from whose perspective?

The following questions are examples of this issue. Is the governing body an effective deliverer of services to its constituents? Has it contributed to improving social, economic, and cultural resources and outcomes for its constituents? How effectively does it obtain and use government funds, and use its own resources? What is the breadth of ownership, commitment and responsibility throughout the organisation? Has it played a significant role in changes (positive or negative) to local or regional control over resources, and in strategic decisions? Do members of
the community view the governing body as an effective vehicle for community management and self-determination? Are there differences between the internal and external perceptions of effectiveness? Are some governance structures and processes more effective in some places, or for certain functions, than others? And what are the ‘costs’ to communities of ‘ineffective’ governance?

(j) Governance capacity development. A central hypothesis here is that building and sustaining strong, legitimate Indigenous governance needs to be founded on both clear power authority and practical capability. The first requirement raises issues of jurisdictional devolution and resourcing. The second involves developing the human, institutional, organisational and resource capacities of Indigenous groups for genuine self-determination. This will require a long-term commitment to community development for governance.

What do the terms ‘capacity-development for governance’ and ‘governance building’ mean? What kinds of powers and responsibilities, jurisdiction, and resources are required to support Indigenous governance-building initiatives? What community skills and assets are already available and required to support the process? How can these be strategically mobilised? If the critical community and regional capacities for governance are not well-developed, how can they be? And how is governance to be conducted in the meantime? What tangible commitments and policy approaches are required from governments, non-government organisations (NGOs), and the private sector in order to support governance-building at the local level?

Where are innovative experiments in local and regional governance happening? Are there broad principles of Indigenous governance which might have relevance for application by different types of communities and cultural circumstances? How can these principles and lessons assist other communities, organisations, leaders and policy makers in their efforts to support Indigenous governance-building?
The Methodological Framework

The underlying concerns

The methodological framework is designed to promote research that meets community-based, scholarly and policy concerns.

On the scholarly side, Project researchers are interested in understanding how Indigenous governance operates in all its diversity at the local level—its cultural foundations and principles, what is working, what is not, and why. One goal is to instil greater analytical rigour and content into academic and public debate in Australia. The research team wants to better understand the relationship between the effectiveness of governing arrangements in communities and issues of institutional form, scale, power, autonomy, legitimacy, representation, and accountability.

On the policy side, the methodological approach is based on the conviction that high-quality research can have significant value to Indigenous agencies and governments concerned with supporting community ‘governance building’. A comparative approach forms the basis of the Project methodology. This should enable broad principles and transferable lessons to be identified, which may in turn inform the development of more enabling government policy and service delivery frameworks.

On the community side, the project is applied and collaborative—it aims to make research ‘count’ on the ground. The methodological framework is designed to support a collaborative community-based approach which includes working with and training (where appropriate) community researchers. The Project will work on practical initiatives with organisations and leaders to identify the shortfalls and assets in governance power, resources and capabilities, and to identify successful experiences for wider dissemination.

Indigenous collaboration and action research

The researchers and partners in the ICG Project are sensitive to the history of western research, whereby research sometimes became an adjunct of colonisation, with little knowledge exchange or consideration of local capability-development. This has served to marginalise local Indigenous knowledge by external parties controlling, defining and thus owning it.

The impact on Indigenous peoples of this epistemological paradigm has been discussed by several scholars (Arbon 1992; Bin-Sallik 1990; Rigney 1997; Taylor 2005;
Tuhawa'i-Smith 2001). The innovative methodology designed for the ICG Project recognises this history and attempts to implement an alternative approach—namely, a collaborative research partnership at the local level, which makes a practical contribution.

A core component of the research methodology is Indigenous collaboration and participation. This goes beyond consultation, where Indigenous community members and leaders are merely the informants. For the purposes of the Project, ‘participation’ is defined as the mobilisation of individuals, families, groups, and representative community organisations to take an active role in the planning, conduct and application of the research being carried out in their community (Rahmeh 1999; Rifkin 1986). In the Project, participating organisations and groups are research partners and research facilitators, driving the specific research questions that are relevant to their particular community and region. Project researchers are also collaborating with individual Indigenous research counterparts, who are working as co-authors on surveys as linguists and interpreters, and in the documentation and analysis of data.

This does not discount a key element of the ICG Project’s research agenda that seeks hard, independent baseline data across field sites for comparative purposes, and to generate broad principles of governance across communities. The collaborative framework for the research asks the partners to work together in an ongoing discussion about the local research agenda, about what kinds of data are needed, how that data can best be obtained, about ownership of data, and how application of research findings can add value to local governance initiatives. The engagement of Indigenous collaborators in defining the research issues in each case study acknowledges the critical importance of Indigenous people exercising their authority to make decisions and develop solutions.

The ICG Project Advisory Committee adds another dimension to the research partnership. Indigenous members of the Committee provide strong guidance for the overall research direction and key research questions. They also act as advocates of Indigenous governance initiatives, and of the Project research findings with governments and communities.

The iterative research approach to engaging Indigenous collaborators is informed by international approaches to social and community development, the basic purpose of which is to enlarge people’s choices and empowerment. Fundamental to this is building human capabilities—the range of things that people can do, or be, in life. One of the most basic of these capabilities is to be able to participate in the life of the community
Methodological and Conceptual Framework

in all its diverse forms. In this sense, effective community participation ultimately underpins effective Indigenous governance. The Project aims to add value locally through such a collaborative and practical research partnership.

**Key components of the methodology**

To meet these fairly ambitious goals, the ICG Project has created an overarching methodological framework to provide common guidance to all researchers.

The framework has the following key components:

(a) **Case studies of participating Indigenous communities and organisations.** These will be undertaken in a sample of different ‘types’ of Indigenous ‘communities’ in urban, rural and remote locations. Researchers will work with the same communities and organisations over several years so that the dynamic and unique aspects of local governance can be documented over time.

(b) **Case studies of the ‘governance environment’**. A sub-set of case studies will focus more widely on the governance environment of particular communities and their organisations. These will identify key players, factors and relationships which impinge directly on Indigenous governance legitimacy, effectiveness and outcomes.

(c) **Case studies of the ‘governance of government’**. A sub-set of case studies will focus on the changing policy, service delivery and funding strategies operating across different levels of government. The goals and rationale of strategies which target Indigenous governance will be analysed and their impacts on the ground investigated.

(d) **Comparative analysis of the case studies**. This will be based on a set of core research questions and issues. This will enable the Project to test the hypotheses identified above, and to generate insights into the general principles and factors at work in contemporary Indigenous governance.

(e) **Identifying and testing meaningful criteria and principles** for evaluating what constitutes ‘effective/ineffective’, ‘poor’, ‘good’, and ‘legitimate’ Indigenous governance in Australia.

(f) **Identifying innovative practice and transferable lessons** to be disseminated widely to Indigenous communities and others.
(g) **A community research collaboration strategy.** This aims to engage Indigenous organisations and community residents as active researchers in the case studies.

(h) **A communication and reporting strategy.** This is designed to disseminate the research findings within communities, to governing bodies and leaders; as well as to government policy makers, service deliverers, and other researchers.

To support these components of the methodology, the ICG Project has built up a multi-disciplinary team, bringing together researchers with professional expertise in political science, anthropology, demography, geography, development studies, and economics. Project researchers will work alongside community research collaborators with expertise in local culture, business development, social organisation, language, history and local politics.

**The research techniques**

The ICG Project’s empirical tools need to be flexible to suit different community environments and research foci, while at the same time enabling valid comparative analysis and the generation of policy and practical conclusions.

In order to deliver on the Project’s multiple aims, a variety of research techniques are being employed by researchers, including:

(a) **Data review, consolidation and analysis.** This involves the collation of available community and regional demographic and socioeconomic indicator data. These profiles will provide an information baseline for analyses over subsequent years.

(b) **Mapping the governance environment.** This involves the identification of the surrounding organisations and agents (Indigenous, non-Indigenous, government, private sector, NGOs) within which community governing bodies operate, and the cross-cutting relationships, powers, functions, networks and alliances creating that environment.

(c) **Ethnographic techniques.** These include participation observation, language analysis, documentation of decision-making and other governance events, structural and institutional analysis. These will be used to document the culturally-based Indigenous concepts, world views, norms, behaviours, relationships and gender issues underlying Indigenous systems of governance and contemporary governance practice. These techniques emphasise an emic approach (i.e., looking at things from the point of view and values of a range of ‘insiders’). These same
ethnographic techniques will also be employed to document the cultural values, logic, behaviour and language of ‘insiders’ within government.

(d) **Governance histories.** These will be recorded for key governing bodies and communities, and will include timelines and influential individuals and events (statutory, political, cultural, leadership, strategic and developmental).

(e) **Governance profiles of organisations.** These will uniformly document the goals, structures, institutions, functions and operation, corporate dimension, decision-making, accountability and representation processes, planning and outcomes for individual organisations.

(f) **Leadership life histories.** These will track individual leaders’ development, experiences and roles (for both men and women); identify individual ideas and practices of leadership; and document the impact of changes in leadership and succession on the life cycles of organisations and their governance effectiveness.

(g) **Governance strategic risk assessment.** This tool will map the governance assets, resources and capabilities that are available and being exercised, and any shortfalls; the internal and external priorities and demands; and the fit between an organisation’s strategic goals and its governance capacities. It will facilitate the generation of potential criteria of ‘effectiveness’ and ‘legitimacy’ (elaborating both Indigenous and non-Indigenous views).

(h) **Policy and service delivery assessment.** This maps the goals, logic and implementation of government policy and service delivery frameworks. It will facilitate assessment of the extent to which frameworks facilitate or impede the development of effective, legitimate governance.

(i) **The Research Field Manual.** This provides researchers with a checklist of common issues and broad questions about Indigenous governance. All Project researchers will investigate these common issues. The manual will enable a more uniform, consistent approach to the collection of core governance data, and provide the basis for the comparative analysis of issues across all participating communities.

(j) **Field interviews.** Informal interviews will be carried out with the wide range of people involved with, served by, or supporting community governing bodies, and will include people involved in the wider ‘governance environment’ at regional, state, territory and national levels.
(k) Small-group surveys, community meetings and focus groups. These techniques will elicit local perceptions, views, and solutions about governance arrangements.

**Governance—A Concept in Need of Critical Investigation**

**The many meanings of ‘governance’**

The etymology of the term ‘governance’ can be traced to the classical Latin and ancient Greek words for the ‘helmsman’ and the ‘steering of boats’. Over time this meaning has been applied to societies and political systems where it has been defined as the ‘art of steering societies and organisations’.

The search for a clearly articulated concept of ‘governance’ has only recently begun in Australia. While the term has rapidly transferred into bureaucratic thinking, government policy making, service delivery, and Indigenous political agenda, there is a lack of critical analyses and hard evidence about it, and confusion over its actual meaning. Unrealistic expectations are being generated that ‘governance’ will be the ‘quick fix’ for all problems at the community level. Some stakeholders expect improved service delivery and local accountability, while ignoring the issues of jurisdictional power and self-determination. As a result, there is something of a fashionable backlash, with the term being described as a ‘buzzword’ or little more than ‘pouring old wine into a new bottle’. It is a cause for concern that these varied views are becoming entrenched without sufficient Australian content having been applied to the concept.

The term ‘governance’ has been in common use in the world of international aid, banking, and third-world development for some time. In this context it has become synonymous with western democratic, neo-liberal ideas of what is supposed to constitute ‘good’ governance. Today, the concept is ‘used by groups with very different ideological persuasions, for a number of different and often contradictory ends’ (de Alcantara 1998: 106).

There have been numerous definitions and approaches to governance, which are usefully reviewed by Kooiman (2003). However, to date, there are only a few field research case studies focused on the concept of ‘Indigenous governance’ (see Cornell et al. 2000; de Alcantara 1998; Dodson and Smith 2003; Hylton 1999; Jones 2002; Kalt 1996; Plumptre & Graham 1999²).

The ICG Project aims to investigate the concept under Australian conditions. To commence that process, some of the meanings of the term ‘governance’ already employed in the international arena are summarised below (see Kaufmann, Recanatini
Methodological and Conceptual Framework

(a) ‘Governance’ is not the same as ‘government’, although governance is certainly an aspect of how governments operate. Rather, the concept of governance blurs the boundaries between and within the public and private sectors (Stoker 1998). In politics, the concept of ‘government’ is usually predicated on some related concept of ‘the state’ and a degree of centralisation of power and decision-making. ‘Governance’ focuses our attention outside the more formal realm of government, onto the wider set of actors and networks—those individuals, agents, organisations, private sector interests, and non-government organisations involved in delivering services, representing groups and negotiating resource allocation. The term ‘governance’ directs our attention to the interaction of self-organising networks at many different levels, and to the relative power and relationships between them, and between these networks and governments.

The Institute of Governance (IOG) in Canada suggests that confusing the term ‘governance’ with ‘government’ has constrained the way in which problems with policy and practice are conceived and addressed (Plumptre & Graham 1999). For example, the confusion in terminology leads to policy issues being defined implicitly as a problem of government, with the onus for fixing them seen to rest with the government. This can restrict the range of strategies that seem to be available to deal with problems—generating a ‘top-down’ approach to reform. In short, definitional confusion related to governance has important practical and political consequences.

(b) Self-government and sovereignty. ‘Self-government’ is taken to mean having jurisdictional control and a mandate (i.e., having the constitutional or judicial right, power, and authority to administer the law by hearing and determining controversies, and by exercising those powers over the members of a group, its land and resources. ‘Governance’ is about having the processes and institutional capacity in place to be able to exercise that jurisdiction through sound decision-making, representation and internal accountability (Sterritt 2002).

‘Jurisdictional authority’ can be exercised over public institutions, territory, expenditure and revenue-raising capacity, and over policy and functional areas such as tax, law-making, health, education, housing, essential services, social security, and economic development. In Australia, Indigenous self-government is
absent as a unified cohesive form of jurisdictional authority (Sanders 2002; Smith 2002). Nevertheless, Indigenous Australians involved in local government do have access to a form of jurisdiction. A number of commentators have also noted that there are jurisdictional aspects to the Indigenous rights and interest recognised under the *Aboriginal Land Rights (NT) Act 1976* and *Native Title Act 1993* (see Langton 2002; Pearson 1997; Reynolds 1998). In Australia, the policy of ‘self-determination’ could have provided a foundation for self-regulating local governance. However, it appears to have been relegated to highly constrained forms of decision-making over discrete service delivery and administrative functions (Smith 2002).

(c) **Governance as the ‘minimal ‘state’**. This use of the term ‘governance’ emphasises the potential for self-regulation in society, and for the establishment of systems of decentralised jurisdictions. Here the concept is used politically, to redefine and limit the potential scope and form of public intervention and action by the state. This meaning of the term is often employed in conjunction with the idea of ‘participatory governance’ where a plurality of local actors and constituents engage more directly in the establishment and exercise of decentralised or dispersed governance. Often this is linked to the exercise of multi-level governance, and raises issues of subsidiarity and jurisdictional devolution (Smith 2004; Westbury & Sanders 2000).

(d) **Corporate governance**. Increasingly, the concept of governance is being used in new public management theories referring to private sector ways of operating in the public sector. The importance of corporate governance is often emphasised in these theories, referring to modalities of organisation and management of economic, statutory and administrative functions. In Australia, there has been a tendency to focus on this aspect of Indigenous governance.

(e) **Resource governance**. An allied meaning is expressed in the term ‘resource governance’, referring to ‘the principles, institutions and practices a society and its members employ to use shared resources’ (Caulfield 2003: 121). This is an aspect of governance which has been reasonably well researched amongst some Indigenous Australian groups.

(f) **Global governance**. More recently, with the creation of the European Economic Union and the establishment of free-trade agreements and other international conventions, there are issues of global governance in international relations. The
technological tools required for global governance (such as ‘eGovernance’ and telecommunications) are emerging as issues with implications at the sub-national, regional and community levels.

(g) Indigenous governance. In recent times there has been a growing recognition of the specific qualities and conditions of Indigenous governance throughout the world. Innovative forms of governance are being designed and established by different Indigenous groups in many countries. These have been given impetus by land rights struggles, treaty negotiations, self-determination policies and legislation, and through arenas such as the United Nations World Council of Indigenous Peoples. Some contemporary international Indigenous governance arrangements have statutory and jurisdictional bases, although many do not.

The commonalities underlying the different meanings

The term ‘governance’ is multivalent—at times it is used as an analytic concept, a theoretical proposition, or a normative concept, to refer to a specific policy, a process, to structures, or to a political environment. But these different meanings and uses have important commonalities. In each, there is:

• consideration of the main institutional spheres (the state, market, and community) as being interconnected, rather than neatly separated and spatialised;

• a focus on the wider field of players and relationships, not simply on ‘government’;

• the idea of some form of cooperation as a mechanism of legitimisation and a guarantee of effectiveness;

• the attention to concrete systems of action and decision making;

• the foregrounding of power and choice;

• the idea that governance effectiveness can be evaluated against benchmarks and principles; and

• a slowly growing recognition that governance, and evaluations of its effectiveness, are the product of culturally-based values, systems and traditions.

The ICG Project will explore the extent to which these commonalities inform the operation of Indigenous governance in Australia.
The normative dimension of governance

The operation of governance has a direct impact on the wellbeing of individuals, groups and communities. It is not surprising, therefore, that the concept of ‘governance’ has increasingly been framed in terms of a normative assessment of its effectiveness. In other words, governance functionality is evaluated as ‘bad’, ‘good’, ‘effective’, ‘ineffective’, ‘corrupt’ etc. The World Bank was an early international instigator of this approach, proposing universal indicators of ‘good’ and ‘bad’ governance which it used to evaluate the performance of third-world governments (World Bank 1994).

The downside of that approach is that it promotes the term ‘governance’ as a tool for imposing western ideals of democracy, participation, representation and accountability. Those ideals are not easy for western democracies to attain, let alone societies with very different political and world views. In multi-cultural and minority populations, imposed concepts and processes of governance can have profound destructive consequences.

The United Nations Development Program (UNDP) (n.d.) has developed the following set of principles for good governance which are claimed to have universal recognition, but which will have local solutions.

(a) Legitimacy and voice (or participation)—where all men and women should have a voice in decision-making either directly, or through the legitimate institutions that represent their intention. Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group.

(b) Fairness—where all men and women should have opportunities to maintain and improve their well-being, and have their human rights respected. Legal frameworks should be fair and enforced impartially. Everyone should be entitled to a hearing.

(c) Accountability—where decision-makers in government are accountable to their members, as well as to the public and institutional stakeholder. Governance processes, information and policies should be transparent (i.e., directly accessible to those concerned together with enough information to understand and monitor decision-making arrangements).

(d) Direction—where leaders and constituents have a broad and long-term perspective of their cultural, social and economic development and a sense of what is needed for such development. This strategic direction is developed with an understanding
of cultural and historical complexities. Governance-building is a journey requiring both short-term and long-term approaches.

(e) **Performance**—good governance systems produce goods, services and outcomes that meet the needs of their constituents. The institutions and processes of governance try to be responsive to constituents and stakeholders, and produce results while making the best use of resources.

Importantly, governance is not culture-neutral. Assessments or principles of what constitutes ‘good’, ‘strong’ or ‘legitimate’ governance, ‘ineffective or ‘bad’ governance, are informed by culturally-based values and traditions. In other words, there are cultural determinants of leadership, of what constitutes representation, participation and accountability. The rule of law for Indigenous people is grounded in traditional law and values. There is a ‘two-way’ accountability for Indigenous organisations—internally to their members and community residents, and externally to government funding bodies.

The IOG has argued that ‘there is plenty of room for different traditions and values to be accommodated in the definition of ‘good governance’ (IOG n.d.). If ‘good governance is about achieving desired results and achieving them in the right way’ (IOG n.d.), then the ‘right way’ is largely shaped by the cultural norms and values of the organisation or society.

For Indigenous groups, however, their governance power and jurisdictional control is also subject to many external conditions imposed by the wider societies in which they live. The conditions for both poor and good governance can therefore be perpetuated from within and from without.

Furthermore, a growing body of international research suggests that recognising the culturally-based parameters of good governance should not be taken as a bland acceptance of cultural relativism. There may be universal principles of ‘good’ governance that do apply across cultural boundaries (see IOG n.d.; Cornell et al. 2000; Cornell & Begay 2003; Dodson & Smith 2003; Sterritt 2002; UNDP n.d.). As a consequence, the question of ‘whose values and norms take precedence in determining what constitutes the ‘right way’ to govern?’ has become an area of considerable contestation.

**The attributes of strong Indigenous governance**

There is a small body of research in Australia that investigates the interaction between ‘traditional’ Indigenous and ‘settler society’ systems of governance. More
recently, there has been a growing body of international evidence which identifies a set of prerequisite conditions needed for strong Indigenous governance in contemporary contexts.

In a presentation to the first national Indigenous Governance Conference, convened by Reconciliation Australia in Canberra, Neil Sterritt (2001, 2002), a Gitxsan leader from Canada, characterised strong Indigenous governance as having four main attributes or dimensions:

(a) **Legitimacy**—the way structures of governance are created and leaders chosen, and the extent of constituents’ confidence in and support of them;

(b) **Power**—the extent of acknowledged legal, jurisdictional and cultural authority and capacity to make and exercise laws, resolve disputes and carry on public administration;

(c) **Resources**—the economic, cultural, human, technological and natural resources needed for the establishment and implementation of governance structures; and

(d) **Accountability**—the extent to which those in power must justify, substantiate and make known their actions and decisions.

Evidence to the Royal Commission on Aboriginal Peoples (RCAP) in Canada suggests that these four attributes are expressed through First Nations institutions and processes such as the centrality of land, individual autonomy and shared responsibility, the role of women, the role of elders, the role of family and clan, leadership and traditional accountability, and consensus in decision-making (RCAP 1996).

The Harvard Project on American Indian Economic Development (Cornell 1993; Cornell & Kalt 1995) identified a similar set of prerequisites to that of Sterritt. On the basis of long-term research amongst over 60 Native American Indian tribal governments in the United States of America, the Harvard project researchers identified three overarching preconditions for strong Indigenous governance:

(a) **‘De facto sovereignty’ or ‘self-rule’**: genuine decision-making power where the tribal government effectively held the reins of power over strategic decisions, the allocation of resources, and related governing processes.

(b) **Effective governing institutions**: de facto sovereignty or decision-making power is not sufficient by itself. Groups must also be able to exercise their authority effectively. To do this they must be able to put in place non-politicised...
representation and dispute-resolution mechanisms, constrain corruption and opportunistic behaviour by politicians and leaders, build capable bureaucracies, and so on.

(c) ‘Cultural match’: for governing institutions to be effective, they must be legitimate in the eyes of the people they serve. To be legitimate they must wield power and authority in conformity to Indigenous conceptions, shared beliefs, and agreed rules. And importantly, the form those rules take must be based on Indigenous choice and informed consent.

In summary, the available research proposes four preconditions for strong and effective Indigenous governance:

(a) power (de facto sovereignty or self-rule);
(b) resources;
(c) effective governing institutions and accountability;
(d) legitimacy and culture match.

‘Poor’ governance, on the other hand, has been reported to be generally characterised by ‘corruption, favouritism, nepotism, apathy, neglect, red tape, selective representation, and self-serving political leaders and public officials’ (Knight et al. 2002). For Indigenous societies, ‘poor’ or ‘ineffective’ governance is likely to occur where some or all of these preconditions are missing, under-developed or ill-matched.

These prerequisites for strong governance which have been identified in international Indigenous contexts, have implications for researching Indigenous Australian governance arrangements. For example, to what extent are such preconditions relevant here? What are the constraints on their growth amongst Indigenous Australian groups? What other attributes or conditions of governance might be locally relevant in Australia?

This body of research conclusions and associated questions informs the research approach of the ICG Project.

**The ICG Project’s Approach to ‘Governance’**

The ICG Project adopts the term ‘governance’ as a central concept that needs to be problematised and systematically investigated. The complexity of the term is difficult to capture in a simple definition. The Project has developed a preliminary operational definition that links its internal social dimensions to the wider political environment.
**Governance as an internal process**

For the purposes of the ICG Project ‘governance’ means the dynamic processes, relationships, institutions and structures by which a group of people, community or society organises to collectively represent themselves, negotiate their rights and interests, and make decisions about:

- how they are constituted as a group—who is the ‘self’ in self governance;
- how they are going to manage their affairs and negotiate with outsiders;
- who will have authority within their group, and about what;
- what their agreed rules will be to ensure authority is exercised properly;
- who will enforce the decisions they make;
- how their decision-makers will be held accountable; and
- what arrangements and entities will be the most effective for implementing their decisions and accomplishing their ends.

Governance is as much about people, relationships and process, as it is about structures.

Many small Indigenous groups have informal processes of governance which are not exercised through externalised organisations. But if a group of people is too large to make all the necessary decisions, they may create organisational structures, hierarchical systems or other arrangements to facilitate decision making. This might include delegating some areas of decision-making and responsibilities to an entity, whilst retaining other aspects of governance under their immediate social control.

From this definitional perspective, we can see that Indigenous community councils and organisations have governance; extended Indigenous families and clans have governance systems; Indigenous law and ceremony is about governance; local community health clinics and stores have governance; homeland associations, women’s councils and land councils have governance; native title claimant groups and traditional owners have governance; and Indigenous businesses and regional service delivery organisations have governance.

The ICG Project places this definition of governance within a political context.
Fig. 1: The concept of governance.

Governance is about power

Social systems, groups and organisations do not exist in isolation. In every society, power and control are distributed across many layers and multiple actors. Some of those individuals and groups are more powerful than others. The uneven dispersal of power involves jurisdictional, statutory, historical, human rights, resource, capacity, age and gender dimensions.

In other words, the governance of an organisation or group of people involves addressing influential factors that have their source in the wider governance environment, not just within its own internal arrangements.

Fundamentally governance is about power, jurisdiction, control and choice—it’s about the relative scope and extent of power, who has influence, who makes the decisions and ‘calls the shots’, and how decision-makers are held accountable, both internally and externally (Plumptre & Graham 1999).

Western models of the state usually assign governments superordinate public power and jurisdiction within a territorial boundary. In Australia, Indigenous systems of governance have their own political processes, and Indigenous groups have sought to negotiate a space for these within the complex jurisdictions of federalism.
The Project aims to investigate the wider dimensions of power, legitimacy, resources and accountability at work in the exercise of Indigenous governance (Fig. 1).

**Governance ‘institutions’ and ‘organisations’**

Governance processes are exercised through organisations and institutions. The ICG Project adapts a widely-used definition of the term ‘institution’ provided in Cheema (1997):

> Institutions consist of cognitive, normative and regulative structures and activities that provide stability and meaning to social [cultural and political] behaviour (Cheema 1997: 13).

Cornell (2002) describes institutions as the ‘rules of the game’; ‘the way things are, and are to be done’. Examples of institutions include the legal and judicial system, political systems, constitutions, policies, regulations, taboos, kinship systems, behavioural and gender norms, religious beliefs, and ceremonial systems and values.

Institutions are often longer-lasting and more influential on people’s behaviour than organisations. They are especially influential in determining the extent to which the organisation of governance is judged to be proper and legitimate.

> ‘Organisations’ … ‘are composed of groups of individuals who come together to pursue agreed objectives that would otherwise be unattainable, or that would be attainable but only with significantly reduced efficiency and effectiveness’ (Cheema 1997: 14).

Formal organisations are structured, meaning that they involve a division of labour, and the allocation of functions and resources into different units of different size, composition and hierarchical order.

The ICG Project approach to governance encompasses both its institutional and organisational dimensions, and how these are reproduced and given legitimacy within different cultural systems.

**The ‘governance environment’ and ‘subsidiarity’**

The concept of the governance environment refers to the aggregate of surrounding things, agents, conditions, influences, networks and relationships within which Indigenous governance arrangements operate. Indigenous governance can be said to operate not only within a community governance environment, but also within a wider
regional governance environment and, in turn, within State and Federal governance environments.

The principle of subsidiarity is used to capture the nature of the relationships between the layers of the governance environment. Subsidiarity means that particular issues, functions and procedures should be handled by the most competent and appropriate authority available (Smith 2004: 17). This means, for example, that no higher centralised level or scale of political aggregation should undertake functions or tasks which can be performed more effectively at an immediate or local level. Conversely, centralised forms of government should undertake initiatives which exceed the capacity of individuals or communities acting independently. Subsidiarity is ideally, or in principle, one of the features of Australian federalism.

Subsidiarity also informs Indigenous Australians’ traditional governance arrangements. In Indigenous societies, different forms of power, authority and decision-making are dispersed across social, gender, age, religious, land-owning and political categories. Individuals and groups negotiate their governance arrangements across these complex sets of overlapping rights, interests and alliances.

(a) At the community level.

Extended families form the backbone of communities. They are not simply visible as domestic and economic units, but are also ‘families of polity’—that is, jural constructs of ‘enduring and central importance to the conduct of Aboriginal business’ (Sutton 1998: 60).

The governance ‘business’ of extended families includes the transmission of land ownership, leadership, cultural property rights, group knowledge and collective identity. The senior members of some extended families are closely identified with the establishment and operation of incorporated community organisations, thereby linking familial descent-group identity to organisational identities and political representation.

In other words, extended families not only have a form of internal governance, they also permeate other layers and aggregations of governance at the community level. Some Indigenous community organisations have jurisdictional status as forms of local government under state or territory legislation. Others operate under different statutory program frameworks established to facilitate the delivery of a range of services.

The result is that communities have different layers of formal and informal governance arrangements, representing sometimes distinct, sometimes overlapping
constituencies. The efflorescence of community organisations owes much to Indigenous preference for highly localised forms of representation, but arguably a negative impact has been to distort the already fragmented polity that characterises traditional Indigenous governance systems (Pearson 1997; Yu 2002).

(b) At the regional level.

This complex picture of community governance is situated within a wider regional environment that consists of other communities, organisations, agencies and actors. These have different program, financial, service delivery, social and developmental links into communities. Some have offices and agents located within major ‘hub’ communities. Others have officers who travel to communities for visits and meetings. Some implement services and program funding according to state and federal government policies. Others deliver regionally customised services to communities.

Families from particular communities are often related to families in other communities, forming regional networks. Larger clan groups and ‘companies’ of related groups also mobilise themselves regionally for ceremony, trade, funerals, and negotiations at regional levels (see Ah Kit 2003; Morphy 1999). Some senior community residents are also members of the governing boards of influential regional organisations (both Indigenous and non-Indigenous). These connections and relationships create a complex genealogy of governance between families, groups, communities and regions (Smith 2004: 17–8).

(c) At the State and Federal levels.

Indigenous community governance is directly affected by state and territory jurisdictional and administrative boundaries, and by different government statutory and policy frameworks. Services are delivered by a multiplicity of government departments, delivering a range of programs into communities which often overlap but are tied to separate funding and reporting arrangements. The ‘state’, in the form of territory, state and federal governments, is tangibly present on the ground—in the form of government officers, agency offices, and often through direct program and funding delivery to community organisations.

The consequence for community-based governance is that organisations are linked to programs, policies and funding arrangements administered by multiple government departments which retain financial authority, and determine accountability conditions and implementation. In 1997 for example, Queensland’s Joint Committee of Public
Accounts (JCPA) reviewed the financial accountability requirements for Indigenous Community Councils in that state, and reported that some Councils had to deal with upwards of 40–50 different grants (JCPA 1997: 27; see also Australia Institute 2000).

In reality these layers are not neatly bounded, exclusive environments. Rather they are permeable and penetrate each other. Actors and organisations are networked into webs of cross-cutting relationships, alliances and opposition. Some decision-making processes and systems of representation extend across the layers. Accordingly, it is more accurate to speak of an overarching ‘governance environment’ with fluid, interacting dimensions. This wider governance environment affects the operation of community organisations on a daily basis, and poses substantial challenges for Indigenous governance at the local level. The ICG Project aims to map out the dimensions and connections within the governance environment, and investigate its impacts on community governance.

**Governance evolves**

Governance is not static. Every society has a right to change—to develop its institutions, values and rules in a manner it regards as internally legitimate, and to do so according to its own informed choice. Governance arrangements need to evolve to meet changing conditions and challenges; whether internally or externally instigated.

Building governance is essentially a developmental issue; it is about institution building, and mobilising the leadership, knowledge, skills and resources of a group of people. What appears to matter for outcomes from ‘governance building’ is that it is under Indigenous control, and is a product of informed Indigenous choice and design.

**Legitimacy and culture match**

Governance is a product of culture—different societies build different systems of governance.

When systems of governance interact, competing values and expectations arise. A central focus of the Project methodology is the investigation and analysis of Indigenous principles, values and concepts underlying their systems of governance. Indigenous people are designing and testing different organisational models to represent their rights and interests within the wider governance environment, and in doing so are having to consider questions of legitimacy and cultural match.
The concept of ‘cultural match’ has recently been introduced into Australian debates by the Harvard Project research team (see Cornell 1993, 2002; Begay, Cornell & Kalt 1998; Kalt 1996). It has found both resonance and resistance in Australian debates about the complex issues of legitimacy, culture, and power relations.

According to the Harvard team, cultural match means institutions that:

… embody values that Indigenous peoples feel are important; reflect their contemporary conceptions of how authority should be organised and exercised; are generated through Indigenous efforts; and therefore have the support of those they govern …

It is not an appeal to tradition; it is an appeal for legitimacy … In some cases, this may mean Indigenous communities have to rethink their ideas of how to govern and invent new ways that better meet their needs … What matters is not that things be done in the old ways. It is that things be done in ways—old or new—that win the support, participation and trust of the people, and can get things done. Some will be old. Some will be new (Cornell & Begay 2003: PowerPoint presentation; author’s italics).

Sterritt (2002) characterised ‘legitimacy’ as consisting of the way structures of governance are created and chosen, and the extent of constituents’ confidence in and support of them. Clearly, amongst Indigenous groups, legitimacy will depend on the whether a cultural match has been achieved. But legitimacy also has external dimensions. It can be undermined or endorsed according to the extent to which those in power must justify and make known their actions to those ‘outside’ (Coles 1999, 2004; Martin & Finlayson 1996).

For Indigenous groups, legitimacy will require the design of inter-cultural institutions, based on a ‘two way process of adaptation and innovation’ (Smith 2004: 26). It will be derived from two authorising environments—that is, from the Indigenous and the non-Indigenous systems of governance in which community organisations are immersed. In other words, an organisation must not only have a cultural mandate and support, it must also be able to get the job done.

**The relevance of cultural match in Australia**

The concept of ‘cultural match’ is poorly understood in Australia, and its potential usefulness in local conditions has received only preliminary attention (see Martin 2004; Martin & Finlayson 1996; Smith 2004; Westbury & Sanders 2000).
The Harvard research has been undertaken primarily with Native American Indian populations whose reservations are largely culturally homogeneous (although there are some Indian nations who have been forced to live and work together on the same reservation lands). ‘Cultural match’ in the Australian context will need to address significantly different cultural, political and historical contexts to those in the United States of America. Indigenous Australian communities are more culturally heterogeneous in their residential populations than many Native American Indian reservation groups and New Zealand Maori. There may be more relevant parallels to be found with some Canadian and Alaskan communities, where there are similar ‘multi-layered sets of institutions in which decision-making power, governing functions and economic activities are dispersed among diverse entities’ (Cornell et al. 2000: 6).

There are a number of factors to be considered. Importantly, culture match is not a matter of force-fitting one system or structure of governance into another. Nor is it the same as being ‘culturally appropriate’. It will not be achieved by trying to resurrect a romanticised vision of past governance. There may be aspects of Indigenous culture that are not amenable to, or easily integrated into the ‘culture’ of western corporate governance. Democratic principles of representation and participation, which emphasise the individual over the collective do not resonate well with Indigenous concepts of social and territorial organisation (see Martin & Finlayson 1996; Rowse 2001; Smith 1976).

In Australia, early colonial officials, researchers and commentators attempted to ‘force-fit’ the relatively fluid systems of Indigenous governance into formal structures based on Victorian English social-evolutionist concepts of government and law. Under that prevailing thinking, Indigenous Australian societies were characterised as being at the lowest point of civilisation, entirely lacking in law and order, leaders, systems of arbitration and dispute resolution, land ownership and so on (see Smith 1976). They were effectively consigned to the governance equivalence of terra nullius. Not surprisingly, Indigenous groups rarely regarded the foreign structures and concepts of governance imposed by the British colonists as being legitimate.

Today, a wealth of Australian research can be analysed to reveal several core principles of Indigenous systems of governance. These can be summarised as follows:

• inalienable traditional jurisdiction over land, resources and cultural property;
• a cultural geography of governance—evident in territorial, political and ceremonial communities;
• spiritually-based system of law and authority—no separation between religion and governance;

• a dispersed, fragmented polity—inform ed by a subsidiarity of power, authority, and decision-making;

• dispersed accountability—with both collective and individual dimensions;

• collective resource governance—linked to systems of law and subsidiarity;

• flexible processes of aggregation and disaggregation of scale (people and territory);

• hierarchically-based authority and knowledge systems—with controlled acquisition and dissemination of information;

• asymmetrical age- and gender-based participation and authority;

• a localised focus on extended families of polity—with overlapping networks, rights, interest and responsibilities;

• a ‘relational autonomy’ of governance—where demands of kin relatedness versus personal and group autonomy are in dialectic tension;

• leadership as stewardship and context specific—emphasising a processual and relational approach to politics;

• consensual decision-making—evolutionary and open-ended; and

• institutions based on the value of ‘radical conservatism’—where innovation and creativity are couched in terms of continuity and religious agency.
Today, Indigenous governance in Australia is the product of attempts to mesh these culturally-based guiding principles, with the need for organisational structures that deliver services, administer programs and grants, and satisfy external demands for financial accountability. Most Indigenous organisations operate as inter-cultural brokers and look to two different authorising environments (Fig. 2).

The bottom line for Indigenous governance is the need to create both culturally-legitimate and practical arrangements. Getting to a cultural match that has both internal and external legitimacy is not easy. It will require time, hard-headed decisions, and will not come about through externally imposed solutions. Initial models will need to be monitored and refined over time.

The ICG Project’s focus on detailed case study research and comparative analysis will encourage a more systematic exploration of the process and models emerging.

**Governance—an organising perspective**

The concept of governance pinpoints some important historical and contemporary issues facing Indigenous Australians, issues which until now have been tackled in a
piecemeal manner. There has been considerable research and policy consideration of issues such as Indigenous community financial management, the role of community boards and committees, corporate practice, the role of traditional law, political representation, accountability, property rights, funding mechanisms, resource management, service delivery, enterprise development, and so on. More often than not, these have been treated as largely disconnected matters, or as location-specific conclusions, when in fact they are inter-related aspects of the much bigger governance picture.

The concept of governance could provide us with a valuable organising perspective, or frame of reference for bringing together related issues into a more cohesive, insightful analysis providing it is given some research rigour (see Judge, Stoker & Wolman 1995; Stoker 1998).

The value of the concept in Australia derives from its focus on the wider field of players in the ‘governance environment’, not simply on ‘government’. It emphasises that the main institutional spheres (e.g. state, market and community) are interconnected, not neatly separated. It enables us to think holistically about the nature and impact of the wider governance environment on the everyday operation of community governance.

Used rigorously, the concept of governance should assist practical action, precisely because it integrates within a single analytic framework what were previously compartmentalised dimensions of Indigenous political life. Its power as a concept derives from its focus on issues of power and choice, and attention to concrete actions and decision-making events. It enables us to better explore the different cultural geographies of Indigenous identity, representation and authority. It encourages us to analyse the Australian complexities underlying the question: ‘Who constitutes the ‘self’ in Indigenous self-governance?’

Governance is useful as an organising perspective because it highlights the need for ‘governments’ to develop a more integrated approach to their policy making, service delivery and funding roles in this wider field of governance. The concept prompts us to develop a policy-relevant language with which to discuss community and regional governance. It also focuses on methods of evaluating the quality of governance and the need to design relevant indicators or measures of effectiveness and legitimacy. The concept of governance affords a connection between theoretical propositions about
inherent rights to self-determination, and the hard practice of achieving it in workable form on the ground.

Assessing Governance

One of the aims of the ICG Project is to investigate what constitutes effective and legitimate governance. The issue is fraught with problems of interpretation and practical implementation. There are many different meanings given to the concept of governance, and different modes of discourse about it, often using incommensurable language. Alongside the policy discourse about governance, there is a statutory, corporate, management, and Indigenous discourse—each with its own logic, principles and criteria. When these discourses about governance engage, competing views and priorities quickly emerge.

Just as governance is a culturally-based concept, so too are the criteria, indicators and measures of what constitutes ‘good’ and ‘poor’ governance. However, a growing body of international research also warns that recognising cultural difference should not be reduced to a crass cultural relativism—there may be universal principles of good governance that apply across all societies; albeit with local solutions.

Many Indigenous organisations now have a sense that governance matters, and especially the significant ramifications of poor governance. Some organisations are starting to evaluate their own arrangements and performance, but have trouble improving on their existing approach, and assessing the merits of their efforts and arrangements.

Principles and indicators

To assist these endeavours, the Project will investigate and test what might constitute meaningful and valid principles, or descriptors, of the quality of governance, in the hope that they might prove useful in governance capacity development. There is considerable international literature on methods of evaluating the quality of governance, and the validity, usefulness, and cultural relevance of indicators (Cheema 1997; Jubes 2002; Kaufmann, Recanatini & Biletsky 2002; Knack & Kugler 2002; World Bank various years).

The ICG Project has drawn on this literature, but its methodological approach for assessing governance is based on the following important parameters in developing and using principles and criteria of good governance:
• they are not a magic checklist, but an ideal that people can work towards;
• no society or government in the world has fully attained them;
• they have important cultural foundations that will determine how they play out in practice;
• they overlap and sometimes reinforce each other;
• judgement and balance need to be used in their application;
• they require both qualitative and quantitative evidence;
• Indigenous and non-Indigenous views and expectations need to be investigated; and
• practical, simple measures need to be identified that can be used by leaders, organisations and governments.

With these parameters in mind, the Project proposes to focus on eliciting possible principles and criteria which capture the following key dimensions of governance, and provide a starting point for assessing governance in practice:

(a) Power—its scope and exercise;
(b) Cultural geography and legitimacy—how workable cultural legitimacy is designed, refined and sustained;
(c) Leadership—how leaders and decision-makers (male and female) are selected, monitored, held accountable and replaced;
(d) Decision-making—processes, consensus orientation, events and outcomes;
(e) Organisational performance—how governance structures and goals are established and reviewed, organisational capacity to formulate and deliver policies and services to meet need for transparency, and for stability, innovation and risk management;
(f) Strategic direction—how communities and organisations develop long-term perspective of their social, economic and cultural development along with a sense of what is needed for such development;
(g) Participation and voice—the extent of involvement in decision-making; the respect of Indigenous constituents and of the state, for Indigenous governance institutions;
h) Accountability—internal and external, including the control of corruption and rent-seeking behaviour;

i) Resource governance—the extent and management of resources and economic development;

j) The ‘governance of government’—government’s capacity to formulate and implement enabling policy and service delivery frameworks; funding mechanisms; downwards accountability;

k) The governance environment—the relationships with external parties, impact of wider regional, state and national environment; and

l) Governance capacity development—processes for, relevance and outcomes.

The diversity of Indigenous Australian culture, and the different historical, statutory and economic circumstances of communities, suggests there will not be a ‘one size fits all’ model of ‘good Indigenous governance’. At the same time, Indigenous Australians share many cultural traits, face common structural obstacles, and experience similar high levels of disadvantage. In other words, while the local solutions will be different, there might be common underlying guiding principles of how to build effective governance. This means that the different models of governance might all be assisted by identifying common underlying principles that are relevant in Australian conditions.

The ICG Project’s Approach to ‘Community’ and ‘Regions’

Why focus on communities?

In the absence of what Bern and Dodds (2000: 164) termed ‘a compelling model of political representation’ in Indigenous Australia, there continues to be heated debate amongst about who constitutes the ‘self’ in self-determination and governance at the local level. Suggestions range from individuals, to extended families, clans and collectivities of clans, geographically-based communities and their representative organisations, regional networks of organisations, and traditional alliances and networks. All these different units of governance have been developed and funded in Australia, but in a haphazard and poorly coordinated manner. As a consequence, competing representative voices have been created on the ground.

For many reasons, Indigenous ‘communities’ are a logical starting point for thinking about the local practices and outcomes of Indigenous governance in Australia. There are, however, conceptual and analytic problems with term ‘community’. Many
geographically-based communities are artificial constructions of colonisation to which different Indigenous groups were sometimes forcibly relocated. Most are not culturally homogeneous or politically cohesive. Many communities are a complex mix of residents with different cultural and historical ties, and include traditional owners and claimants of the land on which the community has been physically built, people married to traditional owners, other Indigenous groups who have no land ownership ties but strong residential attachment to the place, and non-Indigenous residents. These groups have different, often overlapping rights and interests. High rates of mobility amongst some also make for a changing balance in the composition of communities.

Indigenous issues of legitimacy and constituency can be highly fraught in such circumstances. The people identified as having the traditional ‘right’ to exercise authority (e.g. to ‘talk for’ land, to ‘speak for’ different family groups) may not be the same people who are the elected authorities representing a whole community. How leaders and organisations are to be held accountable by a mixed constituency poses considerable difficulties (see Ross 2003). Nevertheless, communities have also become, as Peters-Little (2000) writes, ‘an integral part of... people’s heritage and are fundamental to Aboriginality’. Many Indigenous Australians now identify their family ties, personal histories and political affiliations with individual communities, or regionally-linked communities. Certain families are now attached to particular community organisations. By these means, family and kinship institutions become entangled in community governance structures.

Importantly, community populations (and therefore communities themselves) do not operate in isolation; they are enmeshed in wider regional networks and alliances. Regional representative organisations have been established on the bases of links between such connected communities. And major ‘hub’ communities have developed to deliver services to outlying smaller ‘satellite’ communities. Increasingly, smaller communities are facing funding and resource difficulties in sustaining separate systems of governance at a small scale.

Indigenous leaders are increasingly questioning the scale at which governance can be effectively and legitimately developed. The ICG Project has decided to focus on systems of governance (both informal and formal) operating within ‘communities’, and on the wider governance environment (local, regional state and national) within which community governance operates.
A fundamental question for the Project has been how to approach the concept of ‘community’ itself, given these historical and cultural complexities. A related issue has been how to establish a valid sample of ‘communities’ for the purposes of the research project.

**What is a community?**

The ICG Project defines a ‘community’ as a network of people and organisations linked together by a web of personal relationships, cultural and political connections and identities, networks of support, traditions and institutions, shared socioeconomic conditions or common understandings and interests.

The term ‘community’ can therefore refer to:

(a) A discrete geographic location—comprising, for example, a spatial territory or residential location such as a neighbourhood, city, rural town or district, an outstation, or discrete remote settlement.

(b) A ‘community of interest’ or ‘community of identity’—comprising a network of people or organisations whose membership might be cultural or historical rather than geographic. For example, a clan, language group or urban group might be residentially dispersed but nevertheless share a strong collective identity and form a ‘community of identity’, as will a set of genealogically or ceremonially linked outstations which are spread out across a region. A voluntary collaboration or union, or a set of organisations which together represent the interests of a broad set of people, form what might be called a ‘community of interest’.

(c) A political, policy or administrative community—comprising, for example, a state authority or a federation; a service population or electoral ward, or a policy network of individuals.

Communities are more than just residential locations, interpersonal networks, or collective identities. They take on social patterns, roles, functions and organisational structure (Loomis 2002; Sutton 1998), and assume particular forms through interaction with their constituent populations, other communities and the surrounding environment. Communities can be composed of diverse groups, competing interests and rights; but they can also be reasonably homogeneous.

The ‘cultural geography of governance’ refers to these wider sociological aspects of ‘community’. This term has been developed by the Project in order to widen our
research focus beyond the obvious geographic boundaries of discrete communities, to include the cultural units and more permeable social collectivities which are often viewed by Indigenous people as being the more legitimate bases for the ‘self’ in ‘self-governance’. These cultural and social forms of Indigenous community are evident across remote, rural and urban locations.

According to Community Housing and Infrastructure Needs Survey (CHINS) data, there are approximately 1,300 discrete Indigenous communities in Australia. Of these, 80 are located within larger non-Indigenous population centres and the remainder are geographically separate from other population centres. Only 149 have a population of 200 people or more (there are only 30 discrete Indigenous communities in Australia with populations over 500 people). The majority—close to 80 per cent—have populations of less than 50 people. Approximately one-third of Indigenous Australians live in remote or very remote locations in these discrete communities. The remainder are scattered across urban and metropolitan locations forming Indigenous ‘communities of identity’ (see Peters-Little 2000: 412; Sutton 1998). These urbanised and regionalised ‘communities of identity’ retain strong cultural and historical identities.

Arguments for collective self-governance are often felt to be most persuasive where Indigenous people are concentrated geographically (Hawkes 2001: 156). But these situations do not exhaust the realities and possibilities of governance in Australia. Other types of Indigenous ‘communities of identity’ have demonstrated the desire for devolved jurisdictions and greater self-rule for a membership which is not defined by residence in one location.

The ICG Project aims to carry out research in a range of ‘community’ types in order to identify the diversity of governance arrangements which Indigenous people are designing and have established. This sampling of community types will also facilitate investigating what constitutes meaningful units, boundaries and assessments of governance under different conditions.

**The community case-study approach**

To obtain culturally-informed and accurate empirical data on these diverse aspects of Indigenous governance, the Project has adopted a case-study method, using a sample of community types.

Case studies consist of field-based research in different types of communities, with a focus on key governing organisations and their cultural contexts. But certain case
studies will also focus in more detail on the relationships between community organisations in a regional context, and on case studies of government policy and service delivery frameworks.

In-depth field research in several communities will enable Project researchers to:

(a) drill down and unpack specific governance histories and arrangements;
(b) investigate the commonalities and differences in governance on the ground;
(c) focus on a particular aspect of governance that appears especially significant in one community (e.g. resource governance, leadership, law and order, regionalised governance, urban governance); and
(d) identify underlying attributes and influential causal factors.

For that purpose, Project researchers will each carry out periods of fieldwork with the same community, over a two or three year period. Using an ethnographic case-study approach and a range of research techniques outlined earlier, a research baseline will be established in the first year which is ‘thick’ in description and understanding. This baseline will then be built on over subsequent years.

There are a number of advantages in the case study approach. It enables researchers to focus on the micro-dimensions of governance, on its social and cultural processes, and on its actual practice, and thereby build a deeper understanding of a particular instance of governance (General Accounting Office 1990: 79). A case study conducted over the longer-term will provide greater assurance as to which factors have more traction in building effective governance. Important conditions, consequences and causal relationships are less likely to be overlooked when they have been widely canvassed with different groups and interests.

Selection of community case studies for the Project has been determined by a combination of variables:

(a) Community self-selection. Firstly, case-study research is time consuming and resource intensive. It needs significant engagement and support from community leaders and governing organisations, as well as from the researchers. Communities have to see, and receive, value from participating in the research. The success of the applied research rests on the active engagement and collaboration of communities and their leaders. The Project has therefore been responsive to community organisations and leaders who have expressed an interest in
participating in the Project over a period of time. To that extent, there is a degree of self-selection from communities themselves.

Researchers have also had ongoing discussions about the research with community organisations and leaders, and have been negotiating permission, clearances, roles and responsibilities, and issues of confidentiality with them. This preliminary negotiation phase has been fundamental to the rest of the Project and could not be rushed. All Project researchers must have ethical clearance from their respective university research ethics committees, and the informed consent of participating community governing bodies before proceeding.

(b) **Existing relationships with communities.** Some Project researchers have long-standing relationships with specific communities, organisations and leaders. Given that the research focuses on sensitive issues, the Project requires a high level of trust between researchers and community governing bodies. There are clear benefits in working with communities where researchers have already have built up relationships of trust and culturally-informed communication.

There may be a ‘familiarity effect’ at work in such established relationships. This could promote a sampling bias, or a certain ‘protectiveness’ or blinkered view on the part of the researcher in their analysis. Overall, however, the potential methodological difficulties of ‘long familiarity’ are outweighed by the depth of knowledge, relationships and understanding which some Project researchers have with particular communities.

(c) **Representative ‘types’ of communities.** In order to fully explore the diversity of conditions of Indigenous governances, and generate broadly relevant research conclusions, the Project has sought to include a sample of community types. The communities included are ‘representative’ of particular political, economic, statutory and cultural conditions, and display important governance variations. Another variable considered in this sampling has been the need to include communities from remote, rural and urban locations in the sample.

Communities participating in the research are representative of an important set of these variables. For example, case studies include communities:

- that are urban ‘communities of identity’ (see above);
- of different population size;
- operating in a ‘hub and spokes’ or regionally-linked relationship;
which are more and less culturally homogeneous;

with different land-tenures, and resource rights and interests;

which are representative of a ‘special governance interest’; such as local government or dispersed regionalism;

where organisations are long-established, or an emerging governance model;

where ‘extreme’ outcomes are evident; for example of both best- and worse-case practices; and

where the impact of the wider governance environment, and government policy and service delivery, are particularly evident.

(d) Advice and recommendation. Suggestions about potential community case studies were also provided by the Project’s research partners, by Indigenous leaders and organisations, and government officers.

As a consequence of the considerations above, the Project currently anticipates working with several communities and organisations which have a range of characteristics, as indicated below:

• Wadeye (Northern Territory)—large remote community and outstations; Aboriginal Northern Territory Land Trust; a new regional governance structure with jurisdiction as a local government;

• Anmatjerre (Northern Territory)—small remote community and outlying camps; some Northern Territory Land Trust; Indigenous and non-Indigenous governance issues;

• Yirrkala (Northern Territory)—well-established homelands and representative associations, large hub community and nearby mining town of Nhulunbuy; Aboriginal Northern Territory Land Trust; history of major political and governance initiatives;

• Maningrida (Northern Territory)—large remote community; multiple influential representative organisations; large network of outstations; Aboriginal Northern Territory Land Trust; governance training established;

• Fitzroy Crossing (Western Australia)—remote town; influential economic development organisations; culturally heterogenous; native title issues;
• Noongar (Western Australia)—metropolitan and rural town-based population; regionally dispersed community of identity; emerging regionalised governance arrangements; native title claim negotiations;

• Wiluna—remote community; shire-based governance; major mining developments, major service delivery and community development issues;

• Coen (Queensland)—rural town; shire council arrangements; developing Indigenous organisational bases for governance; native title and park management issues;

• Newcastle (New South Wales)—metropolitan and regionally networked Indigenous population; major economic development initiatives; established organisations with stable governance arrangements;

• Torres Strait Islands—regional authority governance; culturally-based island organisations; major cultural groupings; and

• ‘Policy and administrative communities’—within the Western Australia, Northern Territory and Federal governments.

The Comparative Framework for Analysis

The main approach to researching Indigenous issues in Australia to date has been through case studies—usually as one-off exercises and from a single disciplinary perspective. Case-studies have tended to consist of in-depth fieldwork with a single community, a residential outlier or, more often, a sub-group within a community. There have been a few exceptions, where larger numbers of case studies have been undertaken under the umbrella of a single research project.

However, while past research findings from detailed ethnographic case studies have often been insightful in regard to local issues, they have lacked comparative validity and broader application for policy purposes. The conclusions of research in one community or with one group are rarely seen to be relevant or valid for other types of communities and groups.

The Project has therefore adopted a comparative methodological approach, in tandem with its case studies, in order to overcome the perceived limitations of the case-study approach for policy application. The conduct of multiple case studies will provide in-depth description and analyses of important differences between Indigenous cultures across the country. However, a key hypothesis of the Project is that there are also
important common structural, political, cultural and economic conditions experienced by all Indigenous groups. A related hypothesis is that there might also be common underlying principles and criteria for building and assessing effective governance, and that these could be broadly relevant to all Indigenous governing bodies—no matter where they are located. Through a comparative approach, the Project aims to identify these underlying principles and extrapolate transferable lessons.

The development of a comparative approach to analysis is particularly challenging in a governance environment that is as complex and diverse as that of Indigenous Australia. In order to promote a valid basis for comparison across communities, a field manual of core ‘headline’ dimensions and attributes of governance has been developed by the Project team. This field manual builds on Project researchers’ previous experience, and draws on the national and international literature. Each researcher will report annually on their findings. The field manual will probably be refined as the Project progresses.

Each Project researcher will investigate the issues listed in the field manual, along with their own community-specific lines of inquiry. The purpose of the manual is to:

(a) facilitate the collection of information on a standard set of governance issues across different communities;

(b) promote a reasonably consistent approach by researchers to identifying influential ‘differences’ and commonalities’ in factors and conditions across those communities;

(c) enable analysis of the extent to which there are shared causal relationships between different governance arrangements and development outcomes; and

(d) test possible valid benchmarks and principles of governance effectiveness.

The field manual directs the collection of research data under the following headings (under each there are a subset of questions and issues):

• the research process;

• the conditions of community governance;

• dimensions and impacts of the governance environment;

• the dimensions of organisational governance;

• governance concepts and perspectives in the community;
• scope of the organisations control and power;
• leadership and succession;
• who is the ‘self’ in community self-governance;
• governance legitimacy;
• relations with, and participation of members;
• Institutional modes of governance;
• corporate governance and decision making processes;
• sources of conflict and dispute resolution;
• organisational resources and socioeconomic development;
• overall effectiveness and evaluation of governance;
• governance capacity and development;
• transferable lessons, principles and better-practice; and
• implications for government policy, funding and service delivery.

Research Dissemination

Governance building is a formidable challenge. Comparative case study research offers a link between rigorous research analysis on the one hand, and the formulation of recommendations and options for practical follow up on the other. The ICG Project not only aims to undertake high-quality research—it aims to make the research ‘count’ by informing the work of Indigenous organisations, leaders and government agencies in their practical efforts to build more effective governance.

To ensure the Project serves the needs of Indigenous communities on the ground, ICG Project researchers will undertake regular meetings and consultation with Indigenous leaders and organisations, other researchers, and senior government representatives. The guidance of the Project’s Advisory Committee is critical to these efforts.

The Project intends to progressively disseminate its research findings in a range of accessible formats—to the participating Indigenous organisations, leaders, governments, research partners and other parties. Strategies for dissemination include not only written reports, but also face-to-face community meetings, briefings, workshops, and discussions. To facilitate this strategy:
the Project has produced an information flier which provides an overview of the research process and contact details for researchers;

(b) CAEPR has devoted a section of its web page to the Project. This will enable people to access all Project publications and current news in one location;

(c) a Community Governance Newsletter has been initiated to provide regular updates and ideas to participating communities and more widely. The Newsletter includes reports from community research collaborators and organisations;

(d) the Project publishes a series of ICG Project Papers which can be accessed on the CAEPR website. Published papers, reports and seminars prepared by the Project team will be made available in this manner;

(e) the Project team presents public seminars and papers, and conducts specialist workshops in communities and with other stakeholders; and

(f) the Project regularly reports to its collaborating Indigenous organisations, to its international Advisory Committee and to its funding sponsors.

Building ‘governance’ is essentially a developmental issue—it is not just about getting the structure right. The best research in the world will have little value on the ground unless there is a preparedness to commit to follow-up action by organisations, leaders and government agencies.

A significant barrier in Australia is the lack of meaningful governance training and experienced trainers, and the lack of a developmental approach to ‘governance building’. Apart from the Australian Indigenous Leadership Centre, there is no national Indigenous organisation which delivers governance training and capacity building to communities and their organisations on the ground. There is no coordinated government approach to Indigenous governance training at either the national or state and territory levels. These are major gaps which will significantly hinder progress.

Just as Indigenous capacity for governance is a critical issue, so too is the capacity of Australian governments to deliver coordinated policy, funding and program support that will support community efforts to build stronger governance. New approaches to Indigenous governance will require governments to re-think the way they carry out community development and capacity building for governance.
Notes: Paper 1

1. While there are several excellent ethnographic accounts of Indigenous traditional governance systems operating in particular communities and regions, there are very few comparative studies (see, for example, Nettheim, Meyers & Craig 2002; Sullivan 1995; Wolfe 1989).


3. For Australia, see Berndt 1965; Hiatt 1986; Meggitt 1964; Myers 1986; Sharp 1958; Stanner 1965; Sutton & Rigsby 1982; Williams 1987; and the review by Keen 1989.
References: Paper 1


• 2004. ‘Representative authorities: towards representative structures and service delivery to meet the Northern Territory’s needs’, Paper presented to the Sustainable Economic Growth for Regional Australia conference, 6–8 September, Alice Springs.

• 2002. ‘What is institutional capacity and how can it help American Indian Nations meet the welfare challenge?’ Paper prepared for the symposium on *Capacity Building and Sustainability of Tribal Governments*, Washington University, St Louis.


Governance for Indigenous Communities and Regions conference, 3–5 April, Reconciliation Australia, Canberra.


Theme Two:

The State of the Australian State in Indigenous Affairs
The published papers in Theme Two draw upon my extensive long-term ethnographic fieldwork spent ‘studying up’, in order to elucidate the Australian state’s distinctive culture of governmentality as an observable field in Indigenous affairs. Written 12 years apart, Papers 2 and 3 support the conceptual refinement of governmentality posed earlier in the Introduction, as one encompassing a threefold reference; namely, that of govern-mentality, govern-ment-ality and the governance of government.

The State’s Culture of Governmentality

The Australian state’s field of governmentality has its own distinctive cultural configuration structured around a political geography of ministerial and ‘tribal’ parties, a federalised dispersal of political power, hub-and-spokes administrative architecture, and policy and bureaucratic networks. These are founded on enduring hierarchies, institutionalised modes of behaviour, specialist knowledge and expertise. It is a heterogeneous field having characteristic sub-cultures and silos of powers (associated, for example, with jurisdictional federalism, ministerial offices, and government departments). Neither coherent nor coordinated, at times these sub-cultures operate in ways antithetical to the state’s overall stated policy and political objectives in Indigenous affairs.

Papers 2 and 3 analyse examples of the institutional agency of state where power is exercised through diverse agents in order to mould Indigenous conduct. A particularly powerful tool of the state in this regard is highlighted throughout the papers; namely, the formulation and implementation of policy. Policy statements reveal an emic self-
representation by the state of its conduct of Indigenous affairs — where the state asserts its preferred rules, rationales, ideological aims and practical goals. The process of formulating policy is publicly represented by governments as a progressive evolution, involving consideration of future directions based on best-practice evidence and lessons learned from past implementation. From this perspective, policy statements can be viewed as the state’s authorising texts for action; the bureaucrats’ own version of a ‘Dreaming’ (and one that is similarly couched in terms of continuity and immutable law, but one also reliant upon human interpretation and customisation).

In reality, the papers show policy making and implementation to be a circuitous messy process; one which appears to have become especially turbulent in recent years. A related yet neglected feature of the modern Australian state — which is analysed from different vantage points in the two papers — is its pervasive reliance on a changing and always incomplete store of knowledge. This flows through circuitous pathways and shifting bureaucratic receptiveness to be selectively transformed into ‘evidence’ to promote or undermine particular initiatives and outcomes. However, the practical implementation of policy ‘Dreamings’ reveals a significant disjuncture with the state’s representation of its own motivation, and raises serious questions about the state’s capacity and self-governance within Indigenous affairs.

Collectively, the thesis papers indicate an ever-increasing turnover of policy strategies and institutional structures in Indigenous affairs. These are created at breakneck speed as brokered compromises responsive to ministerial mood and opinion polls as much as to evidence, and are highly susceptible to the agency of powerful individual bureaucrats and influential ‘old boys’ networks which cut across departmental boundaries.

The current environment of rapid institutional change in Indigenous affairs means that policy and program implementation appear increasingly beyond the capabilities of an ill-equipped, sometimes overwhelmed bureaucracy. Indeed, it is arguable that the state’s field of governmentality in Indigenous affairs is now so complexly layered that it operates in much the same way as the global financial system in its recent crisis mode; namely, where its dense entanglement, fluidity and complexity is such that dispersed people and entities act in isolation and in ways that amplify ripple effects, but no one person or entity understands the whole system or can discern cause and effect.
The Bureaucratic Field

Papers 2 and 3 demonstrate the need to see the state as comprised of people, not disembodied systems of institutionalised power and instruments. And even more importantly, the papers report that when people gravitate to particular sites of power and activate related modes of agency over prolonged periods of time, they generate sub-fields within the governmentality of the state.

In this respect, the power of the bureaucratic field looms large in Indigenous affairs. Attached to the defence of departmental territories are vast bureaucratic networks which are both instruments and wielders of statist power (Heyman 2004; Perrow 1986). In Pierre Bourdieu’s sense (1999: 69), bureaucrats are both agents and recipients of the state’s ideological rationale which creates a conformist modus operandi amongst them.

Importantly, the papers testify to the fact that the Indigenous affairs bureaucracy is neither homogeneous nor cohesive. It has its own internal sub-cultures, networks of support and factionalism, elite cadres, age and gender hierarchies, ritual performances, valued forms of governance capital, and a specialist language (see also Paper 4 and Smith 2002b). It includes influential departmental mandarins, and individual officers who sometimes work with considerable autonomy on the ground with Indigenous communities and organisations. Some government officers deliberately position themselves as the local face of government, using that authority to customise policy implementation and funding on the ground. For Indigenous people these are highly personalised encounters with the state whose ‘power is experienced close to the skin’ (Aretxaga 2003: 395). Individual bureaucrats invent local exceptions to government rules (thereby instilling a sense of necessary Indigenous indebtedness), and use their control over access to resources to curry local favour or secure preferred outcomes.

These practices can alter and undercut government goals, but also make policy implementation more workable under diverse community conditions. Not surprisingly, as this pattern of engagement repeats over time, Indigenous people judge that the exception is the rule. In other words, they correctly surmise that there really aren’t any binding government rules or guidelines, except those that visiting government officers and ministers say there are at any particular time.28

On the other hand, the papers reinforce the importance of not pathologising or over-generalising the state’s bureaucracies. For example, Papers 3 and 8 report the sympathetic engagement of government officers working closely with Indigenous communities over long periods. They slowly build close relationships and trust, and
acquire a reservoir of local ‘field’ knowledge enabling them to act as facilitative ‘go-between’ or intercultural brokers (Dillon & Westbury 2007; Gerritsen 1989; Wolf 1956). However, the value of their niche position and knowledge is highly vulnerable to the changing rationales of the state’s governmentality. During phases when the state derides Indigenous cultures of governance, such officers may be seen as too aligned with Indigenous concerns, and so find themselves professionally marginalised to the fringes of bureaucratic influence.

Today, with public servants hidden behind the key-coded locked doors of departments, many become distant from the practical realities of Indigenous life, and insulated from peoples’ expectation of ‘downwards’ accountability. Indigenous representations of this particular form of dis-engagement emphasise abandonment by the enabling state, as much as its impersonal disregard and impunity.

**The field of Indigenous functionaries**

A particularly important development reported by the collective published papers is the infiltration of Indigenous people into the cultural field of the state’s own governmentality; for example, as government bureaucrats, policy makers and advisors, Ministers and politicians, and as government-appointed members of committees, tribunals, statutory authorities, commissions and boards. During ATSIC’s operation, there appeared to be what could only be described as an Indigenisation of the state’s bureaucracy, creating and reinforcing powerful Indigenous political and leadership networks across the country. However Indigenous people occupy an ambiguous position within government. They are functionaries of the state, but also act strategically as advocates promoting Indigenous priorities, rights and interests. In certain important respects they operate as a unique intercultural sub-field within both Indigenous governance and state governmentality; a position that comes with the attendant competing pressures and demands, and contested legitimacy.

**State Representations of Indigenous Cultures of Governance**

The two papers highlight the uneasy line trodden by the Australian state in its governmentality, between two narratives of Indigenous culture. Both have implications for the state’s own agency in Indigenous affairs, and for Indigenous governance. One narrative is to do with the purported ongoing and imminent complete loss of Indigenous culture. This justifies the state stepping in to replace supposedly fading Indigenous governance with modern democratic forms. The other narrative is the imminent re-
emergence of the ungovernable primitive savage, with a culture in need of ‘good’ governance and control by the state. In both narratives the state represents and engages with Indigenous people in terms of a politicised model of temporality where their governance is treated as pre-modern — a gubernare nullius empty of ordered rule onto which can be written the language, norms and institutions of western statecraft.

The ironic consequence of both interventionist narratives is to exacerbate the vulnerability of Indigenous governance by refashioning it into a form which few nation states themselves have ever successfully achieved. This includes good governance characterised by benchmarks of representative and stable leadership, democratic decision making, full corporate and fiscal transparency and accountability, active citizenship participation and voice, and equality before the law. It is through such contrary narratives and their embodiment in institutional practice that the cultural field of state governmentality is dispersed into the lifeblood of Indigenous families, communities and organisations, where it generates its own impacts.

The Governmentality of Indigenous Cultures of Governance

The state’s governmentality has adopted changing guises that follow (and in turn promote) the particular trajectories of its ambivalent representations and agency at different points in time. Nevertheless, one recurrent point of focus by the state has been its characterisation of governance as primarily being about service delivery and financial accountability; a matter of good corporate governance in order to secure desired policy outcomes on the ground. A great deal of state effort goes into trying to meet the challenges of implementing and improving the delivery of services to Indigenous people. Very often this effort is concentrated on the establishment, operation and termination of Indigenous organisations.

A number of my professional publications have documented the nature and impact of the state’s governmentality of Indigenous service delivery across a wide variety of sectors, including employment, welfare, family life and child-care, enterprise and resource development, land management, tourism, and arts and crafts (see Appendix A). The two papers in this theme highlight many of the issues discussed in that wider corpus. Paper 2 examines the establishment in 1989 by the Australian Government of the Aboriginal and Torres Strait Islander Commission (ATSIC), arguing that its creation marked a radical reorientation in the state’s governmentality of Indigenous affairs. Here we see the state moving away from its earlier comfortable habitus of the pater familias of Indigenous assimilation and integration towards Indigenous self-determination.
The paper demonstrates that the creation of ATSIC constituted a fundamentally different phase of engagement by the state with Indigenous culture. Specifically, ATSIC gave structural and institutional recognition to Indigenous cultural diversity. This formed the basis for transferring significant power and responsibilities (for policy, service delivery and funding) to a statutorily enshrined network of national and regional elected Indigenous representatives. In this way, a reshaped version of Indigenous cultural heterogeneity was directly incorporated by the state into its own governmentality (see also Smith 1993a, 1993b).

However, at the very point of ingestion, Paper 2 shows how the newly-influential paradigm of cultural diversity and elected representation became ‘hotly contested’ both by Indigenous people and the Australian state. Being neither fully Indigenous, nor fully of the state, ATSIC became the focus of Indigenous and government complaint, growing bureaucratic surveillance and ministerial intervention. Its eventual abolition by the Australian Coalition Government in April 2004 (see Papers 3 & 8) was, in large part, the culmination of ATSIC’s flawed intercultural role being made the subject of highly charged public politics by the Australian state. The outcome was a radical ejection and rejection by the state of Indigenous culture as an acceptable basis for designing contemporary forms of Indigenous representation and governance.  

Paper 3 was written in 2008, four years after the abolition of both ATSIC and the abandonment of the policy of self-determination. The paper documents a growing reassertion by the Australian state of its unilateral sovereign voice and power over Indigenous cultures of governance. This mode of state governmentality was justified by a renewed pathologising of Indigenous culture and the purported failure of Indigenous governance.

Together, the two papers (supported by those in subsequent themes) demonstrate the ways in which the Australian state has worked to graft the concepts, structures and institutions of its own field of governmentality onto Indigenous governance; sometimes subtly and cooperatively, sometimes overtly and unilaterally. Various examples are provided throughout the thesis papers, in the form of:

- legal requirements on Indigenous people to identify stable representative leaders for entire communities (see Paper 4 and Smith 1997b);
- encouraging (and sometimes requiring) social groups to form themselves into incorporated organisations in order to receive funds (see Paper 8; and also Altman & Smith 1994, 1995, 1999);
• the mandatory creation by governments of visible cultural geographies or administrative boundaries via statutory and regulatory conditions (see Papers 2 & 9, and Smith 2007);

• encouraging (and sometimes requiring) the use of democratic election, decision-making and voting systems (see Paper 3 & 9, and Smith 2002a, 2004);

• asserting the primacy of individual citizenship over collective Indigenous rights and interests (see Smith 2001, 2002b); and

• the statutory creation of newly-named categories of people, on whom are bestowed special decision-making rights, responsibilities and authority by the state (see Papers 4, 6 & 7 and Smith 1998).

The papers also document a parallel trend where the state relegates Indigenous leaders and organisations to an advisory rather than decision-making role in their engagements with the state.

Summary

An important contribution of the two papers is that they overcome the reification of ‘the state’ as unitary, coherent, rational and apical. Their ethnographic evidence (supported by subsequent papers) reveals the state to be experienced by its own agents and Indigenous people as having heterogeneous guises, multiple motivations and contradictory agendas. Over the past 30–40 years the state has sometimes appeared distant and imaginary; sometimes incapable and uncertain; at other times all-powerful, interventionist and punitive; or intimately engaged and enabling. And on many occasions, these have been enacted simultaneously.

These guises are commonly seen as a linear sequence of discursive predispositions towards Indigenous Australians and their cultures of governance — to which Indigenous people then respond or resist. However the thesis papers testify to something more polycentric than centralised, more multi- than uni-directional, more contradictory and diffuse than cohesive.

Importantly, the timeframe encompassed by the collective thesis papers reveals the current hyper-fluidity and turbulence of the Australian state in Indigenous affairs to be part of a cyclical pattern of governmentality; one gravitating along a continuum between modes of inclusion, recognition, marginalisation, exclusion, and reshaping of Indigenous governance. This cycle reveals much about the state’s own problematic self-governance and self-representation in Indigenous affairs. Significantly, the papers
indicate that the state has always been sorely challenged by its own capacity and the complexity within Indigenous affairs, and remains deeply vulnerable to the transformative practices and representations of Indigenous people themselves.
Paper 2: From Cultural Diversity to Regionalism: The Political Culture of Difference in ATSIC

D. E. Smith, 1996.


Introduction

On 2 November 1989 the Commonwealth Parliament enacted the Aboriginal and Torres Strait Islander Act 1989 (the Act) which established, in March 1990, the Aboriginal and Torres Strait Islander Commission (ATSIC) to replace the Department of Aboriginal Affairs (DAA) and the Aboriginal Development Commission (ADC). Hailed as a milestone in Australian Government administration, ATSIC is a unique structure, combining administrative and representative Indigenous arms in one statutory body.

ATSIC operates within a complex political and policy environment; one which is characterised by numerous interest groups, multiple and overlapping jurisdictions, a high degree of politicisation and difficulties in cross-cultural communication (Dillon 1992: 91). This paper argues that the Indigenous representative arm is the outcome of Commonwealth Government attempts to comprehend and incorporate Indigenous cultural diversity into a national organisational framework. The particular administrative and political processes by which this has occurred are described; and the limitations and implications of the incorporation of cultural diversity are raised. In particular, it is argued that the politics of diversity continue to generate key tensions within ATSIC that are critical to its ongoing policy and funding decisions, and to its capacity to operate strategically in the wider public policy environment.

Aboriginal Cultural Diversity

Cultural diversity within the Aboriginal population is taken to mean many things in the public policy arena. It is understood to be marked by a variety of cultural styles across the country, with local groups emphasising the importance of differences in spoken languages, social organisation, the organisation of land-owning groups, ceremonial and ritual affiliations, art styles, material culture and so on. While this cultural diversity exists within an inclusive commonality of Aboriginal identity, key differences continue to be asserted by groups wanting to emphasise distinctive local identities.
The localisation of Aboriginal identity has been further underscored by the historical experience of colonisation, and the socioeconomic impacts of residence at a variety of localities. Aboriginal people today live at remote settlements formed through the imposed phases of mission and government supervision; on small outstations and pastoral excisions; on the outskirts of rural towns; and in inner city and suburban metropolitan areas. In such settings, there are not only cultural differences evident, but marked variation in the socioeconomic circumstances of individuals and families according to their residence in remote, rural or urban areas (see Taylor 1993a). In turn, socioeconomic differences are apparent at even finer-grained population levels within types of geographical location. For example, the category of ‘urban’ can be dissected to reveal important variations in economic well-being between particular urban communities in metropolitan areas (Smith 1995). This national and regional diversity is also mirrored within single communities where one finds significant micro-economic and cultural differences between residential groups.

At a broader population level, a key area of cultural diversity is that evident between Aboriginal and Torres Strait Islander peoples. The growing political significance of, and emphasis on, this difference has lead to the transformation of the Torres Strait Islander Regional Council into a separate Torres Strait Regional Authority (TSRA) within ATSIC, having its own budget line and substantial policy and program independence (Sanders 1994). More recently, influential Islanders have urged the Prime Minister to extend this institutional expression of the cultural differences between the two Indigenous populations, by transforming the TSRA into a Commission separate from ATSIC.1 While the emphasis in this paper is on Aboriginal cultural diversity, it is against the backdrop of this political and institutional negotiation of cultural difference being carried out between Islander and Aboriginal interests within ATSIC. Cultural diversity has become an influential paradigm within ATSIC, and one that is hotly contested, especially in the area of policy formulation, program funding and corporate direction.

**Cultural Diversity and the Bureaucratic Knowledge Base**

It is worth considering the context within which Aboriginal cultural diversity has become the subject of bureaucratic assessment and management by government. We need, so to speak, a view of the State room and its bureaucratic inhabitants. A neglected feature of the modern State is its pervasive reliance on a changing store of social and economic knowledge (Lacey and Furner 1993). For modern governments, selecting,
justifying and implementing policies and new institutional structures means finding defensible and workable grounds for them. Those grounds are often prepared on the basis of information sifted from the vortex of reports, inquiries, briefing papers and reviews which inform the knowledge base of the State’s bureaucracies.

The changing content of bureaucratic knowledge feeds directly into government thinking - though there are circuitous paths and complex chronologies involved. The production of this knowledge base within government is a political as well as an intellectual activity, shaped as it is by the historical relationship between Aboriginal people and the State. Neither should it be thought of as a cohesive and tested set of understandings. Rather, it is characterised by incompleteness and relies on vast amounts of stylised information shaped by historical insights, adversarial interests, key individuals and changing government objectives. It is, in other words, a construct of both smoke and substance. Government reliance on, and bureaucracy’s contribution to, this changing knowledge base is evident in Aboriginal affairs.

If the 1970s and early 1980s saw the policy construction by the State of an Aboriginal collectivity that was physically and conceptually sited in the ‘remote community’ (see Beckett 1988a; Morris 1988), then the period since has witnessed the insertion of cultural diversity into that perceived collectivity. Information about the cultural heterogeneity of the Aboriginal population has been added to the processes of bureaucratic and government decision-making. This is not to say that diversity has been systematically considered by government, or formalised as policy. Nevertheless, the idea of its importance was incorporated into the bureaucratic knowledge base and and became influential.

As the policy and program implications of cultural differences within the Aboriginal population became more apparent, diversity itself became problematic for government and its bureaucracy. For example, the standardisation and mainstreaming of service delivery gradually gave way to pressure for ‘special’ DAA programs based on the culturally specific needs and circumstances of communities. Considerable time and money was been spent on ascertaining what those different needs and circumstances might be, and how DAA should respond to them. One result was that DAA developed an administrative database which divided Aboriginal communities into distinct categories according to variations in their location, settlement histories, population size and cultural characteristics. DAA attempted to develop particular programs for these
community types; to orient service delivery to them; and major policy initiatives were differently applied in relation to them.

A series of government-initiated inquiries during the 1980s served to focus attention on the policy and planning impact of cultural diversity. The issue was influential in the Miller Committee’s review of Aboriginal employment and training programs, conducted between 1984-5. The Committee’s final report (Miller 1985: 5-6) argued strongly that the different cultural backgrounds and aspirations of Aboriginal people influenced the extent of their involvement in mainstream education, training and employment. Accordingly, when the Commonwealth established the Aboriginal Employment Development Policy in 1986, program strategies were devised in accordance with the ‘wide variety of economic and social circumstances of Aboriginal communities’ and the ‘different aspirations and employment needs of Aboriginal people arising from markedly different social circumstances and cultural values’ (ATSIC 1987: 3, 5). Reports by the House of Representatives Standing Committee on Aboriginal Affairs (HRSCAA) further highlighted the implications for government of the cultural and socioeconomic diversity evident within the Aboriginal population. One such inquiry into administrative and support services in Aboriginal communities in 1987-8, argued it was crucial that government policies and programs ‘be adapted to the differing needs and concerns of communities’ whose populations experience ‘differing historical experiences’ ... ‘differing socio-economic backgrounds, cultural beliefs and values and geographic situation’ (HRSCAA 1989: 3-4). Similarly, the Blanchard Report (1987) was influential in drawing attention to the implications of such diversity for service delivery to outstation populations in remote locations.

The perceived need to cater for cultural diversity and localism presented dilemmas for the Federal Government in its desire to consult with, and gain the support of a single, representative ‘Aboriginal voice’. In particular, it faced the issue of how Aboriginal diversity could be welded to an organisational form of representative democracy. Government acknowledgment of the political implications of cultural diversity had been evident in its attempt, via the National Aboriginal Conference (NAC) structure, to establish a national body representative of those differences. The NAC was disbanded in July 1985 ostensibly because of its lack of such representativeness and because of its considerable internal factionalism. Coombs’ review of the NAC for the then Minister of Aboriginal Affairs, Clyde Holding, indicated that there was a clear rejection of the NAC by many Aboriginal organisations and communities in favour of
their own particularised interests (Coombs 1984; see also Rowse 1991; Weaver 1984). From the Government’s perspective, there appeared to be ample evidence not only of the importance, but of the ‘problem’ of cultural diversity and, therefore, the need to manage it. The crux of Coombs’ review had been his proposition for an alternative national Indigenous body that would not only include representatives elected at a regional level, but would also fully assume the existing policy and financial powers of the DAA. Coombs argued that such a national voice should be formed from its constituent Aboriginal parts; that the sheer cultural diversity of the Aboriginal population be the basis for a national body; and that national and regional representatives should be firmly linked to local Aboriginal organisations. However, the Labor Commonwealth Government and senior bureaucrats were unwilling to entertain such a wholesale Indigenous supplanting of DAA. Later, it was ATSIC which replaced the NAC, but with crucial differences: the new Indigenous structure was integrated into the existing Aboriginal affairs bureaucracy, rather than standing outside of the policy formulation process as the NAC had done. The existing bureaucracy (DAA and the ADC) was spliced onto a newly created Indigenous arm.

**Creating the ATSIC Structure: Incorporating Diversity**

By the time the ATSIC proposal was first being developed (during 1986-87), the nature and implications of Indigenous diversity were part of government deliberations. The earliest beginnings of ATSIC are contained in the exchanges of confidential Cabinet submissions, and so not available for public examination. Initial proposals were developed by an informal working party of consultants and staff from the office of the Minister for Aboriginal Affairs, in liaison with senior staff from portfolio agencies such as DAA. The working party drew upon existing bureaucratic knowledge, and a variety of reports and inquiries including the Coombs review (1984) and O’Donoghue’s (1986) revamping of his recommendations (see McMullan 1989: 71-2). The proposal for a new body was announced by Gerry Hand, Minister of Aboriginal Affairs, in the lead-up to the Australian Bicentenary, and formally launched with the publication Foundations for the Future, on 10 December 1987.

In Hand’s original proposal for ATSIC, 28 councils at a regional level were grouped into 6 zones covering the whole of Australia. Between January and March 1988, the Minister toured the country consulting with Indigenous people. Media releases made much of the fact that he participated in some 50 public meetings attended by over 6,000 people. While criticisms have been made of the shortcomings in that consultative
process (see McMullan 1989), it was nevertheless the most extensive ever conducted by government.

As a result of considerable criticism presented by Aboriginal groups during this consultative phase, and the need to gain broad Indigenous support, the Minister revised the proposal (in April 1988), substantially expanding the 28 regions to 56 and then 60, and the zones from 6 to 17.² Importantly, the original administrative criteria for regional boundaries was dropped in favour of criteria based on cultural commonalities and differences, and related factors. Hand stated that the amended boundaries and expanded number of councils ‘reflect Aboriginal and Torres Strait Islander requests and recognise historical, cultural, linguistic and other important factors’ (Hand 1988: 2177). While there is little information on public record indicating exactly how these regions were demarcated, Hand’s claims undoubtedly acknowledges Commonwealth Government attempts to recognise and strategically incorporate Aboriginal cultural diversity as the basis for ATSIC’s organisational framework, and so structurally manage its political impact. Inevitably, it was a limited translation of diversity, subject as it was to prevailing government concerns about the need for financial and administrative efficiency, and the sheer difficulties involved in translating complex Indigenous cultural differences into a nationally representative organisational framework.

ATSIC was established as a statutory authority with legislative powers and functions extending across a bipartite, hierarchical of a nationally elected Indigenous representatives on the one hand, and an equally hierarchical administrative arm on the other (ATSIC 1992a, 1993a). ATSIC’s organisational structure was the subject of intense debate. Significant alterations were required to enable passage through the Senate (Dillon this volume; Sanders 1993). Also, the internal protocols and administrative mechanisms by which the organisation would actually operate were still to be defined. For this very reason, the domain of Indigenous diversity continued to be influential in ATSIC’s early development. Once cultural diversity had been given an institutional expression, it became the subject of strategic interpretation and intense negotiation.

The Organisational Structure and Roles of the Indigenous Arm

ATSIC’s Indigenous representative arm is divided into three components at the regional, zone and national levels. Initially, the base consisted of 60 regional councils as bounded geographic entities covering all of Australia (see Map 1). Each regional council has a set of Indigenous councillors and chairpersons elected for three years to
represent their particular regional population. In pushing through the ATSIC legislation, Hand (1987: 2) described the 60 councils as the ‘linchpin of the Commission’s future’. Legislative changes in 1993 reduced the number of regional councils from 60 to 36 (and to 35 after the creation of the TSRA) and councillor numbers from 800 to around 600.

Regional council areas are grouped into 17 zones. Councillors for each zone elect a Commissioner to represent them on ATSIC’s Board of Commissioners. Along with these 17 Commissioners, the Board also has two other Commissioners appointed by the Federal Minister for Aboriginal and Torres Strait Islander Affairs, and a chairperson appointed by the Minister from among those 19 Commissioners.

Regional councils are established as separate legal entities with a range of statutory functions, including: the formulation and revision of regional plans for improving the economic, social and cultural status of the Indigenous population within its boundaries; assisting and advising ATSIC and other Commonwealth and State government bodies in the implementation of that plan; and via the budgetary process, making proposals for expenditure within their own area.

Regional councillors have executive responsibility for developing and monitoring all ATSIC policy and programs at the regional level (ATSIC 1990, 1992a), though it is not at all clear to what extent this occurs in practice. Councils do not directly receive or spend funds, rather they decide upon program funding allocations within their regions, and are legislatively required to do so on the basis of priorities laid out in their regional plans (ATSIC 1994: 26; see s.97(2)(a) of the Act). Prior to legislative amendments in 1993, regional councillors had a more advisory role in funding decisions. Subsequently, the delegation of Commission powers to regional councils substantially increased their involvement in funding decisions.

In the 1993 legislative amendments to ATSIC’s structure, it was proposed by the Commission that the Board of Commissioners should be responsible for electing its own chairperson. This move for greater autonomy was rejected. The accepted amendment resulted in ATSIC regional chairpersons and Commissioners being employed full-time, though not under the Australian Public Service Act. In order to assume full-time paid employment, Commissioners and regional Chairpersons are required to forgo other paid employment.

Under the Act, the Board of 19 Commissioners has executive powers to set national policy, determine national financial priorities and develop draft budgets; formulate and monitor programs; and provide advice to the Commonwealth Government and the
ATSIC Commissioners thus have a representative role as individuals, as well as collective advocates for their respective constituencies within Aboriginal Australia. The Board has significant decision-making responsibilities and is regarded by ATSIC as ‘the main policy-making body in Indigenous affairs’ (ATSIC 1994: 8). Council chairpersons and State Advisory Committees negotiate the inter-regional division of funds within each State, and the latter Committees play a substantial role in decisions at the State level about inter-regional funding distribution. This ATSIC funding process is administratively complex and fraught with conflicts about the decision-making role of the councils relative to each other and to the Board, and relative to various echelons of the administrative arm (Smith 1993a).

The Organisational Structure and Roles of the Administrative Arm

ATSIC’s administrative arm is divided into three tiers at the central, State and regional office level (ATSIC 1993c). At the apex, the Chief Executive Officer (CEO) is a statutory officer appointed by the Minister. The CEO has authority for the daily administration of the organisation, and has to balance direct responsibility to the Minister in performing these duties with a legislative requirement to exercise powers in accordance with policies and directions given by the Indigenous Board of Commissioners. At the base of the administrative arm are 30 regional offices responsible for the administration and delivery of ATSIC programs. The reduction of regional councils to 36 effectively aligned them more closely to the regional office structure and the latter’s administrative oversight. Regional offices administer the funds allocated by regional councils to Aboriginal organisations and communities, as well as national program funds allocated by the Board of Commissioners. The regional offices are supported by State offices which co-ordinate grant administration and budget preparation, monitor programs and liaise with the Commissioners in their State, and with State Governments in relation to the provision of services (ATSIC 1993b: 11).

The Office of Evaluation and Audit (OEA) was established by s.75 of the ATSIC Act and is headed by a statutory Director appointed by the Minister after consultation with the Board of Commissioners. OEA staff are ATSIC staff. The Office is expected to provide financial accountability to Parliament (Dillon 1992), and is in an ambiguous position between its accountability to the Minister and to the Indigenous and administrative arms of ATSIC. The Director is responsible to the Minister, not the CEO or Board, but can be requested to conduct audits by the Minister and the Board of Commissioners, and is required to report in writing to both. At the same time that 1993
legislative attempts by the Commission failed to have the OEA placed more directly under Board control, its functions were expanded to include audit oversight of the regional councils. Indeed, every stage in the devolution of powers to ATSIC’s Indigenous arm has been met by increased requirements for public accountability measures (Sanders 1993).

While ATSIC’s administrative arm was initially largely formed from existing staff of DAA and the ADC, the need to quickly establish financial and administrative linkages with the representative arm has required a major cultural change within the bureaucracy. The administration is described as having a ‘dual responsibility to both the representative arm and the government’ (ATSIC 1995: 6), requiring a fine balancing of interests between accountability to government and advocacy of its Indigenous priorities. The role of regional, State and central offices in respect to regional councils and Commissioners, and vice versa, is still evolving and remains subject to negotiation.

The Institutional Politics of Diversity

Cultural diversity is the unifying logic behind ATSIC’s representative Indigenous structure. The Aboriginal collectivity has been constituted ‘as a plurality of local interests’ and translated by government into the organisational guise of the Commission. This plurality has been sited in a representative structure that ‘recognises the culturally and politically heterogeneous nature of the Aboriginal and Torres Strait Islander population’ (Dillon 1992: 91, 94). ATSIC’s decentralised character is deemed to be vital ‘because Aboriginal Australia remains as it has been: dispersed, a network of localities’ ... ‘where communities have different values and aspirations, different problems, according to their different cultures and histories’ (O’Donoghue 1991: 13, 1993: 8). ATSIC’s regional council structure is thus presented as a statutory expression of Indigenous diversity. A number of important consequences have followed upon this structural incorporation and containment of cultural difference.

ATSIC’s most recent corporate plan affirms ‘the primary role of the representative members of ATSIC in setting the broad direction of the organisation at the national and regional level’ (ATSIC 1995: 8). Nevertheless, there is an underlying tension between the regional and central levels of the Indigenous arm in these areas of responsibility. The Board is expected to make decisions on the basis of ‘national priorities and budgets’. Regional councils, as representatives of regional expressions of cultural diversity, are expected to make decisions reflecting the local priorities and needs stipulated in their regional plans. In actual fact, the structural divisions of
responsibilities within the Indigenous arm are more ambiguous than that. First, Commissioners are also regional councillors, and regional councillors are often also members of other local Aboriginal organisations. Second, regional councils are being given increased control in response to their calls for greater devolution of funding powers. Third, it remains unclear by what processes the regional and national levels of policy formulation and funding distribution are linked and made consistent. As a result, policy and program funding decisions are subject to diverse and competing Indigenous interests.

Protocols, legislative amendments and reviews have attempted to clarify the relationship between ATSIC’s constituent representative and administrative arms. The budgetary process has been adapted to meet the progressive transfer of financial and other responsibilities to the Commissioners, and decentralisation to regional councils. Despite these efforts, ATSIC remains a contested structure. Its distinctive dual structure has been posed as a partnership between the Indigenous and administrative arms, but if this is the case, it is a partnership characterised by role conflict and an uncertain distribution of decision-making powers. These organisational tensions continue to be negotiated by interest groups, or constituencies, both within and outside the Commission which are aligned to competing views of its role. Indigenous cultural diversity is often employed as a policy and political tool by such constituencies to promote different directions. In the process, institutionalised diversity is becoming a feature of public Aboriginal authenticity.

Transforming Cultural Diversity into ATSIC Regionalism

At the end of ATSIC’s first year, Rowse (1991: 12) suggested that it could be seen not only as reflective of a change in public policy formation, but also as a new stage in the formation of Aboriginal cultural identity. He linked this possibility to the Commission’s potential impact on the ways Aboriginal people might perceive the boundaries between the State and themselves at the local level. In fact, public representations of an institutional Aboriginal identity are in the process of being generated within ATSIC, but at the national and regional levels. It is precisely not at the ‘local’ or community level that cultural diversity has been structurally accommodated within ATSIC. Rather, a very specific reading of cultural diversity has occurred; one which structurally equates it with a regional expression and value. Regional councils have been created by the Commonwealth Government as the institutional face of diversity. This has produced another set of administrative boundaries and structures.
within Aboriginal affairs, which have become the locus of an institutionally contested public Aboriginality.

Regional councils are encouraged by ATSIC to undertake regional planning to document, amongst other things, the varying circumstances and priorities of the Indigenous communities and organisations within their boundaries. As is to be expected, there is little that is uniform or consistent about the planning documentation so far produced. Councils are encouraged to act as the consultative interface with local and State governments for the co-ordination of service and funding needs. Increasingly, they are also seen as the formulators of ATSIC regional policy directions. However, whether they can adequately reflect the wide range of Indigenous interests within their regions is yet to be established. Nevertheless, Aboriginal people have been exhorted by the current Minister to use the council structure to ‘exert the political clout needed to gain a fair share of available resources’ (Tickner 1993).

As a consequence of ATSIC’s decentralisation policy, regional councils are locked into the management and control of an increasing percentage of program funds. Its legislation imposes two major program funding categories: regional programs operating under regional council discretion and administered by regional offices; and national programs allocated by the Board of Commissioners and administered by central office. The Act further specifies that certain national funding areas are excluded from regional council discretion, including State grants, administrative expenses, and funds for portfolio organisations and the Commercial Development Corporation (see Smith 1993a). However, while it is the Board and central office which specifies the relative division of funds between these two broad program types, increasing areas of national program funding are being transferred to regional council discretion. The Commission’s total regional budget, over which regional councils have discretion, has increased from $79 million to $240 million during the three financial years, 1991-92 to 1993-94. Regional funds have risen from representing 12.6 per cent of ATSIC’s total program funds of $628.7 million in 1991-92, to accounting for 32.8 per cent of total program funds of $730.3 million in 1993-94. While some regional councils criticise the slow rate of financial decentralisation occurring, they are in fact steadily gaining substantial authority over ATSIC program funds.

Inevitably, allocative decisions by regional councils are political decisions and a source of conflict. Councillors become the focus of local Indigenous competition over scarce regional funds, and local organisations question the objectivity and authority of
regional council members. To date, disputation has mainly centred on resource allocation decisions by the councils, but increasingly regional councils will be held accountable by government, the Commission’s central bureaucracy and by local communities, for their decisions and for program outcomes. To an extent, parochial politics at the regional and Board level have served to deflect attention away from the responsibilities of mainstream agencies and State and Territory Governments.

Cultural diversity and organisational decentralisation have become firmly grounded in ATSIC regionalism. Regions, in turn, are equated by many in ATSIC (not only regional councillors), as the structural level at which ‘real’ self-determination in ATSIC lies; even over Commissioners who, after all, are firstly regional councillors. The ATSIC bureaucracy and Board attempt to manage the consequences of regionalism and decentralisation by trying to link regional council decisions to national policy frameworks and to financial accountability measures. At the same time, the councils push for greater autonomy and financial self-determination. Cultural diversity, translated in as regionalism and financial decentralisation, has become a key factor in ATSIC policy, program and funding directions.

The Diverse Faces of ATSIC Regionalism

The creation of geographically bounded ATSIC regions has generated further permutations of diversity between regional Aboriginal populations. At the most obvious level, the 36 regions (including the Torres Straits) differ considerably from one another in their populations, physical area, geographic location in rural, remote and urban areas, and the types of communities within each. But additional, more detailed indicators of inter-regional differences are now being documented and referred to in ATSIC planning.

Over the last few years, an important piece of information has been added to ATSIC’s bureaucratic knowledge base. Namely, that while there are substantial differences in socioeconomic status between Indigenous and non-Indigenous Australians; there are often greater variations in levels of socioeconomic disadvantage between regional council populations. ATSIC regional populations vary greatly in their demographic profiles, health characteristics, labour force participation rates, degree of involvement in the subsistence and mainstream economies, income levels, costs of living, educational attainment, and household and family characteristics. Regional council ‘economies’ vary considerably according to the nature of the mainstream labour market, the presence or absence of Aboriginal-owned land and related economic
development options, and the type and extent of government funding and transfer flows into the region (Khalidi 1992; Tesfaghiorghis 1991). Bureaucratic knowledge about these inter-regional variations is expanding as ATSIC obtains five-yearly census data disaggregated to the regional council level. Survey research available to ATSIC also reveals significant variations between ATSIC regions in infrastructure levels, housing and community amenities (Australian Bureau of Statistics 1994; Jones 1994). So that a range of additional socioeconomic differences are being mapped onto cultural diversity, creating a political economy of diversity at the regional level.

Regional plans refer to the varying socioeconomic and cultural characteristics of each region, and assert different funding priorities. As a result, a more geographically-based program structure is being advocated to cater to differing regional needs. There have been calls by some councils to have the allocation of program funds based on an assessment of these regional differences (see Smith 1993a, b). As a result, ATSIC commissioned a consultancy in 1994 to develop a formula, based on relative needs, for use in distributing funds between the regions. Competition and manoeuvring between the 35 regional councils over their relative share of funds is likely to grow more urgent and vocal as they attempt to establish a legitimacy with local Indigenous organisations. One consequence of this is that the conflict over resources is being firmly shifted into the Aboriginal, rather than the government and bureaucratic domain. In particular, attention has been focused on the funding decisions of ATSIC Commissioners and the regional councils.

**ATSIC: A Contested Structure**

ATSIC is often referred to as if it is a monolithic, unified structure. This is far from the case. There are different constituencies within the Indigenous arm, as there are within the administrative arm. Its representative structure has been based on government attempts to incorporate and manage Indigenous cultural diversity; albeit via a narrowly constructed regional reading of that diversity. Subsequent to the initial incorporation of cultural diversity as the basis for ATSIC’s representative structure, further elaborations of that diversity, rendered at the regional level, have been generated within the Commission. In this manner, diversity has become the organisational persona given to the Aboriginal collectivity; but one subject to contested interpretations.

Regionalised diversity has subsequently manifested itself as competing parochial interests - often at the expense of national objectives and local program outcomes. The process of organisational and structural decentralisation within ATSIC has also been
met by demands for even finer-grained representation of Indigenous stakeholders within regions. The result is that diversity has been made a highly politicised domain mediated by constituencies within the Commission, and outside.

The politics of cultural diversity are evident at a number of levels in ATSIC. On the one hand (and with a very broad stroke) a ‘centralist’ bureaucratic constituency emphasises incorporation of difference; mainstreaming; a functionally-based program structure; high levels of centrally supervised financial accountability; tied funding; and concern over the need to maintain national policy and program objectives. It also regards, perhaps somewhat uneasily, the Board of Commissioners as the senior decision-making group within the representative structure (though not perhaps, over the total organisation) and hence, as being the key organisational arbiters of self-determination.

On the other hand, a ‘regionalist’ constituency within ATSIC holds out the regional council structure as the key to the Commission’s future development. That constituency pushes for greater decentralisation of decision making; financial autonomy and control at the regional level; one-line funding arrangements; ‘culturally appropriate’ program outcomes; and geographically-based program structures. The influence of this constituency in ATSIC is evident in the continuing pressure to devolve substantial control over policy and program funding to regional councils. It is also apparent in support for the argument to have the ‘authority’ model of the TSRA emulated for the remaining 35 councils; that is, to transform the councils into more independent regional authorities (see Dillon, this volume).

Not surprisingly, this division between regionalism and centralism is often equivalent to that between ATSIC’s representative and administrative arms. However, there are fluid boundaries between these two broad constituencies; interest groups overlap the two arms and competing interests operate within each. Nevertheless, the tension between the two is evident as a push and pull in all initiatives and strategies developed within ATSIC.

The regional councils are a potentially significant political development in Aboriginal affairs and are central to the institutional versions of Aboriginal identity emanating from ATSIC. In these circumstances, one must question whose interests were served by the reduction in 1993 of council numbers from 60 to 36; a process achieved by the amalgamation of some councils and changes to boundaries. Ministerial and bureaucratic impetus for the change largely arose from the legitimate need for greater
administrative ease in serving the large number of regions and councillors. The reduction has also been posed as creating ‘significantly increased levels of funding and powers and responsibilities for a smaller number of Councils’ (ATSIC 1993c: 25). The effective result is that complex diversity has been further rationalised and reduced in its organisational translation.

There is no doubt that the administrative and financial complexities involved in servicing 60 councils was severely underestimated by government. The Commonwealth’s initial expansion from 28 to 60 was posed primarily as a responsiveness to Indigenous calls for greater recognition of cultural diversity; it also effectively marshalled the support of the Indigenous constituency behind the Minister and Labor Government in the face of a hostile Senate. Concern for diversity was no longer so politically relevant to government in 1993; though it remained so for a number of Aboriginal interests. In regard to the latter, in 1989 the Senate Select Committee on the Administration of Aboriginal Affairs, had reported the ‘strength of opposition’ by Aboriginal people to ‘large [ATSIC] regions having little traditional homogeneity’ (McMullan 1989: 40). Further, the 1993 ATSIC Review Committee which recommended the reduction, did so regardless of reporting that ‘Regional Councils ... supported the current number [60] ... ‘and no change’ (ATSIC 1993c: 25). Arguably, the reduction was as much about containing the political consequences of cultural diversity, and in particular, managing the impact of 60 regional councils erratically acting as independent advocates of their own local interests.

Conclusions

Government acknowledgement, albeit under Indigenous pressure, of the cultural heterogeneity of the Aboriginal population was a fundamental factor in developing the ATSIC structure. The nature of that diversity has continued to be constructed and renegotiated within and outside the Commission. As a consequence, ATSIC remains a contested structure. Indeed, the internal tensions generated by the structural incorporation of cultural diversity, and the politics surrounding its subsequent management, appear to be one of the Commission’s more critical defining features, creating a powerful dynamic for change. It is already apparent that the direction of that change is towards the greater authority of the Indigenous Commissioners and council Chairpersons, and to greater decentralisation of powers to regional councils.

There remain then, a number of challenges for ATSIC arising from the nature of the articulation between its administrative and representative arms, and from the
implications of its decentralisation policy. Firstly, the incorporation of cultural diversity as the basis of its representative structure raises the issue of where Indigenous organisational authority is located. If ATSIC represents, as claimed, the institutional apex of the government’s self-determination policy to date, does the structural locale of self-determination lie within the regional councils as representatives of culturally diverse regional constituencies? Does it lay with the Board of Commissioners as the elected national voice of Indigenous Australia? Or does it lie entirely outside ATSIC, at the so-called ‘grass roots’ level of local communities, organisations and groups. In the short-term, the focus on politicking about this issue has its costs. Parochial interests within ATSIC can predominate, and the Commission’s ability to influence the national decision-making of government is not being maximised. These tensions are also not easily understood by government, and the public perception of ATSIC being an ineffective organisation predominate media coverage despite the inordinate requirements for its accountability.\(^7\)

Secondly, if regional councils are to be effective structures for implementing ATSIC policy and programs, then councillors must be able to gain and deliver the support of their Indigenous constituencies. However, while ATSIC regionalism is being constituted as a new public form of Aboriginal authenticity, criticisms have been made as to whether councils fairly represent the range of Aboriginal priorities and interests at the local level. ATSIC’s desire to respond positively to such criticism has seen it encourage greater devolution of powers to the regional level in order to reflect diverse local interests. But clearly there must be some bounds placed upon the structural recognition of Indigenous diversity. There are limits to the extent that localised and highly competitive Indigenous interests can be accommodated by the elected representatives, and in reality, neither ATSIC nor government can fund or service the complexity of Indigenous cultural diversity that exists. If national policy objectives and program coherence can be maintained, and regional councils held accountable to their constituencies, ATSIC regionalism may very well represent the most effective organisational structures by which ‘special’ government program funding can be implemented.

Thirdly, while cultural diversity was used as a unifying device in the creation of ATSIC’s structure, it remains to be seen whether it will continue to act as a unifying factor. As part of the politics of diversity within ATSIC, a regional decision-making culture is arising and becoming influential in the competition between and within
regions over access to limited resources. There are also clear tensions between national policy and funding priorities set by the Board, and those asserted at the regional level by councils. The politics of diversity may yet be promoted by various constituencies in Aboriginal affairs to the detriment of ATSIC’s political and policy unity, and to its standing as a nationally representative body.
In a speech to Torres Strait Islanders at Thursday Island, the Prime Minister Paul Keating responded to George Mye’s ‘fear ... that the Islander culture may be subsumed in the greater culture of Aboriginal Australia’, and the suggestion by Islander leaders that there be a separate Torres Strait Island Commission, by stating that the proposal would be considered by the Commonwealth. Keating assured the Islander audience that their interests and culture would not be ‘subsumed in any other culture - Aboriginal or non-Aboriginal’ (Transcript of speech, 12 September 1995).

The ATSIC Bill introduced in August 1988 ultimately listed sixty regions because some urban regions were detached from surrounding rural areas.

The latter advocacy role was especially evident in the public involvement of the ATSIC Board Chairperson, along with other Aboriginal leaders, in the negotiations with the Commonwealth Government in the lead up to the passage of the *Native Title Act 1993*.

See Beckett (1988a, b), Morris (1988), Rowse (1991) and Weaver (1984) for discussions of the public and private constructions of Aboriginality immediately pre-dating the establishment of ATSIC, and in particular, the part played in these by the official recognition of Aborigines as a collectivity within a multicultural Australian nation.

Sanders (1993) speaks of a ‘renegotiated policy bargain’.

ATSIC’s legislation imposed two major program funding categories: regional programs operating under regional council discretion and administered by regional offices; and national programs allocated by the Board of Commissioners and administered by central office. Though it is the Board and central office which specifies the relative division of funds between these two broad program types. The Act further specifies that certain national funding areas are excluded from regional council discretion, including the Community Development Employment Program (CDEP), State grants, administrative expenses, and funds for portfolio organisations and the Commercial Development Corporation (see Smith 1993a). Over the financial period 1992 - 1993, funding for the CDEP has increased from 37 per cent to 45 per cent of its national program funds totalling $587.9 million in 1993-94. CDEP scheme funds represent notional welfare-equivalent payments...
made by ATSIC to Aboriginal communities which have volunteered to forego individual welfare entitlements. If CDEP funds for 1993-94 ($264.8 million) are deducted from the ATSIC’s centrally-allocated national program funds ($587.9 million), then the remaining $323.1 million is only some $90 million above the total regional program funds of $231.2 million.

7. The requirement for financial accountability that has, at times, engendered a ‘siege mentality’ within ATSIC (ATSIC 1993d: 4). No other government department or authority has within it an independent Office of Evaluation and Audit (OEA) with a charter to regularly evaluate its efficiency, programs and operations, reporting directly to the Minister for Aboriginal and Torres Strait Islander Affairs. It is asserted that more than 40 OEA and 20 Australian National Audit Office audits are conducted into the Commission’s operations each year (ATSIC 1993a: 4). Similarly, no other Commonwealth Government department has a counterpart policy office - the Office of Indigenous Affairs - separately located within the Department of Prime Minister and Cabinet, offering parallel advice to government, independently to that of ATSIC.
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In late June 2007, I was at the South Alligator River in Kakadu National Park attending a meeting of Indigenous leaders from local government councils and resource organisations representing communities throughout West Arnhem Land and the town of Jabiru in the Northern Territory (NT). They were meeting, as they had done regularly for the past three years, to plan the implementation of a local government shire covering the entire region of West Arnhem and Jabiru. Also present were senior officers from the NT and Federal Governments, who, under a bilateral agreement signed between the two governments in 2005, had been working closely with the Indigenous leaders on the transitional committee to facilitate the establishment of effective and culturally legitimate regionalised local government.¹

In 2003, Aboriginal (Bininj) leaders from West Arnhem Land saw the NT Government regionalisation policy as an opportunity to secure greater authority and control for Bininj people over the things that mattered to them, and to create a strong voice that could influence government funding and service delivery to the region: ‘We will get to say what we want in our communities, we will set the priorities’; ‘We have control over this project’; ‘We will create policies and strategies that achieve more local employment and better services’; ‘We will have a much stronger voice speaking as one to government’.

Part and parcel of the regionalisation process has been the regular delivery, as an integral part of each committee meeting, of governance capacity development with the Indigenous and non-Indigenous members of the committee. This has been carried out by the same team of community-development officers from the NT Department of Local Government, with my research support, for more than three years (see Evans et al. 2006; Smith 2005, 2007). The governance work included sessions on governing roles and responsibilities, separation of powers, systems of representation, organisational structures, codes of conduct and conflict of interest, meeting procedures, human-
resource management and contract conditions, and so on. Each session culminates in the committee collectively developing new governing rules—for example, in the form of written policies, agreed procedures, resolutions and a future constitution and preamble.

An important driving force behind these efforts has been the desire to create an effective regional organisation that will better reflect Bininj cultural values and institutions: ‘We will have a council that respects and works with our culture.’ As part of the governance capacity-building work, the Indigenous committee members routinely discuss the cultural issues involved in developing workable rules; they test proposed policies against potential community and cultural scenarios, and share practical ideas with government officers about how they might collectively and individually enforce their rules in a way that acknowledges the difficult challenges involved in working across cultures.

The result is that the community leaders on the committee have developed strong governing capacity and confidence based on the experience of working together as a team to make and enforce collective decisions. They follow up difficult issues of representation and externally imposed change with tenacity and integrity, and their relationship with the NT and Federal Government partners continues to be frank and robust.

Figure 9.1: Logo design for the proposed West Arnhem Shire, as endorsed by the Shire Transitional Committee, 2007.

Note: The logo for the shire was designed by Ahmat Brahim, an Indigenous man with traditional ties to the region, whose father was a member of the Transitional Committee.
Collaborating for Good Governance

The West Arnhem Shire logo endorsed by the committee demonstrates their real commitment to working as a ‘joined-up’ local government with the other levels of government in Australia for the benefit of Bininj and Balanda (non-Aboriginal) residents of the region. Their intention, written into their early constitution preamble and policies, is to use their traditional systems of culture and governance to strengthen the legitimacy of the Regional Authority [shire], and use the [shire] to strengthen traditional systems of governance. Through this vision and commitment we seek to maintain observance and respect for traditional values, and to join the responsibilities and structures of traditional authority with those of local government, to achieve a high quality of life and a wide range of opportunities and choices.

We are developing our own rules that include our culture. In our own culture we have our own rules that are very strong and we are bringing this into the [regional local government].

The collaboration between Bininj groups across the region, and with government, hasn’t all been smooth sailing by any means. The history of mutual suspicion is slowly shifting as a result of the trust and relationships being built up between the government community-development officers, community leaders and different clan groups, and as the committee members work with one another to resolve practical issues and develop shared approaches.

As one member of the committee noted in a presentation to NT Government ministers in 2005:

When we started, people were unsure of each other. People were only interested in their own group. We had our own ideas—at the beginning we were all different. We were not used to making decisions together. Now, people have a shared commitment to the whole region. We are all working towards the one goal. Now we work through issues and make an agreed decision.

Major changes initiated in 2006 by the NT Government to its policy framework for local government have severely tested the partnership relationship. The foundation of governance capacity, however, trusted relationships with
particular government officers and the growing effectiveness of Bininj decision making within the committee have built resilience in the committee and the partnership. Also, the Bininj leaders remain strongly committed to achieving real outcomes on the ground. For that purpose they continue to collaborate with government to create workable solutions that will address the entrenched backlogs in infrastructure and essential services in the region.

**West Arnhem: From Collaboration to Coercion**

On the final day of the West Arnhem Shire committee meeting in late June 2007, the Federal Government issued a media release announcing that it was taking over the administration of some 60 NT Aboriginal communities, under compulsory lease acquisition, for an estimated period of five years. The release stated that government administrators, the Army and police would be placed into each community and children would be required to undertake mandatory health checks in an effort to identify and curb child abuse. All communities located on Aboriginal inalienable freehold land under the *Aboriginal Land Rights Act (NT) 1976* would have their permit systems revoked and be subject to Australian Government leasehold conditions.

Government officers at the West Arnhem meeting were unable to shed any light on the media announcement—they had not been forewarned themselves and had to resort to the media release. Quick calls to their managers in Darwin and Canberra revealed that they were similarly uninformed.

The next day, the front-page headline of the *NT News* read ‘Martial Law—Howard mobilises cops, military as he declares “national emergency” in NT communities’. The opening paragraph reported:

> The Federal Government yesterday seized control of the Territory’s Aboriginal communities in the most dramatic intervention in NT affairs since self-government. Canberra in effect declared martial law over the 44 per cent of the Territory owned by Indigenous people. (Adlam and Gartrell 2007)

To say that the Bininj members of the West Arnhem committee were shell-shocked would be an understatement. In one day, without any consultation, their collaboration with the Federal Government had essentially been made null and void. Their role as the proposed local government for the entire region was thrown into question, their work in
the past three years ignored and their governance roles treated with disdain. A week
after the media release, the Army, police and Federal Government officials entered two
communities in the region.

The West Arnhem group of Indigenous leaders had been working in partnership with
the NT and Federal Governments for more than three years. Their sense of betrayal was
intense, but not new. It took me back several years to 2001 when I worked with the
Mutitjulu community at their request to develop a welfare-reform package for the whole
community.

Mutitjulu: A Litany of Broken Promises

In 1991, the Ngaanyatjarra, Pitjantjatjara Yankunytjatjara (NPY) Women’s Council
reported to government on the welfare of Indigenous (Anangu) children and families in
the central Australian region that included the Mutitjulu community. The Aboriginal
chairwoman of the council stated in her introduction to the report:

We are telling this story strong about what we think about child
protection… Women’s law, grandmothers’ law is really important one to
us…it teaches us [the] right way for children to be looked after and taught.

But a lot has changed for us on our communities. We are worried about
losing our traditional means of controlling and caring for children. We are
worried about our family structure breaking down. We are worried about
grog and petrol sniffing and how that affects our families. And we are also
worried that government and welfare mob don’t understand our way and our
problems.

We women have ideas about what to do to make it better. We want
government and welfare mob to listen to what we say and our ideas. We
want them to work with us and our organisations to get it right. (R. Forbes,
NPY Women’s Council, 1991)

Ten years later, after years of further inquiries and reports into their family living
conditions—and little to show for it except band-aid responses from governments—the
Anangu families and leaders of the Mutitjulu community had had enough.

In response to the national welfare-reform agenda of the Federal Government in
2000, the community council at Mutitjulu asked Centrelink, the Aboriginal and Torres
Strait Islander Commission (ATSIC) and Families and Community Services (FACS) to
work with them to develop a practical strategy to address welfare dependence and
related family problems in the community. Under a joint contract between ATSIC and the community council, I lived and worked in the community to ascertain what Anangu considered to be their priority welfare problems and their ideas for resolving them. In that time, I consulted with senior leaders and family members, young and old, all community organisations and service deliverers, as well as regional stakeholders and relevant government agencies (see Smith 2001).

Not surprisingly, Anangu concerns had changed little since 1991:

‘Sit-down money’ is killing our young people.

When the welfare money came in, it really killed the work; people started slacking off. Now young ones don’t know work, they’re welfare trained.

No more sit-down money, we gotta cut it out. Level ’m up, everyone gotta work.

Push all those petrol sniffers into work. Young people make everything good for family. I like them to be helping more with all the community work.

Out of the consultation process, the Mutitjulu Community Council and senior family leaders proposed a Community Participation and Partnership Agreement to be negotiated with the relevant Federal Government departments and key regional stakeholders. In 2001, it was a unique, innovative model; it came well before the Council of Australian Government (COAG) trials and before the Family Income Management pilot projects in Cape York.

The Mutitjulu Community Participation and Partnership Agreement proposed an integrated package aimed at directly attacking welfare dependence and social dysfunction in its real-life community context. Key components included the following.

- Community-wide coverage of all welfare recipients—what Anangu called the ‘all-in’ approach—with breaching implemented in partnership with Centrelink.
- A whole-of-community participation program based on Individual Participation Agreements that would require all welfare recipients to undertake some form of work selected from a menu of participation activities and training developed by the community.
- Tying receipt of Youth Allowance to school attendance and work participation.
- Providing intensive assistance and support to individuals to take up paid employment.
• Recognising the support role and social capital provided to families and children by older women, and creating mechanisms to ensure that welfare payments intended for the care of children were directed to the older women who invariably took care of them.

• Government agencies working alongside the community to rebuild local governance processes and provide governance capacity building to Anangu leaders and councillors to enable them to actively participate in, and manage, the implementation process.

The Mutitjulu Council proposed that the agreement should be further fleshed out and implemented in partnership with the Federal Government, FACS, Centrelink and ATSIC. Accordingly, it asked the government to:

• provide a delegation to a community officer under the Social Security Act 1999 to enable the council (or other specific-purpose community organisations) to implement a whole-of-community approach to welfare reform

• support them in developing local Anangu breaching and enforcement rules and appeals procedures with Centrelink

• provide a consolidated block of welfare and related program funding, with a single reporting/acquittal package—what Anangu referred to as a ‘one-bucket’ funding strategy

• provide families with financial literacy and budgeting training, and with local banking services.

The community was not naive about the challenges for its side. Residents were adamant that they wanted a measured transition carried out in partnership with government, with sustained departmental facilitation on the ground.

Senior officers from the Federal Government visited the community and attended council meetings at which they assured local leaders that the government was listening to their proposal and would support them. That was the last the community heard of them.

What happened? Essentially, in 2001, the Federal Government and its departments walked away from Mutitjulu. Initially, the government departments involved argued that there needed to be further community consultation, and suggested that the community was in fact ‘too dysfunctional’ to participate in such a major reform process.
(In fact, continuing consultation was an integral part of the proposed implementation process.)

In reality, the problem lay not in the community, but in Canberra. First, the key departments would not support an ‘all-in’ community model of welfare reform and would not support linking Youth Allowance with school attendance—even though these had been specifically requested by community members and their council. Second, Centrelink and FACS would not countenance an Indigenous community working with them to develop and implement locally relevant breaching rules. They also would not countenance a community organisation being provided with a delegation under the Social Security Act in order to do so (‘Over my dead body,’ declared one senior bureaucrat).

Third, entrenched interdepartmental turf wars in Canberra meant that the departments concerned were unable to negotiate a common position. As a result, the process inevitably became bogged down by strategic bureaucratic behaviour that led to inertia. Finally, the Federal Government was unable or unwilling to reform the chaotic state of its departmental program funding in order to streamline the pooled funding and grant-reporting arrangements that would have been required.

In 2001, the Mutitjulu community had called out in desperation to the Federal Government. It wanted decisive action, but it also wanted to be a full partner in action to address local welfare dependence and governance dysfunction. At that point, the government turned its back on the community.

As a result, it is arguable that significant responsibility for the horror of violence, abuse and despair that has since escalated at Mutitjulu can be laid fairly and squarely at the door of the Federal Government and its departments and, in more recent years, at the door of the NT Government as well.

In late June 2007, the Federal Government announced that Mutitjulu would be the first community into which it activated national emergency measures. It would do so unilaterally, not in collaboration. Ministers and some media commentators have argued that, late though it is, at least action is now being taken at Mutitjulu. Two critical elements of the community’s earlier partnership proposal for welfare reform are, however, noticeably absent—namely, the implementation of a governance-building strategy right from the start, and the streamlining of related government program funding down to the community.
The New Intervention Policy

Clearly, we are at a watershed in terms of where the Federal Government is taking Indigenous affairs policy and practice. No-one would deny the depth of problems experienced by Indigenous families and communities in this country; Indigenous people themselves have been calling for decisive action on a whole range of social, economic and human rights issues for several decades now. After years of government failure to address deeply entrenched structural disadvantage, however, should we think that the outcomes of this hasty intervention will be any better?

The new policy approach will attempt substantial social engineering within Indigenous communities. The Federal Government appears to be undertaking another missionary phase in Indigenous affairs, one based on a well-intended desire to improve conditions for families and children, but unilaterally imposed by government using ‘the full weight of its coercive power’ (Scott 1998:5). The history of Indigenous affairs in Australia shows that coercion rarely leads to sustained positive outcomes. On the contrary, often it has led to unintended consequences that have exacerbated problems and created profound misery on the ground.

Since the announcement of the ‘Howard–Brough–Pearson’ new intervention policy, we have heard a barrage of opinion—much of it partisan and ideologically driven, with many bold assertions uninformed by empirical evidence. My concern here is not with the causal grounds for the Federal Government’s action in the welfare arena, but with its logic and strategies for addressing the issues, predicated as they appear to be on a lack of analysis of why government policy has failed so badly to date, and on unproven assertions of a direct connection between the Aboriginal Land Rights Act (NT) 1976 permit system, and child abuse. Unless these underlying issues are addressed, there is a real chance that the current intervention will simply repeat the debilitating mistakes of the past.

Implicit in the Federal Government’s new intervention approach is an acknowledgment that its current whole-of-government policy has failed, even though that policy has been implemented only recently. Is this the case, and, if so, in what respects has it failed? Also, have there been any positive outcomes from that approach?

In 2002–03, COAG trials began operating in eight Indigenous sites across Australia, in a whole-of-government, partnership policy framework and with an overarching emphasis on shared responsibility. The aim of the trials was twofold: first, to build Indigenous community capacity to more effectively deliver services; and second, to
strengthen the capacity of governments to work with each other in a coordinated way and deliver more streamlined funding to Indigenous communities. Important lessons for governments and communities can, and should, be derived from that practical experience. In a matter of one week, however, we seemed to go from a whole-of-government policy approach to one of coercion, in which the power of the State enforced collaboration.

To develop a more empirically informed consideration of these urgent matters, I want to describe some of the relevant research findings from a major project I have been involved with in the past four years.

**The Indigenous Community Governance Project**

The Indigenous Community Governance (ICG) Project is itself an innovative partnership between the Centre for Aboriginal Economic Policy Research (CAEPR) at The Australian National University and Reconciliation Australia. It is being carried out in collaboration with 11 Indigenous communities across Australia, with funding from the Australian Research Council and the Federal, NT and West Australian (WA) Governments.

The research is national in coverage and community focused. It covers a range of different types of ‘communities’ in remote, rural and urban locations. A team of multidisciplinary researchers has been working with the same community organisations, groups and leaders for the past three years.

The project is investigating the complex dimensions of how communities are governed—not only their cultural foundations and complex histories, but the financial, legislative and policy frameworks under which they operate—and how these impact on their effectiveness and legitimacy.

The methodology is rigorous and our research results are documented extensively on the CAEPR web site (see Hunt and Smith 2006, 2007; Smith 2005). Each researcher investigates the unique aspects of governance in the communities they are working with, and also provides extensive research data against a common project field manual that targets key governance issues and questions. The project has developed an innovative comparative analysis to identify more broadly relevant principles and common themes that appear to underlie Indigenous governance challenges and solutions across the communities.
The project is participatory and applied. Researchers work with community groups and organisations to explore best-practice solutions to their governance challenges. To assist that approach, the project is also currently working with Reconciliation Australia to develop a web-based tool kit of governance resources and diagnostic tools for use by Indigenous organisations and communities and agencies working with them. The project also aims to make the research count with governments. For that purpose, various policy, funding and program frameworks have been analysed and reported on.

The research is now starting to tell us about what works, what doesn’t and why in Indigenous community governance in Australia. In particular, the evidence is consistently highlighting several conclusions that are directly relevant to the Federal Government’s new intervention policy.

**Project Research Implications for the New Intervention Policy**

The ICG Project has thoroughly investigated and analysed the factors underlying poor governance arrangements in Indigenous communities. These are discussed in reports and case studies on the CAEPR web site. Given the current government and public focus on Indigenous dysfunction and failure, however, it is important to remember that Indigenous communities can be successful in establishing good governance and that in doing so they are securing important social, cultural and economic outcomes.

**What is working**

First, the research overwhelmingly confirms that the exercise of practically effective, culturally legitimate governance in Indigenous communities is critical to providing a foundation for addressing and sustaining their social wellbeing and economic development. In other words, good governance delivers a development dividend for Indigenous communities.

Second, lest we all succumb to the politics of despair about Indigenous Australia that seems to have hold of the nation at the moment, the research reports that amid the failures there are extraordinary successes in community governance.

Around the country, we are seeing Indigenous people in their organisations and communities working to address complex internal relationships and representation issues in order to develop legitimate governing arrangements that win the support of their members (for example, the West Arnhem Land Transitional Committee is developing an innovative organisational structure with a layered network of
representation that will enable it to act regionally, but also recognise local community interests and decision making (Smith 2007).

We are documenting Indigenous groups reassessing their cultural histories and geographies in order to promote greater legitimacy and accountability of leadership and decision making (for example, groups at Wadeye in the Northern Territory undertook an extensive community-wide reappraisal of the cultural underpinnings of their governance arrangements in order to create a more inclusive community council).

Project researchers have reported innovative governing structures being designed to suit changing contemporary conditions (for example, the Layhnapuy Resource Association represents the interests of a number of interrelated outstations across East Arnhem Land and has recently restructured its governing board and management in order to better respond to changing government policy and economic opportunities for its member groups).

We are seeing direct links between the effectiveness of an organisation’s governance arrangements and its ability to deliver sustained social and economic development outcomes (for example, Yarnteen Corporation in Newcastle has built up an outstanding governing board and management team who promote continuing governance training, professional development and youth mentoring. This has led to high credibility with the wider business community and investors, and has resulted in sustained success in enterprise development).

The ICG Project’s research is also identifying a set of core ‘design principles’ that appear to underlie many of the different governance solutions on the ground. A particularly important principle is networked governance, which is applicable in remote, rural and urban communities. It is premised on a form of ‘bottom-up’ federalism with associated layers of power, roles and responsibilities (for example, the set of organisations and interrelated groups that now constitutes the Bunaba Corporation is a network designed to recognise the autonomy of particular groups and their economic interests, at the same time as sharing the benefits of collective representation and financial management). Models based on networked governance are seen in all the communities with which project’s researchers are working.

Strong nodal leadership and succession planning are shown to make a significant contribution to the good governance of communities and organisations. Influential leaders become connecting points within networks to mobilise resources and opinions and get things done. Under their direction, the project has documented organisations
undertaking the hard work of reforming their governance, creating workable rules and procedures and enforcing those in the complex inter-cultural environments in which they operate.

In particular, the research has documented innovative Indigenous processes of building practical governance capacity in the context of their daily work. When Indigenous people develop their own institutions rather than adopt externally created rules, their governance capacity and confidence appear to be significantly strengthened. In all the case studies, we are witnessing community groups and leaders using their cultural values and social relationships as assets to help them build stronger governance.

**What isn’t working**

Many of the intractable social and economic problems confronting Indigenous Australians are, in significant part, a function of the mutually reinforcing institutional constraints and failure of governance within governments themselves. The ICG Project has documented institutional failings in policy, implementation strategies, funding frameworks, public-sector capacity and the system of fiscal federalism itself (see Westbury and Dillon 2006).

The way governments function directly affects Indigenous capacity to govern well and get things done in communities. In every case study, researchers are reporting that there is no single, whole-of-government policy approach; rather, there are several. Organisations and communities are routinely confronted with different whole-of-government policies and strategies from different departments and jurisdictions.

Departmental territorialism and inertia is rampant in Indigenous affairs. We have witnessed Indigenous initiatives to improve local governance undermined by the ‘go-it-alone’ attitude of particularly influential departments, which protect their niche program role and funding power and resist the efforts of other agencies to collaboratively develop program and funding coordination. The point was highlighted at one COAG trial meeting by a perceptive community leader, who asked the various departmental officers the question: ‘Where is your *thamarrurr*?’ He was one of the local leaders involved in the time-consuming, difficult task of getting the different clans to work together under a single regional council modelled on a traditional principle of *thamarrurr* (‘coming together’). Why, he asked, couldn’t governments work with each other, and why couldn’t they get their departments to work together?
What hasn’t been recognised—at least by governments—but what has been documented by the ICG Project and numerous reports and inquiries, is the extent to which government funding arrangements have exacerbated community and organisational dysfunction and poor governance. As Westbury and Dillon (2006) succinctly note, for Indigenous communities, ‘accessing government program resources becomes a labyrinthine voyage through scores of separate programs and a sea of bureaucratic process’. This fundamentally diminishes the time, resources and capacity that community organisations can give to making their service delivery and governance more effective.

Government policy in the past 30 years has not succeeded in addressing this internal institutional failure. On the contrary, programs seem to be multiplying and grant funding and acquittal processes are becoming more onerous. In one community, at the time it began participating in a COAG trial, its representative organisation was managing 50 different buckets of government program funding. For a small community of approximately 2300 people, that in itself constituted a major administrative workload that diverted scarce human resources away from critical community governance and service issues. After three years of the trial, the same organisation was managing more than 90 different buckets of program money.

There continues to be, in Indigenous affairs, a fundamental disjunction between government policy goals and real implementation on the ground. This is compounded by a failure of engagement by governments at all levels. When governments introduced self-determination policies in the 1970s, they essentially vacated the field of community development and collaborative engagement on the ground. The result was a failure to keep up with international best practice in community development, which might have enabled a more sophisticated approach to the issues involved in the current intervention. The additional consequence has been a failure of governance capacity within an already overstretched bureaucracy reeling from one policy change after another.

A plethora of papers and reports has concluded that the institutional arrangements of fiscal federalism in Australia are fundamentally flawed and a key driver of Indigenous disadvantage, especially in remote regions. For example, the per capita allocation from Commonwealth transfers to local government in the Northern Territory makes up just more than $20 million of a $1 billion national pool of specific-purpose grants. The bizarre result is that the Northern Territory receives less in local government financial
assistance than is notionally allocated for the population of Geelong in Victoria (Westbury and Dillon 2006).

The result in the Northern Territory, which covers more than one-sixth of the Australian landmass and has an Indigenous population experiencing high levels of socioeconomic disadvantage, has been to create huge backlogs in infrastructure and services in local communities. These are the very communities now being accused of not delivering much-needed basic services to children and families.

Infrastructure backlogs are not currently addressed by the Commonwealth Grants Commission (CGC), and the jurisdictional sovereignty of territory and state governments means they are not required to expend Commonwealth transfers on the Indigenous locations or service requirements against which ‘disability factors’ the transfers were initially assessed by the CGC (Smith 1992). As a result of the historical under-investment by governments in NT communities, CAEPR has recently estimated that to deliver on its intervention promise to spend whatever it takes to ‘fix up’ Indigenous communities in the Northern Territory, the Federal Government will need to allocate in the realm of $3–5 billion to achieve parity in the next five years in education, health, Community Development Employment Projects (CDEP) program transitions to work and housing alone.

We have entered a period of policy formulation in which Indigenous culture is pathologised by governments and many public commentators in much the same way as early missionaries regarded Indigenous culture as contaminating the ability of families and children to assimilate. Indigenous culture is portrayed almost as a virus, something that will undermine the effectiveness and accountability of organisations and their governance arrangements. Accordingly, policy and program solutions increasingly seek to quarantine culture to one side. The primary mode of departmental interaction with community organisations is one of managerial governance that focuses on compliance and grant acquittal. The lesson of history, however, is that Indigenous people will never leave their culture to one side; they will not be assimilated into being ‘whitefellas’ and their governance arrangements express cultural goals in addition to financial compliance and administrative effectiveness. Importantly, the ICG Project has documented examples of where Indigenous groups and organisations are using their cultural values, institutions and social relationships to positively support their collective efforts to rebuild their governing arrangements. In other words, cultural legitimacy can provide a powerful mechanism for accountability and effectiveness.
By and large, however, governments still do not recognise the positive developmental role of good governance, and their efforts to facilitate Indigenous governance capacity building at the local level remain ad hoc, uncoordinated, erratically funded, poorly implemented and are rarely followed up. The recommendations of numerous reports and inquiries on community governance and associated capacity building have not been implemented.

Taken together, these issues produce what Westbury and Dillon (2006) conclude is ‘a fundamental failure of the nation state to govern effectively in Indigenous Affairs’. It also represents a fundamental failure of the Australian State to invest in Indigenous self-governance and related capacity, despite the mounting evidence that this can lead to significantly improved social and economic outcomes on the ground.

In many ways, an inevitable conclusion must be that the governance dysfunction within government represents at least half of the national emergency currently confronting Indigenous communities.

**From Coercion to Collaboration?**

Coercion as a policy instrument has limited developmental power for Indigenous families and communities; history has demonstrated that. Government ministers and bureaucrats often talk about the importance of developing policies and strategies on evidence-based research. The ICG Project is producing convincing comparative evidence that suggests that there are several strategies that will facilitate more effective, sustained outcomes.

First, taking genuine decision-making powers and control away from communities and organisations, and then handing them back later and expecting Indigenous people to assume ‘ownership’ of models and rules they have had no say in developing, will not work. In this respect at least, the ICG Project’s research suggests that Noel Pearson is wrong. He has argued (Pearson 2007) that there are three policy phases to the Federal Government’s decisive action: the first is unilateral intervention on the ground; the second is radical reform and innovation; the third is retreat by government and transfer of ownership to Indigenous organisations and leaders.

In fact, Indigenous self-governance and good governance lie at the very heart of positive development outcomes. Governments urgently need to provide enabling policy and legal frameworks, and integrated program guidelines, to actively promote Indigenous governance capacity and authority. Building Indigenous governance
institutions and capacity should be built into any new interventions—right from the start.

Governments also need to urgently put some implementation backbone into the policy rhetoric of ‘whole of government’, especially in relation to funding. At the macro level, fundamental reforms to federal fiscal institutions need to be made, as they affect funding transfers to and expenditure by state and territory governments on services and programs for Indigenous people. These transfers must be allocated to the areas of substantial community need, on the bases of which they were initially determined by the CGC. Associated infrastructure/capital backlogs and cost shifting by governments to Indigenous local governments and small community organisations must be addressed at policy and institutional levels within government. Also, the CGC should be requested to include a new category that assesses Indigenous community infrastructure/capital needs (Westbury and Dillon 2006).

If we can have decisive action in Indigenous communities, presumably the same is possible within government. At a micro level, there is arguably an urgent need for the mandatory integration of program funding across departments that is relevant to community governance and capacity building. The stories presented at the beginning of this chapter and the case-study evidence of the ICG Project indicate that there are communities, organisations and leaders who want decisive action from government, but in partnership and with reform on both sides.

In conclusion, our case-study research clearly demonstrates that building governance institutions and capacity needs to be placed at the forefront of any proposed intervention from the very start, not as an afterthought. ‘Governance building’ should be made an integral part of every policy and its implementation on the ground. Simultaneously, the reform of governments’ own governance dysfunction and bureaucratic capacity in Indigenous affairs has to be a fundamental component of any solution. Without these two parallel strategies, it is likely that the current ‘decisive action’ will exacerbate problems, not alleviate them.
Notes: Paper 3

1. For more information on the bilateral agreement, the process and history of the NT local government regionalisation in West Arnhem Land, see Smith (2005, 2007).
References: Paper 3


Evans, L., Appo, H. and Smith, D. E. 2006, ‘Community development practices and principles in the development of the West Central Arnhem Regional Authority’, Unpublished discussion paper, Department of Local Government, Housing and Sport, Darwin, Northern Territory.


Theme Three:
Seeing Indigenous Cultures of Governance
Overview of Theme Three: Seeing Indigenous Cultures of Governance


Theme Three lies at the heart of this thesis by publication. **Papers 4 & 5** draw on over 35 years of fieldwork research in remote, rural and urban Indigenous locations to unpack the distinctive cultural moorings, scales, order-generating mechanisms and modes of power and agency at work in the Indigenous field of governance.

A particularly important contribution of the two papers is to rectify the common assumption that Indigenous society is so culturally heterogeneous and egalitarian that individual governing agency and shared general principles of governance do not operate. While the thesis papers certainly document Indigenous diversity, their collective ethnographic depth and comparative breadth has enabled underlying cultural and social conditions of governance to be discerned. The thesis asserts there is a remarkable commonality to these conditions across Indigenous Australia which enables us to theorise the existence of an identifiable field of Indigenous governance having distinctive parameters, complex formations and cultural geographies. These key parameters are summarised below.

Another important contribution of the two papers is to document and analyse the dense interconnections and direct relationship operating between the layered social organisation of Indigenous life, and its dispersed and networked mode of governance. Indigenous governance is not something that sits above or beyond Indigenous mechanisms of sociality. On the contrary, the papers collectively demonstrate that governance is embedded within and intimately shaped by that sociality; *at all scales*.

Importantly, the collective thesis papers also show that when Indigenous people are required to engage with externalities, such as matters of service delivery, government funding and policy implementation, negotiations under statutory frameworks, mediation with external stakeholders and the like, they habitually call upon (often assertively so)
the wide variety of their networked governance capital and resources. These lie within and across their extended families; linked households, peer groups, ceremonial, social support and exchange circuits; their local and regional organisations and enterprises; and dispersed leadership. In this manner, different issues and events are responded to by Indigenous people activating (and internally contesting) different permutations of their networks, for the purposes of governance.

The two papers in this theme (supported by the corpus of papers in the following themes) documents several of these different networked, governance formations, and the different kinds of governance capital and institutions that are activated in order to practically address different matters. In doing so, the field of governance is shown to be both affect and affective of complex Indigenous considerations and interactions by actors concerning the most appropriate governance formation that should take precedence or priority in respect to a given matter at any given time.

The Cultural Logic of Indigenous Governance

The ethnographic evidence presented in the two papers (supported especially by Papers 7 & 8 and the wider corpus of publications listed in Appendix A) enables the distinct specificity — the cultural logic — of the field of Indigenous governance to be identified. This field can best be described as a spatially dispersed system of self-organising network formations which have powerful nodal points of social rule and agency, internally structured by relationships of power, hierarchy and dense forms of governing capital. These networked formations are connected by intersecting relational pathways which are themselves given shape by dense interstitial spaces of cultural meaning and value.

An abstract visual depiction of this governing pattern or logic is set out in Figure 1. It resonates strongly with the networked logic spoken of by Dundiwuy 2 Mununggurr, and also rendered by David Mowarlijarli in his drawing of the continent of Australia as an embodied network (see Frontispiece).
Figure 1. A simple Indigenous network with five nodes (red). Each node is shown as a sphere, and connections are shown as straight lines (yellow). Each node can trace a connection to every other node. Connections can be understood as a relation of different kinds. Nodes are also connected to a shared interstitial dense cultural space (cross-hatching).

Source: The backdrop graphic for this diagram is from part of a painting by Debra Wurridj, entitled *Lorrkon Hollow Log*, from Maningrida, Arnhem Land, Northern Territory.

The thesis papers document many ethnographic examples of the different order of network formations that underwrite governance. For example, **Paper 5** draws upon a considerable evidence base to analyse the scaling outwards of individual actors’ kin and social affiliations to produce dense expanding networks of extremely connectivity (see also **Paper 8** and Smith 2007). Examples of these networked formations include Indigenous extended families and their linked households, clans, ceremonial groups, moieties and ‘skin’ groups, congeries of outstation residents, fringe camps and pastoral station dwellers, and alliances (formal and informal) of Indigenous organisations and leaders.

What they all share in common as networks are a set of social and other relationships and ties among a group of people and entities which can take on a persistent pattern of connections, structures and practices. Importantly, these network formations operate within (and across) various social, economic, geographic and political scales. They are multi-dimensional. From the local, they ooze outwards, creating networks of networks (such as peer groups of leaders, regionally linked organisations, marriage associations...
reinforced over time, companies of “owners” and “managers” of sites, rituals, songlines). **Paper 5** also documents how Indigenous local networks can scale down into sub-networks (such as factions, gangs, and gendered domestic units such as widows’ and single men’s/women’s campsites, and initiates age grade groups). Theme Four demonstrates how such networks also penetrate into Indigenous organisations, locking them into wider circuits of relatedness.

In other words, governance per se does not reside in one, and only one, scale or formation of network. A significant contribution of the papers in this Theme is to demonstrate the multi-dimensionality of governance, as an ever-present negotiable process (with outcomes and consequences) whose form is tied to human calculation, in which ‘networkedness’ is the primary calculus.

In Indigenous networks, *nodes* are real, not virtual. They consist of individual leaders, senior family members, a peer group of elders, an organisation or committee, and operate as potential points of power, intentionality and hence agency. Indigenous nodes commonly occupy several relational positions that extend into different networks for different purposes. Networks are thus able to connect with other networks via their nodes.

The *connecting lines or pathways* of Indigenous networks are its conduits or arteries and have specific properties. The papers document relational connections (formed by ties of kinship, marriage, age-grade and gender, land ownership), but also socioeconomic, historical and political ties between nodes. While nodes can be thought of as autonomous actors, the pathways of Indigenous networks insert the balancing weight of interconnectedness and interdependence.

A network of enmeshed ties represented by short-distance (“close”) relational pathways is associated with thick webs of social responsibility and obligation that generate a high degree of social boundedness and collective identity. Also people value some connections more highly than others at different times. **Paper 4** shows how such variables result in Indigenous networks having clustering effects that generate core-peripheral, close-distant dimensions.

Both papers also document the critical role of the interstitial space between nodes and their connecting pathways. These are not empty space. As **Paper 4** demonstrates, they are cultural constructs comprising the ontological heartland of a network, the source of a ‘theory of existence’ (Myers 1986: 49) popularly referred to as ‘The Dreaming’. These dense spaces are intimately woven into the fabric of human networks,
acting as the cosmological foundation of Indigenous Law and a powerful authorising environment for particular kinds of personal agency.

The ethnographic evidence in the two papers indicates that Indigenous nodal networks have high internal coherence and meshed connectivity; that is, a ‘measure of self-similarity’ (Fuchs 2001: 157). Such networks link people into structured layers of socioeconomic organisation and clusters of intimate interdependence. Consequently, they also link people into conflict or factionalism that is potentially extremely debilitating by virtue of its very closeness.

This is a deeply embedded model of existence that mediates Indigenous understanding and ordering of the world. All the thesis papers confirm that networked relationality is a model that retains high value amongst Indigenous people in rural, urban and remote locations; albeit with differing content to its spaces and pathways. For example, Paper 4 examines the sophisticated consideration of network parameters — the ‘burden of interpretation’ — that people undertake when they must deal with conflicts or disruptive events whose impacts radiate through their network and require the restoration of social order and/or compensatory action. A number of the thesis publications also confirm that the intense relationality of Indigenous mesh networked formations gives rise to competing twin trajectories; for example, between individual autonomy and collectivities. It also means that close-up sociality can degenerate into close-up conflict; with exponential and sometimes long-term repercussions for people. The implications for governance are that it must operate across a complex multi-dimensional field of relations, formations, and modes of power and agency.

**Governing Through Nodal Networks**

The research evidence presented in the two papers indicates that the particular systemic and cultural facility of Indigenous nodal networks enables a distinctive field of ‘law and order’ to be generated. Its form is qualitatively different from the networked federalism and bureaucratic and policy networks of the Australian state’s field of governmentality.

The social vantage point of any node within a network is initially dyadic, creating spatial distance between itself and other nodes which, as Paper 4 indicates, is ‘measured’ or understood by people not only as *relational distance* but also as *spheres* of power and influence.
While Indigenous networks are egalitarian in their ethos, some connections and nodes are more equal and more highly valued than others. The published papers document many examples of particular individuals, families, organisations and places considered to be more powerful or influential than others. This can be literally observed where certain nodes are positionally more powerful than others, having developed multiple thick connections within and across networks, including to other influential nodes.

The thesis papers report such individual nodes performing a governing role which is its own cultural institution; one that is recognised and valued by other nodes in their network. Leaders or ‘bosses’ (e.g. of families, clans, ceremonies and organisations) accumulate forms of governing capital such as valued knowledge, experience in mediating disagreements, oratorical skills, and personal reputation and qualities. These can be deployed to facilitate the organisation of order. A governing node is a source of agency; a person or entity within a network who can mobilise people, resources, relationships, capabilities and information to mould consensus, manage a course of action, or achieve a desired outcome.

**Paper 4** examines the particularly important source of governing capital accrued by certain men and women as a result of their elite connection to the dense ontological spaces of their network. They are able to call upon its Law-given power and order, and provide a performative co-presencing of the Dreaming and its power for others. For example, when ‘bosses’ are painted and dance as an ancestral creator figure, they literally embody that presence into the here and now. In these and other ways, particular people concentrate and eventuate the deeper meanings of culture. This potent connection provides them with what Annette Weiner (1992: 4) calls ‘cosmological authentication’; a form of certified knowledge and sanctioned power to act.

The radiating density of networked sociality ensures that such powerful people remain highly influential in the everyday life of their close networks. **Paper 4** notes that significant and ‘sometimes dangerous burden of interpretation is imposed’ (ibid: 10) upon such influentially connected people.

The thesis papers report governing nodes drawing upon several encultured modes of power derived from their: personal renown and situational potency; relational authority; structural position within networks; acquisition of diverse forms of capital; and their close connections to a metaphysical world of power. Today, these sources now also include forms of power and influence found in the wider governance environment (see...
Theme Two, as well as those associated with their positions in incorporated Indigenous organisations (see Theme Four). On the bases of this ensemble of governing capital and power, other people concede authority to them.

But this is a limited concession, not a delegation or relinquishment of any other person’s individual autonomy. For governing nodes are themselves embedded within the relational grip of their networks. Like David Mowarljarli’s map, they are spatially embodied — attached to tangible things (a ‘country’, an extended family, set of linked households, a dispersed community of identity, a physical office in an organisation). There is a craft and an art to networked governance.

**Superstructural Governing Nodes**

The papers in this Theme indicate that governing nodes cluster. For example, individual leaders within a network may be directly linked to leaders in other networks through their shared historical and work experience, participation in important events, and shared roles and responsibilities for particular ceremonial practices and knowledge. The leaders of organisations are also embedded within this wider network of leaders (see Appendix B).

These governing clusters can be conceptualised as a jural circuitry, the backbone within a network — the part that carries the heaviest communication traffic, and the heaviest load of order-organisation that helps hold a network together and connect it to others. This circuitry of governing nodes constitutes its own superstructural node, bringing together individuals who can marshal significant collective authority and influence in order to direct processes, concentrate resources and coordinate their respective members for joint or desired end purposes. But they do so without permanently integrating or amalgamating the various networks of which they are a part.

**Moulding and Mobilising Consensus**

In polycentric relational systems such as Indigenous networks, governing nodes are a way that agency becomes centred and concentrated. In such systems, decision making is an occasioned agreement rather than an ongoing, unchanging state; a matter of moulding consensus as a form of ‘generalized expectation’ (Fuchs 2001: 139-49). For example, **Paper 4** describes decision making in the context of compensatory events as the creation of ‘chains of cooperation’ (Macy 1991: 745); that is, the result of parallel multiple interactions in which each member of a group or participant in an event takes into account what others are doing and saying. Importantly, the chain of a consensus can
be moulded and harnessed into cooperative action by governing nodes when they insert their own reputational influence, governing power and thick relationality into network processes.

Nevertheless, as a network’s linkages shift, as its boundedness expands and contracts, so too does consensus mutate and readjust, and collective action dissipates. When the social distance between nodes becomes tenuous, or other networks come into play, there is reduced adhesion to consensus and collective action. The strain towards localised decision making and autonomy in a network serves as an additional constraint upon the extent to which a governing node can sustain the specificity of an exercise of power. In other words, the very cultural and systemic features of meshed networks that enable the governing agency of nodes, also constrain that agency.

The Durability and Fluidity of Networked Governance

Collectively, the papers demonstrate that Indigenous networks and their nodal governance have a sophisticated facility for both durability and fluidity. On the one hand, network proclivities are not so mechanical or preordained that they are not internally contested, contradicted and interpreted through struggle and interaction between individuals and between networks. A critical systemic advantage of meshed nodal networks lies therefore in its tolerance (and in certain circumstances, active promotion) of diverse, aggregated scales and polities in response to the strategic and situational agency of people and external conditions. A governing network also facilitates dimensionality; its nodal points of power and authority are able to operate as horizontal linking pins (egalitarian) and vertical linking pins (hierarchical) within and across networks (see organisational examples of this in Appendix C).

On the other hand, meshed networks are not infinitely fluid and open. The two papers document several deep systemic design principles that promote the resilience and boundedness of networks. Papers 5 and 8 identify the cultural principle of relational autonomy as being particularly influential. It is a unitary concept, not an oppositional dualism, highlighting the fact that individual and local-group autonomy is socially embedded. The second core design principle identified in the thesis papers is that of subsidiarity in decision-making roles and responsibilities across the layers of networks. This plays a critical role in enabling order-organisation across the interconnected layers of a network.

The systemic effect of this ensemble of cultural principles is to encourage dispersed, but networked layers of polity (see a regional example of this in Appendix B, and
organisational examples in Appendix C). It also serves to create heartlands of core durability within a network and, by so doing, to delimit its shifting peripheries where some connections and influence peter out. By these means, the centripetal force of the powerful nodes, dense spaces and thick pathways of relationality provide the system-preserving glue which acts to hold networks together over time. Conversely, the vitality and fluidity of networks can be seriously jeopardised when such principles are leached of cultural meaning, and when governing nodes lose their access to the authorising environments of thick relationality, ontological power and governing capital.

The Legitimacy of Nodal Networked Governance

A related critical issue for the sustainability and effectiveness of Indigenous governance arrangements is investigated by the two papers; one which I have more recently termed ‘cultural legitimacy’. Adopting Neil Sterritt’s (2002) approach, legitimacy is defined in Paper 1 as the way structures and institutions of governance are created and reproduced, how leaders justify, substantiate and make known their actions and decisions, and the extent of people’s confidence in and support of them. Legitimacy in this sense suggests a collective recognition of institutionalised rules and values about governing. When invoked, they ‘measure’ the extent to which leaders and organisations comply and are deemed credible and trustworthy, or otherwise. The papers under this theme also show that the legitimacy of Indigenous governance arrangements can be influentially determined by powerful individual nodes and particular factional clusters within networks.

In other words, legitimacy is not a fixed cultural brand or stagnant collective benchmark. In the context of nodal networked governance, the papers demonstrate it to be a relational condition that has to be negotiated and sustained over time. For example, a leader or organisation may be accepted by a group of people as socially authorised to act on their behalf, make decisions, and to interpret information for them in particular contexts. But they must continue to perform that role in ways that resonate with people as being ‘proper’ and ‘right’. As one Indigenous leader succinctly put it:

We have to be careful … we got a jury out there … we have to behave properly and make our decisions properly so people in our communities can see us paying respect and behaving properly (see Paper 8).

Governing nodes must maintain credibility and reputation with their authorising social environment in order to continue mobilising people and moulding consensus.
The papers demonstrate that Indigenous assessments of legitimacy focus primarily on the relationships and processes involved. People are concerned with the way structures of governance are created, leaders chosen and perform, consensus generated, accountability performed and resources shared. The layered identities and ties of networks are generally viewed by Indigenous people as the legitimate bases for identifying the ‘self’ in their ‘self-governance’. From this perspective, legitimacy is about the means and the ends.

Furthermore, the papers suggest that governance legitimacy does not mean having to simplistically integrate or juridify one thing (culture) into another (e.g. a new organisational structure). There is no quick-fix ‘culturally appropriate’ solution to legitimacy. Rather there are cultural design principles of networked governance whose effectiveness and resonance can be drawn upon to inform experimentation, which will then be strategically assessed by people. The papers highlight that what matters for the longer-term sustainability of Indigenous governance is that processes for designing and assessing legitimacy be under Indigenous control and agency; a product of informed Indigenous choice backed by the practical ability and power to pursue chosen courses of action.

Summary

The papers under this theme ethnographically document and analyse the radical specificity of Indigenous governance as nodal networks which can generate governing circuits and superstructural formations. By its very networked condition, Indigenous governance must be able to operate as a multi-dimensional field; as a flexible, relational system of order-organisation characterised by several distinctive features. The critical features of the field of nodal networked Indigenous governance include: its vertical and horizontal trajectories of scale and polities; relational and consensus conditions of decision making; its facilitation and constraint upon individual autonomy and collective action; and its durability through time, including connections back to ancestral networks and forward to future generational networks.

Importantly there is a dispersed subsidiarity of governing roles and responsibilities, and a clustering of superstructural circuitries of governance. Governing nodes are able to call upon their thick relationality, accumulated governance capital and network centrality to concentrate and mobilise governing power and agency, and reinforce particular kinds of systemic order. In doing so, they may call upon or activate different orders and scales of networked formations, for the purposes of achieving a preferred
governance process or outcome. This model of the Indigenous field of governance has significant ramifications for Indigenous people’s engagement with other players in the wider environment; and, in particular, for their encounters with the governmentality of the Australian state.
Paper 4: Valuing Native Title — Aboriginal, Statutory and Policy Discourses about Compensation


Introduction

Writing about compensation for resource development in Papua New Guinea, anthropologist Colin Filer (1997: 156) reported that:

Arguments about ‘compensation’ . . . are not merely the result of conflicting evaluations of things which have been lost, damaged or destroyed; they also seem to reflect a deeper division over the definition of ‘compensation’ itself, and hence the conceptual and emotional relationship between ‘compensation’ and the other forms of property or value which engage the minds of the participants.

Similar deep divisions and conflicting evaluations engage the mind of parties in the Australian arena of native title compensation. Underlying the conceptualisation, negotiation and determination of native title compensation lie highly charged issues of cultural and legal ethnocentrism.

In Australia, multiple statutory pathways to securing potential compensation have been established under the Native Title Act 1993 (hereafter referred to as ‘the Act’ or ‘the legislation’). Some involve negotiation and mediation; others require arbitration and court determination. There are also different modes of discourse about native title compensation, using languages which often display an incommensurability of meaning and practice. Alongside the statutory, there are common law, policy, economic and Indigenous discourses, each operating according to its own logic, principles and criteria. When these discourses about compensation engage, competing views quickly arise about the specificity of such terms as ‘native title’, ‘impact’ and ‘effect’, and related matters of scale, duration and degree. A common feature, however, of these disparate discourses is that all are grappling with the concepts of property, value, extinguishment and loss; concepts which are increasingly subject to investigation by tribunals and hearings around the world (see Hann 1998; Jorgensen 1995; Kirsch 2001; National Native Title Tribunal (NNTT) 1999; Posey 1990).
With such highly charged matters at hand, this paper is a preliminary attempt to disentangle some of the threads of incommensurability. Two key modes of discourse about compensation—the Aboriginal and the statutory—are examined in some detail to draw out their key principles and concepts. This serves several purposes. The first is to clarify the distinguishing features of the multiple statutory pathways established for compensation under the Act—for there remains considerable confusion about them. The second is to consider the implications of the statutory and related common law procedures for securing practical and just outcomes. The third is to highlight some of the key policy challenges and long-standing lessons that will need to be addressed in order to secure such outcomes.

The fourth and perhaps primary purpose is to more fully explicate one discourse about native title compensation that seems to have been largely missing from the public debate to date, but which is arguably central to it; namely, that of Aboriginal groups in respect to their own regimes of compensation sourced in Aboriginal systems of law. For that purpose, the paper commences with an ethnographic analysis of Aboriginal compensation processes, principles and concepts, and of the related rights, interests and responsibilities in land that are embedded within these. The paper considers the value systems revealed therein, and their implications for how ‘loss’, ‘extinguishment’ and ‘just terms’ might be better conceptualised for the purposes of common law consideration and the negotiation of compensation.

An overall objective is to draw together these seemingly disparate threads in order to construct a ‘recognition space’ for ‘native title compensation’. It is argued in the second half of the paper that native title compensation is, like native title itself, sui generis, or unique. Native title compensation will require an innovative jurisprudential approach that acknowledges it as a fundamentally new creature, recognisable at the intersection of Aboriginal and Western laws. Such an approach will entail the ‘construction of emergent principles’ and ‘new rules’ (French 2000: 3). A precondition for that innovation will be the creation of a recognition space that ameliorates the legal ethnocentrism of the common law, and addresses the intrinsic value to Aboriginal people of their lands and waters. Such an approach would need to be based on an exegesis of logically probative facts about the Aboriginal value of ‘cultural property’ (see below and Kirsch 2001), and about the related compensatory rights and interests exercised by Aboriginal people. To assist in that objective, the paper proposes a ‘Heads
of Damages’ (Heads) for possible use in the more formal arena of arbitration and court determinations.

**The Emerging Discourses and Divisions over Compensation**

An important mode of discourse about native title compensation is carried out in statutory and common law terms. In the *Mabo v Queensland (No 2) (1992) 175 CLR 1* (hereafter *Mabo No 2*) decision, the High Court declared that the common law of Australia recognises and affords protection, under certain conditions, to the native title rights and interests of Indigenous Australians. The decision also stated that while there may be locations where native title has survived intact, there would be circumstances—past, present and future—in which native title could be impaired or extinguished.

The *Mabo No 2* decision and the subsequent *Native Title Act 1993* enacted by the Federal Government established the legal principle that compensation may be payable to native title holders for specified actions (referred to as ‘acts’ in the legislation) which lead to ‘extinguishment’ or to any ‘loss, diminution, impairment or other effect . . . on their native title rights and interests’ (ss. 48, 51(1)). An act is said to ‘affect’ native title if it ‘extinguishes’ native rights and interests in lands or waters, or is ‘otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise’ (s. 227). The historical fiction of *terra nullius* was thereby replaced with the legal fiction of extinguishment.

What constitutes loss, diminution, impairment or extinguishment—and whether the latter may be partial or full—is not yet settled by the Australian courts and is subject to ongoing debate (Bartlett 2000; French 2000; Neate 1999). The statutory framework prescribes as an overriding measure that an entitlement to compensation is ‘an entitlement on just terms’ (ss. 51, 53). Compensation on ‘just terms’ seems a governing issue—the way in which ‘just terms’ is defined is at least as important as defining what ‘compensation’ might mean.

In Australia, the debate about how to conceptualise and value native title compensation is linked to the fundamental question of what constitutes native title. Native title is broadly defined in the legislation to mean:

- the ‘communal, group or individual rights and interests in relation to land or water’;
- where those rights and interests are possessed under ‘traditional laws acknowledged, and traditional customs observed by’ Indigenous Australians;
where people, ‘by those laws and customs, have a connection with the land and waters’;

those ‘rights and interests are recognised by the common law of Australia’ (s. 223(1)); and

it is specified that native title includes hunting, gathering and fishing rights and interests (s. 223(2)).

The legislation has left many critical issues and concepts open for practical resolution. The specific details remain to be worked out between parties in negotiation or in the courts. With regard to compensation, there is considerable uncertainty about the following key issues.

• What are the native title rights and interests that have been, or might be, affected by an ‘act’ of government or a third party?

• What is the nature of the act’s impact on those native title rights and interests?

• How is loss, impairment or extinguishment to be determined?

• Who is entitled to compensation and on what basis?

• Who pays compensation and on what basis?

• How is the extent of compensation to be measured and its form determined?

A range of opinions are expressed by stakeholders. To date, proposed solutions have largely been dominated by legal and land valuation discourse, often pursued within highly charged contexts of resource development or court litigation (see, in particular, Gardner 1998; Sheehan 1997, 1998). Not surprisingly, many parties are looking for the elusive Holy Grail of a formula or standardised procedure for the calculation of compensation.

However, a practical way forward is made difficult by a number of factors. Common law recognition of native title is in its infancy in Australia. Described as a ‘moveable feast’ (Edmunds & Smith 2000: 4; see also French 2000), it is developing case by case, not always in a consistent manner, and in circumstances where the traditional laws and customs from which native title is ‘solely derived’, are ‘incompletely known’ and ‘imperfectly comprehended’ (Mabo No 2).

Another challenge is the complexity of the statutory framework. Different potential types of statutory compensation have been created with multiple pathways by which they might be secured; and each pathway invokes distinctive processes, principles and
criteria. Amendments to the legislation made in 1998 also generate a greater degree of intersection between certain pathways, enabling more flexible combinations of processes to be activated, but also adding to the overall complexity.

Furthermore, the term ‘compensation’ is used differently throughout the legislation, and nowhere is it defined. Also, it is used interchangeably with other terms such as ‘condition’, ‘consideration’, ‘payment’, and ‘trust amount’. In effect, native title compensation can be negotiated, mediated, arbitrated or determined via different statutory procedures which invoke differently defined categories of native title parties. In a number of instances compensation can be secured at the same time that other ‘conditions’ apply which, in turn, have a compensatory character.

These complex permutations arise because the legislation not only establishes procedures for the common law recognition and protection of native title, but also for its legal extinguishment, forced taking, and loss. It also affords statutory entitlements which allow native title rights and interests to be traded by way of negotiated consent. The High Court has declared that the rights of negotiation are ‘valuable rights’ which enable applicants to ‘protect’ their claims and may result in them ‘obtaining a commercially beneficial settlement’. The legislation thereby provides ‘claims of native title [with] an economic as well as a spiritual and physical dimension’ (McHugh at 253, 259 in North Ganalanja Aboriginal Corporation v Queensland (1996) 135 ALR 225).

In a number of contexts, these tradeable statutory rights are being used as bargaining leverage to secure compensation, not only as a consequence of temporary impairment or diminution, but also as a straightforward means to revenue sharing. In many of these cases, extinguishment simply has not been an issue.

To add to the statutory and common law complexity, there is an Indigenous discourse about compensation. Culturally-based criteria and values are held by Aboriginal people about the nature, purpose and means of determining of compensation. Many groups across the country continue to exercise compensatory rights, interests and responsibilities that are derived solely from Aboriginal law and custom and that are directly relevant to native title over land and waters. Like the Native Title Act 1993, Aboriginal regimes of compensation have multiple pathways, principles and criteria, and outcomes that are subject to negotiation in the shadow of the law.

Importantly, Aboriginal people bring the values, behaviours and logic grounded in their own culturally-based compensation processes with them into the native title negotiation and litigation arena. The Aboriginal discourse about compensation is not
always compatible with Western legal principles or market valuation models. Nor is it always comprehensible to other parties or institutions involved in negotiating or determining compensation under the legislation.

Inevitably, whichever statutory pathway is pursued, parties confront deeper divisions that unfold as they attempt to translate the different discourses of compensation. The languages of these discourses often display an incommensurability of meaning.

If ‘just’ and sustainable outcomes are to be secured, an innovative jurisprudential and policy approach is required that acknowledges native title compensation as a fundamentally new creature: the combined product of several modes of discourse that is recognisable at the intersection of Aboriginal and Western laws. Such an approach will entail the ‘construction of emergent principles’ and ‘new rules’ (French 2000: 3), and the development of enabling policy frameworks to facilitate agreement-making and settlements.

Aboriginal Regimes of Compensation

In this section a cross-section of ethnographic literature is reviewed and combined with the author’s field research experience in urban, rural and remote communities over a period of 27 years, in order to elucidate the general features of the compensation regimes operating within Aboriginal societies. The constituent principles, criteria, values and processes are drawn out, and their embeddedness within an overarching system of rights and interests in land and waters is described. The outcomes pursued by Aboriginal people from their own compensation processes are highlighted.

This review is preliminary and is not an exhaustive coverage of the available literature. There are obvious gaps in time periods and locations; especially for areas of settled Australia where the historical and ethnographic record is often thin. It is not the intention here to promote a culturally static or reified account of Aboriginal compensation regimes; the social organisation and land tenure systems which underlie them are dynamic and so, therefore, are compensation processes and mechanisms. Furthermore, there is considerable diversity in the forms of social and economic organisation evident across the country, so that constituent rights, interests and responsibilities in land will vary between groups. Compensation processes and mechanisms similarly respond to these variations. Furthermore, as Sutton (1981) perceptively argued over a decade before the native title legislation existed, Aboriginal people in settled Australia continue to exercise a sense of Aboriginal identity—they retain the ‘bones of the culture; that is, the principles of things such as socialisation of
children, family life, their role as kin, modes of conversational interaction, systems of rights and responsibilities, and so on (see also his subsequent detailed ‘updating’ of that argument in Sutton 1998b). I would further argue that they continue to retain and exercise, to varying degrees, forms of distinctly Aboriginal compensation processes, principles and criteria. Accordingly, as Sutton argued in 1981, Aboriginal groups in settled Australia can justifiably demand land rights and compensation for territorial dispossess.

Like native title itself, the specificity of rights, interests and responsibilities exercised under Aboriginal compensation processes will vary on a case by case basis; but also, like native title, there are arguably core compensatory principles and values derived from the underlying system of Aboriginal law and land title which is common across the country. These core structural traits can usefully be extrapolated to a general level of applicability to Aboriginal groups. It is precisely because of that general applicability that parties in negotiation about any matter involving compensation with different Aboriginal groups across Australia, find themselves encountering the same modes of interaction, logic, expectation and discourse. The following analysis attempts to draw out the core traits of Aboriginal compensation processes.

**Aboriginal Law: The Grounds for Compensation**

Aboriginal groups in many parts of the country continue to possess and exercise compensation rights, interests and responsibilities that are derived under their extant traditional laws and customs.

Aboriginal law operates as a whole system underpinning personal property and communal title, and establishes what some refer to as the ‘right road’ for people to follow. It is not a bundle of accidental principles or isolated relations (Keen 1994; Williams 1986, 1987). But neither does it resemble Western law in its structure, first principles or processes. It has its own notions of precedent and ancient moral authority, externalised into the Dreaming. As Myers notes (1986: 49), the Dreaming and system of law derived from it ‘constitute the ground or foundation of the visible, present-day world’; it is a ‘theory of existence’ in which everything, including land, water, persons, customs, and resources originates.

Concepts of personhood, group identity and human agency are inextricably linked to the law and to land. With its origin in a religiously framed creative epoch, the law constitutes a source of permanent cultural values for Aboriginal societies. It is the repository of law-given precedents and moral authority which is perceived as having no
arbitrariness. It provides what Weiner (1992: 4) calls, ‘cosmological authentication’—that is, an authority lodged in the sacred and religious domains which transcends the mundane and impermanent aspects of social life, but which nevertheless dictates in daily affairs how material resources and social practices link individuals, groups and land. Conceived as such, ‘the law’ drives much of customary legal behaviour across different domains; for example, in areas of property rights and responsibilities, marriage and kinship, daily family life and socialisation, economic production and exchange; ritual and ceremony, and so on (Keen 1994; Maddock 1984; Sutton 1988; Williams 1986, 1987). Dreaming-derived law provides certain people, places and processes with a powerful legitimating force and value.

The paradox (and achievement) of the Dreaming is that it facilitates personal creativity and individual autonomy within an ontological framework that disguises the process of change under a consciousness of permanence and the veneer of conservatism (see especially Morphy 1997; Myers 1986; Weiner 1992). On the one hand, individuals deny unilateral personal agency regarding the law, whose foundation and reproduction are externalised into the Dreaming. Nevertheless, within a spiritually sanctioned view of the law as unchanging, in everyday life there is a fluid ‘here and now’ quality in which behaviour and events are actively interpreted, negotiated and manipulated in the shadow of the law (Merlan 1998; Myers 1986). As a consequence, human assessments and decisions about circumstances that might require a compensatory response are not necessarily predictable. But when made, they will be framed by recourse to the law.

As a theory of existence and value, the law provides the grounds for people thinking about and practicing compensation. The legitimacy and enactability of rights, interests and responsibilities that comprise Aboriginal compensation processes are constituted by laws that are part of a system of like laws which form an interrelated whole. Aboriginal law governing compensation is based on locally recognised codes of behaviour and shared values regarding what is termed ‘wrong-way’ and ‘right-way’ behaviour. It is expressed in public processes for applying sanctions, punishment, redress and restitution. ‘Wrong-way’ behaviour is responded to and enforced by representatives of social authority, differently constituted according to their age, kin relatedness, ceremonial seniority, power, gender and so on.

Aboriginal conceptualisations of compensation are therefore complex, and correlated to a fundamental relationship posited between the individual, group, land and the eternal law of the Dreaming. As a theory of existence and value that assists groups to actively
assimilate and respond to change, and that legitimises change as continuity, the law affords a crucial adaptive mechanism for contemporary Aboriginal societies across the country. Processes of compensation derived from contemporary Aboriginal law and custom are extant amongst many Aboriginal groups who continue to negotiate their exercise of related rights, interests and responsibilities. In the following sections the nature of those processes, rights, interests and responsibilities are further explored.

**Events and Behaviour that Provoke Compensation Processes**

Aboriginal compensation is about property—that is, property as defined in terms of what Hoebel (1966: 424) referred to as its essential nature; namely, the network of social relations that governs the conduct of people with respect to the use and disposition of things. As Gray (1994: 192–4, citing Justice Douglas’s decision in the *Sierra Club* case) and Hann (1998) have well understood and clarified for different audiences, the most important ‘property’ in any resource is the right to participate in the selective exploitation or prioritisation ‘of its various forms of value’. To be recognised as having the right to ‘speak for’ an asset, to have a ‘dispositive voice’ in dictating the terms of its circulation, access, utilisation and distribution, is to command ‘an intensely significant component of “property” in the resource’ (Gray 1994: 193). The social conditions for compensation are first activated when the distribution of entitlements to access, use and distribution are called into question or put at risk.

There are certain behaviours and incidents in the Aboriginal domain that may put such entitlements at risk and initiate the need for some form of compensatory assessment and action. A preliminary review of the ethnographic literature (see references) suggests such behaviours and incidents include those listed below.

1. Actions against bodily property, including committing a personal injury and wounding (accidental or otherwise); committing murder and homicide; ‘accidental’ death (in a world where individual agency is disguised, many deaths are perceived to involve religiously-based causation).

2. Theft of objects (including land, ritual paraphernalia, designs), or of power (for example, in the form of knowledge), or of sexual rights (such as by adultery).

3. The failure to resolve indebtedness or respond to reciprocal obligations and demands (whether they be economic, social or ritual), and the refusal to honour contractual obligations (such as for bestowal and marriage).
4. Committing a transgression or offence against persons in authority, especially by younger to older senior people.

5. Verbal trespass (for example, given that speaking for land is an act which confirms and asserts one’s rights of ownership of that land, then talking for country which is not one’s own, or publicly declaring restricted words, constitute important verbal trespasses upon the rights and interests of others).

6. Economic trespass (including the taking of resources from another person’s country without permission or reciprocity).

7. Various acts of religious trespass and sacrilege (including breaches of religious obligation and behaviour, breaches of taboo associated with sites and ceremony, breaches of restricted knowledge; grievances arising from sorcery; and failure to safeguard and manage spiritual resources).

8. Physical trespass onto the geographic space of a dangerous and restricted location, or onto country that is not one’s own, for illicit purposes.

9. Committing damage (including accidental or deliberate) to land and sites, to totemic flora or fauna, as well as the related failure by an individual or group to safeguard and protect land and its environmental resources.

This range of behaviours and events can all be characterised as constituting forms of trespass in its widest meaning. That is, they are perceived by Aboriginal people to be examples of unlawful acts which cause injury to, and improper inroads upon, other groups’ or individuals’ property, presence, authority, rights and resources. They may be deliberate or accidental, actual or implied, short or long-term in their duration. But as forms of trespass they will be interpreted as an intrusion, transgression or offence, and so deemed to require a compensatory response.

**Construing the Effect of an Action or Event**

The nature of effect (its quality, scale, duration and so on) is directly related to the type of causative action or event involved. For each action or event such as those listed above that is construed negatively as trespass, the effect of transformation and loss confronts people. For example, an action may challenge the distribution of social relations or potentially sever them, infringe rights in the use and disposition of things, jeopardise principles of authority, or make vulnerable the legitimising force of the law and Dreaming. In other words, the extent of effect has many dimensions, and these are subject to interpretative construction by individuals and groups.
The ethnographic literature makes it clear that Aboriginal landowners will investigate the nature and possibility of effect across a range of domains, including on:

• the land and sea, and sites within them;
• people’s possession, access, use and enjoyment of land and sea;
• individuals, families, groups and their social relations;
• an individual’s physical and psychological health and wellbeing;
• the environment and its natural resources;
• religious life and the law itself;
• the systems of knowledge related to the above; and
• on group authority over all the above.

It can be generally argued that, within the Aboriginal worldview, effects are not easily quarantined. Rather they are seen to be contagious, easily spreading from one of the above domains to others, and they may have multiplier effects that potentially escalate conflict in the process (see e.g. Chase 1980: 283–5; Sutton 1995: 42, 46, 57; Williams 1987). The logic used by people to interpret this contagion emphasises the effect of an action or event on both the visible and invisible worlds. An intimate interdependence is perceived to exist between these worlds; for example, conception, foetal nurturing, birth, the bodily wellbeing of humans, and their eventual death are all regarded as being spiritual as well as physiological processes and, above all, are causally linked to the spiritually embodied land (see Morphy 1997; Munn 1986; Smith 1981). Land not only contains the bodies and spirits of past ancestors who have ‘gone down’ into it, but it also incubates the spiritual essences from which foetuses are created and babies ‘come up’ (Smith 1981). Its geographical features also represent the metamorphosed forms and imprints of the Dreaming creator beings. All these essences of spiritual signification are regarded as exercising an active agency in the real world—an agency which can directly affect individual physiological development and physical wellbeing. For example, a person may bear certain telltale birth marks on their body that were put there by a particular Dreaming; they may display physical mannerisms or personal idiosyncrasies from an ancestor associated with their spiritual conception; or evince an attachment to a particular story or totem because they were conceived or born at a related site (see Brady 1999: 166–7; Smith 1981: 181–8). It is not surprising then
that the effect of actions may easily spread from the personal, to the social, to the land and law—and vice versa.

An important and sometimes dangerous burden of interpretation is imposed upon key individuals and groups regarding the type of transformations created by an act, in and across these domains. Ongoing assessments will be made of the extent of effect in respect to its scale, duration, and the degree of social and religious repercussions. The gravity of the offence, the motivation and mental state of the perpetrator, the harm done to those people and things at the hub of effect, the prevalence of the action, and the need to uphold the law through deterrence, are all factors taken into account in the complex process of interpreting effect and thereby determining a compensatory response.

Evaluations of the nature of the effect may be carried out publicly. Williams (1987: 49–66) describes the holding of clan ‘moots’ as a mechanism of dispute settlement amongst the Yolngu (see also Berndt & Berndt 1952; Chase 1980; Elkin 1931: 191; Memmott 1979: 97–103). This involved intervention and management by persons with political authority, the gathering and checking of information, obtaining admissions of culpable acts, confirmation of action to be taken, and the application of sanctions. But when the effects of actions and incidents fall squarely within the realm of sacrilege and breach of religious taboo, consideration of similar issues will be restricted to closed group of religious authorities and dealt with summarily and without public declaration.

A critical factor in evaluating the nature of an effect in order to determine the form compensation should take, is the need to identify the social boundaries of groups involved.

**Identifying the Social Boundaries of Perpetration and Impact**

As Weiner (1992) and Kirsch (2001) have noted, loss is a manifestation of the process of social relations. For Aboriginal groups, acts of trespass invariably require the interpretation and assignment of social interests and social responsibility.

An act or event which provokes a compensatory process can most easily be construed as a central point of energy from which radiate a series of repercussions; rather as a stone which, on falling into water, creates concentric waves whose energy is progressively depleted at the outer margins. In the same way, an act or event will produce a radiating social ‘field of perpetrators’ and a social ‘field of impact’ (see also Maddock 1972: 165, who refers to ‘fields of guilt’; and Sutton 1995: 42, who refers to the ‘politically responsible group’ making decisions and asserting rights and interests).
The size and spread of the relevant social fields inevitably depends on the extent of transformation and loss created by the impact of the relevant action or event (see Sutton 1995: 42, 46) The ethnographic literature suggests that identification of these social fields will be based upon an interpretive reading of a mix of factors. The concept of ‘distance’ has multiple connotations and appears to provide a broad framework within which possible factors are considered. There is a sociology and geography of ‘distance’ which can be ‘measured’ in terms of kin relations, and economic, ceremonial, political and ownership rights, interests and responsibilities (Maddock 1984; Myers 1986, 1989).

**Possessory and managerial distance**

Individuals and groups have multiple and overlapping ownership and management rights and responsibilities for particular tracts of land, water, sites, and totemic affiliations. Religious, political and economic interests in sites and estates are not exclusively held by their core or primary owners (see especially Sutton 1995). Even persons ostensibly belonging to the same corporate group have ‘different ancestries and life histories and, thus, only sometimes share identical “countries”’ (Sutton 1995: 33). These degrees of rights, interests and responsibilities will be measured on the basis of people’s possessory and managerial distance from the property (be that an object, place, relation or process) that has been affected, and will be taken into account by people at the hub of effect.

In places where land ownership is intimately connected with Dreaming tracks and travelling ceremony, then the patterns of associated rights, interests and responsibilities are extremely complicated (see Sutton 1995: 54–7). Dreamings interpenetrate and connect people together. For example, different groups of people may own or have responsibility for managing the sites, songs or ceremonies associated with an extended Dreaming track crossing a number of their different ‘countries’. These groups may all be regarded (and regard themselves) as being directly affected by an impact that occurs at a particular site on one section of that track. For example, Peterson (1993: 77) reports that the beneficiaries of cash payments arising from a gold mining agreement included people who had important ceremonial links to the country on which the mine was located, but who themselves resided some 300 kilometres away from the mine site. Furthermore, as Sutton’s (1995, Ch. 1–8) analysis of Aboriginal boundaries and land ownership across the country indicates, Dreamings, powerful sites, ceremonies and stories are of different types and can engage different numbers of people.
The institutional relationship between Aboriginal ‘owners’ and ‘managers’ involves a relationship between senior persons that entails notions of compensation, in the sense that it is based upon mutual responsibilities to safeguard places and ritual processes, and a corresponding obligation to ‘pay’ when mismanagement occurs (Merlan 1982; Trigger 1989: 18–23). Accordingly, the specific persons undertaking the reciprocal set of ritually-based rights and duties to land, referred to in many areas as ‘owners’ and ‘managers’, may be included as members of the group affected by the damage to a natural object or site, or the breach of a religious obligation by either owners or managers.

If an action or event is deemed to have significant transformative and multiplier effects, then the inclusion of people in both the fields of perpetration and of effect will likewise be expansive. Sutton (1995: 42) reports, for example, that if a decision is made about ‘allowing a major development that will transform a whole region, many groups may . . . be involved, even where the development site itself may be wholly on one small clan estate’. Josif (1988: 11, cited in Cooper 1992: 232) noted that custodians of the Bula sites at Coronation Hill, which were subject to possible mining activity in the early 1990s, were anxious because ‘Aboriginal people from other groups share spiritual ties with the Sickness Country . . . and may consider that Jawoyn were not performing their proper role as custodians’. Some Bula custodians feared ‘payback’ or sorcery if it was decided they had not protected sites properly. In Cape York Peninsula, people who own and perform the same ‘dance style’ for land that may be affected by an adverse act may be regarded as members of the social field of effect (Chase 1980). Dixon reported how the Aboriginal actors involved in the negotiation of the Glen Hill mining agreement in Western Australia conceived of the social extent of groups affected by the mine in terms of the traditional system of exchange, called wunan. The wunan connected distant groups with rights to participate under Aboriginal law, and functioned as criteria for including them in the social field of effect (Dixon 1990: 83–4).

**Genealogical distance**

All Aboriginal action and interpretation of events takes place within the ‘rubric of relatedness’ (Finlayson 1991; Martin 1993; Myers 1986: 117; Sutton 1998b). For the purposes of compensation, distance will also be measured according to degrees of social and kin relatedness. Persons may be excluded from the field of effect by being classified as ‘too far away’ in terms of their kin relation to the people at the hub of impact. Conversely, on the basis of the ‘logic of expansiveness’ initially applied by people
(Myers 1986: 166), those persons who live far away from an act or event that has occurred, but who are ‘close kin’, will be regarded as experiencing the same effect as their family at the centre of the effect.

By the same measure, genealogical ‘outsiders’ who reside with the group at the hub of effect might be vulnerable to inclusion in the field of perpetrators. They may choose or be required to make themselves geographically distant in order to avoid sanctions or punishment. The closer the genealogical relationship of people identified as the perpetrators of an action, the more immediately fraught becomes the process of assessment, and the more urgent the need to clarify the extent of inclusion and to resolve the situation by way of compensatory settlement.

Reading the intimacy and value of social relations is a difficult, potentially vexatious matter. Memmott (1979: 99) reports that an important part of ‘squareup’ proceedings carried out after the death of a person was for the immediate family to ‘reassure’ certain others that they are not suspected in the person’s death. Chase (1980: 193) reports that every conflict situation encountered in his research in east Cape York meant that some people ‘were caught with divided loyalties’. These people were in fact referred to as *kuuntyi yi’atyi* (‘middle’ relations) and were expected not to take sides, but rather to attempt to prevent violence.

**Geographical distance**

Residential distance from the thing, country or person affected by an act or event combines with other factors to help determine the identity of groups involved. Geographic distance often has complex permutations. For example, residential closeness to the centre of impact of an act will tend to constitute a criteria for inclusion in the field of effect; unless it is counteracted by genealogical distance. As noted above, people who are regarded as genealogically or ceremonially ‘close’ to the people at the centre of an effect, but who nevertheless live a long geographical distance away, will tend to be included in the field of effect. For example, certain *kunmokurkar* groups in the Coopers Creek area of western Arnhem Land characterise themselves as being in a long-distance ‘company’ relationship which can link them in to shared consideration of compensation and the circulation of royalty payments (Kesteven & Smith 1983).

There will also be a mundane geographic logic by which people can assert that other groups are simply ‘too far away’ to worry about their feelings or rights. The physical characteristics of the actual area subject to an effect may also mean that the
geographical mapping of effects will be perceived to radiate out many kilometres in one compass direction, but be geographically restricted in another. For example, people with country located along the Coopers Creek in western Arnhem Land form a ‘riverine alliance’ referred to as ‘Marryalayala’ or ‘one creek’, so that the effects of some acts are considered to follow groups along the river, rather than travelling inland from it (Kesteven & Smith 1983: 123–5, 140).

**Distance as degrees of spiritual power**

Within the Aboriginal landscape, places, things and people vary radically in their importance. The relationship posited between people and ‘country’, and the law and Dreaming, imbues certain mundane things with a numinous character and relative degrees of ‘power’ or sacredness. There are particular people, places, objects, elements, behaviours and procedures which are regarded as directly expressing transcendent value and power. Some objects and sites accrete power and powerful memories over time, or by association with powerful substances (for example, particular trees which have birthing blood or umbilical cords buried by them, mortuary sites for powerful persons, sites representing metamorphosed creator beings, sites where ceremony is conducted or important disputes have been resolved, etc). These visible signifiers of power are variously described in Aboriginal English as being ‘big’, ‘number one’, ‘boss’, ‘poison’, ‘sacred’ or ‘dear’.

The consequences of an act on something ‘big’ may be seen as apocalyptic and can be transmitted through arterial flows of spiritual power to connect different groups (see Cooper 1992: 227). Some significant sites can be said to generate waves of repercussions that flow outwards to affect a much wider area of country and larger groups of people. For example, in one case, disturbances at related sites were stated as being sensed by Dreaming beings at the main site, and custodians were concerned about exploration activity up to ten kilometres from it (Merlan & Rumsey 1986 cited in Cooper 1992: 227). An effect which may appear insignificant in daily life may be interpreted differently in circumstances where powerful sites are involved. Arndt (1962: 304, 306) noted that in the close vicinity of one such site, sufficient disturbance may be as little as the careless kicking of a rock or stick, or the making of excessive noise (see also Cooper 1992). An effect on ‘big’ things radiates across land and people, invoking a much bigger social field of perpetration and effect, and requiring the imposition of heavier sanctions and recompense. Small local sites with less transcendental signification may invoke a more tightly defined set of kindred and field of effect.
Temporal and personal dimensions of perpetration and effect

The gender, age, and seniority of persons involved in committing an act, or experiencing its effects, are factors taken into account when people measure degrees of social inclusion or exclusion. Other factors are the sentimental forms of attachment by individuals to places and objects which act as memory maps of personal and group histories.

Assessments of the social, physical and spiritual boundaries of effect and perpetration have to be carefully negotiated as they involve cross-cutting attachments, allegiances, politics and enforcement of the law. As Williams (1982: 146) perceptively comments about processes of demarcating the physical limits of country: ‘reticence to locate precise boundaries may . . . [reflect] concern about the consequences of doing so, (and conversely)’. The same concern for consequences influences the assessment of social boundaries for the purposes of compensation. As a consequence, the process of evaluating social inclusion and exclusion will often continue in parallel with, and continue after, the actual process of settling compensation.

The contagion and interpretation of current events is also replete with temporal force. Williams’ (1987: 65) statement that, for the Yolngu, ‘nothing ever really ends’ is applicable to most other Aboriginal societies. Old tensions and unsettled grievances from earlier incidents—some occurring generations ago—resonate through present-day social relations and are criteria for considering the motivation behind an action, and the extent of its effect. For example, Williams (1987: 67) reports on her inquiry into charges of sorcery, made after the death of a senior man in 1969. One explanation was that it began in events occurring at least 30 years earlier, and ultimately involved a large number of people. Memmott (1979: 102) reports that before a proposed dance festival commenced at Doomadgee in late 1974, the several different groups attending spent the first day participating in ‘square-up settlements’ so that ‘old grievances could be settled and . . . not interfere with [its] success’.

By implication then, while the effect of an action may in time recede or stagnate, if it is not appropriately resolved, it will be revived at a future date. The potential is that old grievances and their effects become construed by later generations as compounding or creating new grievances. In other words, the duration of an effect is not necessarily discrete, but may be scattered across time.

In considering effect, custodians of land and close kin bear the burden of what Gray (1994: 195) refers to as the ‘principle of stewardship’: ‘Under this principle, ownership
or possession of land is viewed as a trust, with attendant obligations to future generations as well as to the present.\textsuperscript{3} The ethnographic literature indicates that Aboriginal stewardship entails ‘looking after’ country, people and the law in the present and for future generations, and transmitting the rights and responsibilities of stewardship to them (see Myers 1986; Smith 1981). Both individuals and groups may be held accountable to others for their stewardship. The concepts of ownership, stewardship and effect are underpinned by the notion of a ‘community obligation’ to preserve over time the collective entitlements to ‘equitable property’ and ‘non-commodity values’ (Gray 1994: 202; see also Gray 1991). From this perspective, if land is the property of Aboriginal people, then people are a property of the land.

**The Forms of Aboriginal Compensation**

Aboriginal compensation mechanisms reveal social values and preferences. For Aboriginal people, compensation is primarily about social process and prioritising certain relations, and can be enacted in a variety of ways. Invariably, people, the land and the Dreaming are placed at the hub of agency. The need for human action—in the form of sanctions, ‘pay back’, ‘squaring up’, recompense, retribution, or exchange—is framed as a necessary stabilising expression of the law.

Compensation can consist of material recompense to the aggrieved person and group. For example, at ‘house opening’ ceremonies in Cape York conducted some time after a death to ‘open’ up the deceased’s dwelling and ‘free’ it from spiritual contagion, payments of food and household goods and other capital items are ‘paid’ by the widow’s family to the family of the deceased husband (Martin 1993). Cash is a medium of social exchange, and payments of cash may be required by the aggrieved from persons identified in the field of guilt. For example, Peterson (1991: 75) noted the use of cash payments as a ‘compensatory mechanism’ in the case of a person paying a relative who had rights to their hair (for ceremonial purposes) when they had a haircut without that relative’s knowledge or permission. Access to valued resources may similarly have to be met by the return of gifts to the owners (for example, as an equivalence, in the form of an artefact made from those resources (Myers 1986)). A person of eminence in the law who performs as a ‘witness’ to validate another’s claims to pre-eminent ownership rights and responsibilities for an area of land or a specific site, may subsequently demand and have to be paid cash as compensatory exchange for their testimonial comment.
Aboriginal compensation also takes many non-material forms. For example, it may take the form of ‘an apology’ from people or from the government. It may consist of the conduct of ritualised ceremonies or highly orchestrated fights of reconciliation. These are widely reported across place and time, and include those described amongst the Pintubi by Myers (1986: 171); by Elkin (1931: 190–91) in the formal *kopara* exchanges held by the Lakes groups of South Australia; in East Cape York by Chase (1980: 192); in the Lardil ‘square-up fights’ described by Memmott (1979: 99–103); and in the peace-making ceremony (*magarada*) described in Arnhem Land by the Berndts (Berndt & Berndt 1952: 116). In instances of serious inter-group conflict over certain actions, settlement has been reported in the form of a series of exchanges of small areas of territory between particular groups. The transaction indicated a resolution of conflict, and involved not so much a transferral of ownership of land as a confirmation of continued access and shared rights to exploit resources (Kesteven & Smith 1983: 133).

Compensation may be enacted through the application of sanctions and retaliatory punishment of the perpetrator(s). These mechanisms may be socially enacted (including suppression of social interaction, temporary ostracism or permanent expulsion from the group). They might be physical (including warfare, regulated civil revenge, and death). They might also be enacted through sorcery and the direct intervention of the spiritual domain. Once included within the field of perpetrators, the persons or their close relatives may be expected to allow themselves to be punished, either forcibly by means of spearing, or by offering their body to physically receive another’s injury punishment, or by physically replacing the thing itself (for example, a wife may be ‘given’ to another person in the deceased husband’s family).

Individual autonomy has its bounds. People who repeatedly act against the social order eventually bring the action of their aggrieved kin upon themselves. In the past this may have resulted in them being put to death (Chase 1980: 190; Smith 1981: 170–3).

The law is said to be ‘hard’, and in certain circumstances the law will intervene of its own accord to punish breaches of religious taboo; for example, in the form of serious illness, death, sorcery or religious revenge. There are religiously empowered enforcers amongst people (and animals) who can instigate sorcery and mete out death. When offended, the spirits of deceased ancestors can punish relations by sending physical and environmental ills. For example, failure to observe requirements for ‘looking after’ and respecting the graves of close kin ‘could bring punishment from the spirit to those who desecrated the physical remains’ (Chase 1980: 186). Through sorcery, certain people...
may also invoke the particular qualities of a site to bring about physical and environmental calamity on others (for example, by ‘sending’ swarms of flies and mosquitoes, illness, rain and fire, and causing reproductive failure of people, plants and animals). It is the author’s experience that in many contemporary negotiation situations, Aboriginal people feel keenly that their decisions, if determined to be wrong by close kin or their own law, may result in their punishment by ill-fortune and ill-health.

The form that compensation takes is directly linked to the nature of the provoking action or incident; to people’s reading of the type and extent of effects; and to the criteria of social distance involved. In summary, forms of compensation enacted may be:

- action oriented and physical—in the form of punishment and sanctions involving regulated civil revenge, injury or death;
- socially based—as in processes of ostracism, expulsion or self-imposed absence;
- material and monetary—as in processes of exchange of cash, food, services or commodity goods;
- religious and spiritual—via religiously empowered enforcers of punishment, the conduct of cleansing ritual, or through religious ostracism or expulsion; and/or
- symbolic and performative—through apology or highly orchestrated reconciliation fights or planned confrontations.

Aboriginal Compensation as Value System and Process

The Aboriginal semantic domain of compensation appears to be broader than that allowed for by Western economic and legally-based approaches. It is more akin to the Macquarie Dictionary definition of the verb ‘to compensate’, as: ‘to counterbalance variations; offset; recompense; to adjust or construct so as to produce equilibrium; to be an equivalent; to make amends’. The dictionary definition recognises the essential plasticity of the concept, and resonates with Aboriginal views where compensation is:

- a process (the act of compensating and the state of being compensated);
- a realm of valuation (for comparing and estimating the worth of a thing);
- an entitlement and responsibility (the kind of compensation given or received as an equivalent for debt, loss, suffering, etc); and
• an outcome (assessed by the extent to which recompense, equilibrium and amends have been secured).

Perhaps the critical feature of Aboriginal compensation is that it is essentially a process-based system in which the relationship between people, the land, law and the Dreaming is paramount. The mechanism of compensation is used to affirm the value of that connection: to achieve defined social purposes; to reaffirm relationships of mutual equivalence and demand sharing; to bind individuals into groups; and to confirm ownership of the land (see e.g. Chase 1980; Elkin 1931: 191; Kickett 1999; Maddock 1984: 184; Martin 1995: 8; Memmott 1979: 97–103; Peterson 1991: 75, 1993).

Compensation processes reveal realms of value with multiple referents. For example, in evaluating an effect for compensatory purposes, people closely consider:

• the utility value of the thing and relationships involved;
• the extrinsic value as a means to something desirable;
• the inherent social value;
• the moral and authoritative value derived under law;
• its economic value, and so on.

People strategically canvass these aspects of a thing or relationship’s ‘total value’, in order to come to some accepted understanding of the extent to which it is seen to have value, and the form of compensation that will correspond to that value. Underlying all forms of compensatory response is a notion of equivalence, the value of which has many dimensions. At its heart is the desire to restore sociality and reaffirm relationships of authority and the illusion of cultural permanence. The measure of that balance is in the form of what has been referred to as ‘egalitarian mutuality’ (Maddock 1984: 184) or ‘assertive equalitarianism’ (Martin 1995: 8). That is, the outcome should restore the expectation and satisfaction of reciprocity and ‘demand sharing’ (Peterson 1993), and acquit individuals and groups of indebtedness entailed by their inclusion in the field of perpetrators.

Another measure of balance is expressed in the desire to secure a ‘levelling up’ or ‘squaring up’ (pers. comm. P. Memmott and P. Sutton) based on a core principle of ‘equivalent injury’ (Stanner 1953). To secure that end, the principle of proportionality is applied. However, the outcome sought is not measured as an exact equivalence (in the sense of reducing one thing to another), but in the sense that the form of compensation
must be judged as proportional to the loss or damage sustained, and capable of enabling a reinstatement of perceived total value. But restoring sociality and mutual responsibilities is not necessarily about equity. As noted above, some things and people are more ‘equal’ than others, more powerful, more senior. Accordingly, the balance sought through compensation may be asymmetrical and hierarchical in nature (such as in restoring the relationship of authority between senior and junior generations). People will make subjective judgments as to when the equal ‘total value’ of an effect has been obtained.

Broadly then, a compensation process may be used to:

• restore and maintain environmental productivity and reproductive capacity;
• safeguard the health and reproduction of people and the land;
• re-establish economic exchange relationships;
• restore and safeguard religious rights, interests and responsibilities; and/or
• confirm the authority of groups and individuals for areas of land and water.

The preferred primary outcome of all forms of compensation is to secure the semblance of finality in social and temporal domains, by acquitting individuals and groups of any perceived indebtedness and guilt entailed by their inclusion in the field of perpetrators.

**Inalienable Possessions: Valuing the Invaluable**

Just as compensation reveals value, so too competition over the products of compensation reveals that which has been lost, most lost, and its value.\(^4\) The discussion of Aboriginal regimes of compensation so far has indicated that some things are more highly valued than others. This section reviews some ethnographic sources to consider what those things might be, and how that higher value might be construed.

Drawing upon Myer’s erudite ethnography of Pintubi sentiment, place and politics, Weiner (1992: 101) notes that the Dreaming-derived law encompasses ‘vast inalienable possessions that are authenticated by the very cosmology under which they are produced’. In an important analysis of the nature of exchange and social reproduction, Weiner examines the creation and core meaning of what she calls ‘inalienable possessions’—those things (be they land, sites, names, body designs, songs, stories, knowledge, ritual practices or paraphernalia) which become imbued with the intrinsic
and ineffable identities of their owners, accreted with history and memories, repositories of genealogies, and are transferred by their owners from one generation to another.

As Weiner (1992: 42) notes, what gives inalienable possessions their power and potency is their authentication by an authority perceived to be outside the present. As a consequence, they act as the stabilising force against loss and impairment, and are critical to the reproduction of group identity and social relations through time. To that extent they are seen as timeless, outlasting their owners who must nevertheless bear the responsibility for recreating their social value over time. Such possessions bestow responsibilities of stewardship, out of which evolve many different levels of authority and relationship. Control over their meanings and transmission from one generation to the next are thus strictly circumscribed, and accords authority and legitimacy to successive owners.

Inalienable Aboriginal possessions are dense with signification, whereby their value is seen to lie in their very inalienability. They have infinite utility and absolute value. They are said by the Anangu people to ‘come in front’. Such value is translated in Aboriginal English as ‘big’, ‘dear’, ‘precious’. For Aboriginal groups, land is *cum grano salis*—the incomparable inalienable possession. It is a ‘value carrier’; that is, it is ‘value as such, the immovable ground above and beyond which real economic activity [is] carried out’ (Weiner 1992: 33). Such possessions become invaluable precisely because they are beyond commodification.

As Gray (1994: 161) notes, it is inevitable that all ‘property’ referents have about them an ‘utterly interdependent quality’. This is precisely the case with respect to Aboriginal conceptualisations of land. For example, not only does an individual trace kin relations to other individuals and groups, but to tracts of country and religious paraphernalia which may, in turn, be related to each other as kin (Keen 1994: 110–24). Aboriginal land is an extension of the person and the group—rights *in rem* and *in personam* are at the same level and centred within a spiritual framework (Sutton 1998a). It constitutes what Radin (1982) has called ‘property for personhood’. In other words, it is an object that is part of the way we constitute ourselves as continuing personal entities in the world; an analogy very close to Weiner’s notion of inalienable possession.

In presenting an argument for the repatriation of the Elgin Marbles, Moustakas (1989: 1185) extends Radin’s concept in order to include group rights in cultural property—what he calls ‘property for grouphood’—which ‘expresses something about
the entire group’s relationship to certain property... [and is] essential to the preservation of group identity and group self-esteem’.

Writers including Kirsch (2001), Coombe (1993), Janke (1997) and Pask (1993) have more recently adapted these ideas to propose the centrality of ‘cultural property’ as a term encompassing both the loss of property as ownership of an object, and loss of property conceived as a sense of belonging or way of knowing. For Aboriginal Australians, land and its various manifestations in song, dance, knowledge, sites, ritual, names and so on, is more than ‘thin air’ (Gray 1991); it is cultural property for personhood and grouphood.

Such inalienable possessions of personhood and grouphood can not be easily substituted; they are not fungible. Their value will not be not realised in free market exchange. Rather they accumulate a subjective and cosmological value which sets them beyond a reinstatement value. Such valuation defies the philosophy of possessive individualism and market exchange that defines Western legal categories of property (see Coombe 1993, drawing on MacPherson 1962). How then is the loss or impairment of such a possession construed and valued by its owners?

When the locus of an inalienable possession’s authenticity is interfered with, then its absolute value declines, sometimes rapidly (Weiner 1992: 102–3). But more fundamentally, ‘taking a possession that so completely represents a group’s social identity as well as an individual owner’s identity and giving it to someone outside the group is a powerful transfer of one’s own and one’s group’s very substance’ (Weiner 1992: 104). The loss of inalienable possessions diminishes the person and by extension, the group to which the person belongs.

Coombe (1993: 279) argues in the Canadian context, that the ‘commodification of Indian spirituality is understood to pose the threat of cultural dissolution’. Moustakas (1989: 1185) takes the implications of ‘property for grouphood’ to its logical conclusion. He suggests that such property should not be alienated ‘because future generations are unable to consent to transactions that threaten their existence as a group, and that commodification and fungibility are inappropriate ways to treat constitutive elements of grouphood’.

From a legal perspective Radin (1982: 1014–5) argues that, where property is ‘for personhood’, there is a *prima facie* case that it is a property right that should be protected against invasion by government and against cancellation by conflicting fungible property claims. This case is strongest, she concludes, where ‘the claimant’s
opportunities to become fully developed persons … would be destroyed or significantly lessened, and . . . where the personal property rights are claimed by individuals who are maintaining and expressing their group identity’. Such a case is routinely voiced by Aboriginal people in respect to their invaluable property for personhood and grouphood. The following sections examine the extent to which native title rights and interests in land and water—as clear examples of inalienable possession—are afforded protection against invasion by government and cancellation by conflicting fungible property claims; and how their extinguishment and loss might be, if they should be, valued for the purposes of native title compensation.
Notes: Paper 4

1. The reference to ‘Aboriginal’ rather than ‘Indigenous’ is intentional as the paper focuses on the ethnographic literature relevant to Aboriginal groups and their compensation processes. Conclusions presented here should not be taken as being applicable to Torres Strait Islander peoples who may exhibit distinctive cultural differences.

2. In most cases where ‘land’ is used in this paper it can be taken as an abbreviation for ‘land and sea’. For coastal-dwelling people the one is the continuation of the other.


4. I would like to thank Peter Sutton for suggesting the significance of contemporary Indigenous competition over compensation as a mechanism which reveals that which is ‘most lost’, and hence most fought over in the native title arena.
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Paper 5: Indigenous Families, Households and Governance


Introduction

This paper is part ethnographic, part quantitative, and part reflection as I tease out whether there are connections between the concepts of ‘family’, ‘households’ and ‘governance’. The paper probably raises more questions than it answers, but that has been its value. First, I discuss first some of the insights about contemporary Indigenous family and household formation and domestic economies in Australia that have arisen out of 30 years of field research in a range of communities — rural, urban and remote. I especially draw on more recent work carried out as part of a team research project on the delivery and impacts of welfare payments made to Indigenous families. Some of the findings presented here will be familiar, others do not necessarily conform to our sometimes taken-for-granted understandings. Next, I describe the nature of extended family formations and their collective identity, in the households in which they reside. The role and impacts of mobility, parenting and child-rearing; household developmental cycles, social and economic support networks; and ‘linked’ or ‘connected’ households on family formations and identity are described. The paper argues that extended families are the fundamental structures that have to be reproduced in order that Indigenous cultural and socioeconomic reproduction as a whole can take place.

From there I attempt to make a grander leap, to consider the place of Indigenous extended families and their linked households, in the cultural and sociological geography of contemporary Indigenous governance. Can extended families be said to have what we would call governance? If they do, then does that mode of governance connect to larger-scale levels of organisational governance and political representation? And if so, how are the connections made? And what are the implications for families and for community governance arrangements?

Families and Their Households

The concepts of ‘family’ and ‘household’ in Indigenous societies have long been critically assessed among anthropologists and other social scientists, both within Australia and internationally (see Bender 1967; Daly and Smith 1996, 1999; Finlayson
1913 Malinowski contended that ‘careful investigation of the facts of family life in Australia was urgently needed’, because of the problematic attribution of ‘European characteristics to the Aboriginal family without adequate investigation of the details of actual family relationships’ (1979:161).

But despite its apparent centrality in Indigenous social and economic organisation, in recent years there seems to have been decreasing research into Indigenous family formation, not an increased focus. The ‘sexier’ and perhaps more tangible imperatives of land rights, native title, economic development and national politics seem to have taken research precedence. One also wonders whether researchers today are less willing to spend the longer, intimate time on the ground with families that is needed to convey the dynamic environment of their daily life — relying instead on summarising and critiquing the work of others who remain active in the field.

The important exceptions in the past decade include the research (and publications) on families and households of Julie Finlayson (1991), which remain the best ethnographic accounts of family life in Australian anthropology, along with the field-based research of Chris Birdsell (1988), Annette Hamilton (1981); Peter Sutton (1998) and Smith (1980, 2000), and the more recent work of younger researchers such as Yasmine Musharbash (2000). The research in which I have been involved indicates that the terms ‘family’ and ‘household’ require nested operational definition, in order to even begin to capture the temporal, spatial and socioeconomic processes at play in their formation and reproduction.

The notion of ‘family’ has long been recognised as the ‘central ordering principle’ within Indigenous society (Daly and Smith 1996; Finlayson 1991; Smith 1980; Sutton 1998). Invoked in almost every context and in every discussion, it is the key unit, at both an actual and conceptual level, in Indigenous social and economic life. While the nuclear or elementary family is important, it is not the most common residential or structural form. Rather, each individual’s investment in family relationships is widely distributed in expanding waves of classificatory and consanguineal relatedness. The residential and sociological result is the centrality of extended family formations, variously referred to as ‘mobs’, ‘one family’, ‘all family’, ‘company’ and so on. Membership of these extended structures is open to interpretation and negotiation over time, expanding and reducing through consociate ties born of historical association,
friendship, political alliances and engagement in processes such as native title and land rights.

At its most basic, the term ‘household’ is usually taken to refer to a co-residential unit — a group of people who live in the same dwelling and share economic resources. But amongst Indigenous Australians, households — even those occupying a single physical space — are compositionally complex. At any point in time they comprise extended family units which are commonly multi-generational, and have larger numbers of residents and more youthful dependents than the national average (see Figure 1).

Case study surveys conducted by the author and the CAEPR research team (see Smith 2000; and project publications listed on the CAEPR website) at the community level report between 50-60 percent of households having three or more generations present, and the average household having 6.5 members compared with the Australian average of 2.7 persons (Henry and Smith 2002:4; Smith 2000). In two surveyed
communities, 43 and 48 percent respectively of residents were under the age of 16 years (Smith 2000). Indigenous families are big, and reproducing young families at a greater rate than non-Indigenous families. Over time, factors such as mobility, the operation of shared parenting and child-care, support networks and patterns of resource redistribution, give rise to a sophisticated process for the reproduction of the collective identity of extended families. In the next section I will briefly consider these factors and their impacts.

**The Impact of Mobility on Families and Their Households**

A key factor in the composition and viability of Indigenous Australian households is mobility. Our recent survey research indicates that we have taken a view too simple of this complex process. Mobility takes on different forms and rates in different communities and households. Yes — some adults and children are highly mobile within and between their communities where they make use of a series of ‘usual’ home bases. But, as I discuss below, there are often invisible areas of stability and continuity within families and their households.

On the side of dynamism, our research in communities reports that household composition may change daily. For example, approximately 59 percent of one community survey respondents stated there were other places in the local area they sometimes stayed, and 58 percent had done so in the past four weeks (Smith 2000). Children travel with and without their parents and siblings, and this flow is unpredictable. Fifty percent of children in the same households sometimes resided in other places in the same community.

In another community, a research ‘census’ was taken nightly of members staying overnight in particular households (Musharbash 2000). Over the course of a fortnight, in one four-bedroom house, the composition of residents was recorded. During that period, there was an average of 21.9 persons staying at the house per night, with an average of 13.7 adults and 6.8 children. However, that ‘census’ also documented the actual individuals who slept there over the full fortnight. This ‘flow’ of people presented a much more complex picture of actual household composition. There were, in fact, 27 different related adults and 15 different children sleeping at this house over the fortnight; that is, a total of 42 different individuals passed through the house. At a bigger-picture level, a survey of household membership conducted in another community over three years reported that one out of every two persons recorded in the first survey wave had moved: either into or out of one of the households (Henry and
The changes over three years in the family members resident in one household are set out in Figure 2.

In such contexts, the concept of ‘visitor’ is often inappropriate — newcomers and strangers are ‘familiarised’ through their incorporation into kin relatedness and become household members when they take up residence, no matter how briefly. In the context of high rates of mobility, many people have multiple home bases. This rate of mobility has the potential to have a significant impact on the reproduction of family identities, and on the economic viability of households. How then do families survive as collective units and identities in the face of such mobility?

Fig. 2 a), b) and c): Genealogy of changing household membership No. 07, Kuranda, 1999, 2000 and 2001.
b) 2000

Age and gender summary of household:
3 females in residence
2 males in residence
Total persons: 5
Adults: 5
Children: 0

Age and gender summary of household:
6 females in residence
6 males in residence
Total persons: 12
Adults: 2
Children: 2
We have identified one crucial factor; namely there is a relatively stable ‘core’ of family members at the heart of many households. In the census referred to above, there were in fact eleven persons (seven of the adults and four of the children) who slept at the house for the entire period. In one community surveyed, the core of family membership was extremely stable — respondents had been living in their houses for an average of 7.3 years (Smith 2000). In other words, not all Aboriginal people are mobile; and some family residents of households are particularly immobile. The stable family members often appear to be senior adult kin.

There are significant differences between flow, average and ‘core’ household data about membership that tell us some important things about household composition and family formation. Apart from the obvious impact of mobility, these data also tell us a story about an enduring core of family members who provide stability and a critical source of familial cohesion and mutual support.

There are longer-term consequences of these flows of people through households. The households of many families are characterised by a complex life cycle of expansion, contraction, disintegration and re-formation. These developmental cycles are not ad hoc phenomena, but are subject to the regulating influence of social relatedness, the influence of a core of stable members, and the strong imperative to protect and reproduce family networks and identity. Mapping these developmental cycles and the changing family formations within them enables us to begin to see just how complex and dynamic the concept of ‘household’ is over time. But it also attests to the role of particular family members over time in maintaining family networks and identities and ensuring the ongoing economic viability of their households.

**Parenting for Social Reproduction**

Sutton has noted that focal individuals in families ‘often make strenuous efforts to keep as many of their descendants as possible under their own descent group identity while they are alive’ and that there may be competition between descent groups as to ‘which way the kids will go’ (1998:66). Not only that, an extensive system of personal responsibilities and rights are established as a result of adult participation in ‘looking-after’ and ‘growing-up’ young descendants. A critical factor in the reproduction of extended family collective identity is the social and economic distribution of parenting (Smith 1980).

In both the qualitative and quantitative research I have carried out with the CAEPR research team, a high proportion of Indigenous children have been found to be living in
households where they have either no biological parent or only one resident, but where other relations, such as a person of the grandparental or parents’ siblings’ generation looking after them. For example, three-quarters of households in one rural community had children resident who were the biological children of non-resident adults. In another remote community, 40 percent of the female respondents surveyed were looking after the children of other relatives. Of the surveyed households in one rural community, 82 percent had only a single adult parent (genitor or genitrix) and their biological children in residence, or children in residence without their biological parents (Smith 2000).

The strategy of distributed parenting and shared child-care is one that is critical to enable people to deal with the economic difficulties of the high childhood dependency burdens encountered by many households. Perhaps more fundamentally, it not only facilitates the ongoing inclusion of children within the descent group, but the social relations of child-bearing and rearing have significant direct impact on the transmission of important territorial, property, naming, and economic rights. The nurturing of children within extended families allows for particular connections and identities to be confirmed or emphasised, and thus for particular cultural continuities to be constructed and reproduced over time (Smith 1980:384-397).

However, not all family members act cohesively and inclusively. There are children who do in fact receive marginalised care (Smith 1980). They may, for example, have both parents absent, receive erratic care from a sole parent, or reside in households where family members have precarious economic viability. Virtually every international study of the wellbeing of families shows that children who spend their lives in households that are poor are more likely to lack adequate nutrition, quality housing, residential stability and other critical resources (see for example, Annie E. Casey Foundation 2003; Moore et al. 2002). This early deprivation has significant consequences for children’s later lives.

The end result of unstable and periodic nurturing is to create potentially marginality as an adult in making acceptable claims to family identity and support, and lead to territorial and political marginality, severely circumscribing a person’s ability and perceived ‘right’ to make successful claims over things and other people (Smith 1980).

A recent analysis by Daly and Smith (2003) suggests that Indigenous children also continue to be amongst the most economically disadvantaged in Australia. There is every indication that the transmission of reliance on welfare and high levels of
unemployment are inter-generational, placing some Indigenous children at risk of future economic marginalisation and poverty. In these circumstances, family cohesion and viability may be under considerable pressure.

**Linked Households and the Family ‘Safety Net’**

Indigenous households ‘ooze’ — that is, they have porous social boundaries whereby their membership extends beyond the physical dwelling. Families which extend beyond a single dwelling create fundamentally important social and economic linkages to close kin living in other households. Support networks for sharing child-care, and for redistributing resources and cash, similarly ‘ooze’ along the same relational pathways, extending beyond the boundaries of discrete households, across to kin-related clusters of households. The extent of these networks is considerable and are set out in Figure 3 for a group of households in one community. In effect the discrete household is not the basic economic unit for families. Rather, linked households are instrumental in the economic survival of many families, and serve to reinforce patterns of relatedness at the heart of extended family identity.

This safety net constitutes a resilient source of social and cultural capital for families and their households. Its operation helps to keep families financially afloat, creates a reservoir of support for the care and socialisation of children at risk, and makes an invaluable contribution to the well-being of families under stress. For example, over 50 percent of household respondents in one community survey we have carried out said that a close relation regularly helped them pay for food and clothing for their own children. Many older women in households provide the backbone of financial and domestic care for their grandchildren and the children of other relatives.
Fig. 3: Movement of family members between households, 1999-2000.


From Families to Governance?

The experiential location of the domestic economy and of family identity for the majority of Indigenous Australians lies beyond discrete households, in extended family formations residing across linked households. These cognatic descent groups are identified, first and foremost, by surnames. Sutton has called these formations ‘a distinctive form of social organisation that has emerged in urban and rural areas of most of Australia’ and which shows ‘some remarkable commonalities across the continent’ (1998:55, 57, 62). Members of such extended families might reside in several linked households scattered around a city neighbourhood or a rural town, in a regional set of small communities, or in a community and its satellite outliers. Today, the members of some extended families also reside further afield, in different States.
In light of the centrality of extended families in articulating preferred forms of Indigenous social, territorial and economic organisation, the second part of this paper turns to the question of whether they have a role in community governance. And if they do, at what cultural and sociological levels is it manifest?

In early fieldwork carried out in Cape York over 25 years ago, I noted that ‘just as relationships within the family are expressed within the idiom of nurturing, so too are notions of attachment to, use and ownership of land couched in that idiom’. People are said to be ‘boss for’ and have a duty to ‘look after’ land in the same way that they are ‘boss for’ and must ‘look after’ and ‘work for’ the members of their families (Smith 1980: 395-397). These concepts lying at the heart of personal relationships and familial authority are the same concepts that form the basis of power and authority more generally in Indigenous societies. They inform perceptions about the nature of continuity, autonomy and relatedness; the operation and value of hierarchy; and the moral basis of power and leadership.

Sutton is right in referring to these extended formations as ‘families of polity’ (1998:55), for they are not simply visible as residential and economic units, they are also jural constructs of ‘enduring and central importance to the conduct of Aboriginal business’ (1998: 60). That business includes not only the duties of care and responsibility for family members, and engagement in networks of support, but also the transmission of land ownership, leadership, cultural property rights, group knowledge and collective identities.

If ‘governance’ (Smith 2005) is taken to mean the processes, relationships, institutions and structures by which a group of people collectively organise themselves to represent and negotiate their rights and interests, and make decisions about:

• how they are constituted as a group;
• how they manage their affairs and negotiate with outsiders;
• who has authority within their group, and about what;
• how they ensure that authority is exercised properly;
• who enforces the decisions they make;
• how their decision-makers are held accountable; and
• what arrangements are required for implementing their decisions.

Then extended families can arguably be said to have ‘governance’.
‘Families of Polity’ and Community Governance

Perhaps more importantly, today the site of that familial layer of governance is not restricted to domestic matters, duties of care and networks of support. Today, families of polity form the backbone of communities and of many incorporated organisations, thereby linking familial descent group identity to organisational identities and forms of political representation. In other words, extended families not only have a form of internal governance, they also ooze into other layers and aggregations of governance at the community and regional levels, and outwards. Furthermore, the demographic and resource success of particular families appears to be related to their relative influence within communities. In other words, not all families are born equal; some are more equal than others, and some of their senior members are more influential sources of authority than others in community life.

The term ‘community’ can be defined as a network of people and organisations linked together by a web of personal relationships, cultural connections and identities, networks of support, traditions and patterns of behaviour, shared socioeconomic conditions or common understandings and interests. Communities include discrete geographical locations, as well as ‘communities of interest’ and ‘communities of identity’ whose membership might be residentially dispersed, but nevertheless they share a collective identity or objective.

Communities are more than just interpersonal networks, residential locations or shared collective identities. They take on social patterns, roles, functions and organisational structure, and assume particular identities through interaction with their populations, other communities and surrounding environments (political, economic and cultural). Many Indigenous communities are the constructions of colonisation: places to which different Indigenous groups migrated and were sometimes forcibly relocated. But they have also become, as Peters-Little writes, ‘an integral part of … people’s heritage and are fundamental to Aboriginality’ (2000).

Many Indigenous Australians have come to identify their extended family ties, histories, and identities with particular communities. And particular communities have come to be associated with particular named families. Furthermore, in the contemporary arena of native title, land rights and resource agreements, coalitions of families are exercising their rights to participate in and build social and territorial organisation on a larger scale; for example, in the form of what Sutton called the new ‘corporate tribes’, through ‘nation building’ and the negotiation of regional alliances.
The overall ‘governance environment’ of communities is characterised by complex organisational relationships and political networks, but there is also a sociology to Indigenous community governance. Over the last 30 years, Indigenous Australians have been prolific in establishing incorporate organisations, under both Federal and State legislation. These organisations have provided a mechanism through which Indigenous leadership and political representation has been carved out and exercised at community and regional levels. Indigenous families have played a prominent role in the establishment and running of these local organisations, with particular families coming to be associated with particular organisations.

Sometimes the activities of organisations are fiercely competitive, having become silos of factional family power. Powerful families are associated with powerful organisations, and influential family leaders are often board members of multiple organisations at regional, State and Federal levels. In these ways, families of polity are more than just a larger version of non-Indigenous family structures (Mantziaris and Martin 2000:170) — they play a central role in community politics, in the initiation and resolution of local disputes about authority and legitimacy, and in defining community governance arrangements and outcomes. In these ways they are a crucial component of the local governance environment.

**Indigenous Principles for Governance and the Place of Families**

How do ‘families of polity’ negotiate their engagement in other layers and aggregations of Indigenous governance? This paper suggests that two key Indigenous principles appear to play a determinative role:

1. Relational autonomy
2. Subsidiarity

**Relational autonomy**

Indigenous interests in land, in forms of inalienable property such as knowledge and group identity, have always been characterised by a complex layering of rights and interests across different groupings. The history of Indigenous political development to date has also demonstrated a cultural preference — albeit difficult to sustain — for what could be called ‘connected localism’ or the ‘relational self’ (Nedelsky 1989). The ‘relational self’ is not a social isolate, but constituted by interaction and interdependency with others; especially, in the case of Indigenous Australians, within extended families. The parallel preference for personal autonomy is marked by a
tendency towards a localism of family self-interest. But this momentum towards ‘atomism’ and autonomy at the level of individuals and their extended families, is balanced by the equally compelling strain towards connectedness, relationship and interdependence — in other words towards wider social aggregations and circles of relational autonomy.

The emphasis within Indigenous extended families is, first and foremost, on locally-based interests and a strong preference for direct control and participation at the local level. But with the growing attachment of families to organisational politics, the strain towards local autonomy has increasingly seen a growth in multi-family connectedness and family engagement in regional representative structures.

The traditional organisational principle of relational autonomy has always seemed to stress the ‘relational’ as much as the ‘autonomy’, a point which some researchers, in their haste to argue that small-scale local organisations are somehow more culturally appropriate, seem to have forgotten. The implications for governance is that systems of political representation can be decentred and dispersed (just as extended families are), but they must also accommodate inter-dependent social layers. Indigenous ‘families of polity’ evidence just such a principle of relational autonomy in their linked households.

The Indigenous tradition of decentralised confederations, or ‘bottom-up’ federalism, suggests that no single institutional or organisational layer will suffice as the sole or pre-eminent unit of Indigenous governance and political representivity. But it also suggests that families of polity distributed across their linked households, constitute an important foundation for larger-scale systems of political representation and participation. This has indeed been the case in some regions in recent years. Indigenous people are skilled at operating across multiple social, economic, spiritual and political domains. Individuals and ‘families of polity’ interact within a complex set of overlapping rights, interests, relationships and alliances. These connections are fluid, subject to strategic negotiation, and enable different groupings of people to constitute themselves as the ‘self’, at different scales and for different purposes - from the local to the regional, state and national levels.

The normative framework within which familial relationships are reproduced places a strong emphasis on institutions of kin support, demand sharing, reciprocity, age and gendered authority, and consensus decision-making. These norms are carried with families as they establish organisations and negotiate representative politics in community governance. This sometimes leads to volatile ‘developmental cycles’ of
organisations, in much the same fashion as it does with household developmental cycles.

**Subsidiarity**

Subsidiarity is a principle suggesting that issues should be handled by the most competent and appropriate possible authority. This means that no higher centralised level or scale of political aggregation should undertake functions or tasks which can be performed more effectively at an immediate or local level. Conversely, centralised forms of government should undertake initiatives which exceed the capacity of individuals or communities acting independently.

Subsidiarity is ideally, or in principle, one of the features of Australian federalism. Arguably, subsidiarity also adheres to forms of traditional Indigenous political, social and economic agency. In other words, there is a cultural geography and sociology to identifying the politically responsible group for decision-making, participation and representation in communities and regions.

In Indigenous societies, certain scales of social aggregation are associated with the ‘proper’ exercise of authority and decision-making about particular kinds of matters. For example, religious, economic and political interests in land are not held exclusively by primary land-owning groups of families. Rather, patterns of rights and responsibilities overlap and are dispersed across a range of people and interests. Extended families deal with particular domestic matters and localities and constitute corporate organisational identities. Larger sets of extended families may come together for particular economic activities and land management activities. Clan groupings meet across regions for ceremonial and dispute-resolution purposes; and responsibilities for the conduct of particular ceremonies are distributed between different kin categories.

Particular riverine and drainage basin systems have been reported to provide a basis for the production of regional cultural identities and ‘company’ relationships over long distances for the purposes of economic exchange. The consequences of something ‘big’ or important happening with respect to land, sites and important resources can draw together larger groups of people who, in other circumstances, might not commonly form a decision-making or residential grouping.

Furthermore, there are important political and ceremonial circumstances where the autonomy of individuals and small groups is limited under traditional law. And there are gender and age variables which influence how subsidiarity operates with respect to...
access to, and distribution of, knowledge and law. All these are prime examples of traditional Indigenous modes of ‘governance subsidiarity’ (Smith 2004).

Today, this same traditional propensity for subsidiarity is evident in Indigenous people’s active engagement in forming local and regional organisations for service delivery and political presentation. This usually occurs at the same time as people also assert an apparent preference for small-scale residential localism.

If there is any preferred principle or emerging ‘tradition’ of Indigenous governance in Australia, it might well be one based on the Indigenous propensity for a dynamic form of subsidiarity. Coombs labelled this phenomena ‘bottom-up federalism’ (1994:131–43, 174–82, 220–30). It occurs when autonomous local groups (including extended families and organisations) form regional federations or coalitions for the shared purpose of political representation and service delivery, and attempt to do so without significantly sacrificing important areas of their local autonomy. Other writers have subsequently proposed similar strategies (see Sanders 2004; Smith 2002; Westbury and Sanders 2000; Yu 2002). At the heart of these local and regional Indigenous organisations lie families of polity and their linked households.

**Conclusion**

In responding to the question: ‘Who is the “self” in Indigenous self governance and self-determination?’, extended families arguably play a fundamental role in governance arrangements at the local level. The twin concepts of relational autonomy and subsidiarity help us to understand better how Indigenous Australians families engage and interact with other organisational layers of Indigenous society. The concepts also help elucidate how families and their senior members attempt to balance the pull towards residential localism and family autonomy with a desire for larger-scale expressions of identity and forms of representation.

While aspects of Indigenous political representation can be centralised, residential preference seems to remain decentralised, and the desire for local family autonomy in certain areas of decision-making remains strong. Contemporary Indigenous governance arrangements at larger regional levels will need to explore mechanisms of subsidiarity and strategies for ‘bottom-up federalism’. Just as linked households comprise interlocked layers of extended families, so too might governance need to be built up as interlocked layers or aggregations with corresponding negotiation of roles and responsibilities across those layers.
‘Household’ and ‘family’ are not mere structures, but are social and economic categories that have important implications for the cultural reproduction of Indigenous identity. In this paper, I suggest that they are also political categories which have important implications for Indigenous governance arrangements at the local and regional levels. Importantly, they play a particularly important role in the developmental agenda within communities and regions aimed at reforming welfare, education, health and economic participation amongst Indigenous Australians.
Notes: Paper 5

1. The research project was carried out at CAEPR by a team of researchers including Dr. Anne Daley (economist), Dr. Julie Finlayson (anthropologist), Dr Rosita Henry (anthropologist), Ms Yasmine Musharbash (a PhD scholar) and myself. The project was carried out over a three-year period, with a large number of families and their households being surveyed at two separate communities. The project resulted in a series of publications which can be found on the CAEPR website. The research methodology, conceptual and definitional issues, and a detailed presentation of the first year of community surveys and policy contexts are provided in Smith (2000).
References: Paper 5


Sutton, P. 1995. ‘Atomism and collectivism: The problem of group definition in native title cases’. In J. Finlayson and J. Fingleton (eds) *Anthropology in the Native Title Era*, pp.1-10, Proceedings of a workshop by the Australian Anthropology Society and the Native Title Research Unit. Canberra: AIATSIS.


Theme Four:
A Society of Organisations?
Overview of Theme Four: A Society of Organisations?


The anthropology of organisations has developed slowly, tending to focus on business, management, policy making and, more recently, the organisational face of state governmentality. Less attention has been given to the anthropology of Indigenous organisations, although in Australia the work of anthropologists at CAEPR has made a significant research contribution.

Since 1984 I have written a large number of research publications and reports on the governance histories, structures, arrangements, legitimacy and effectiveness of a variety of Indigenous incorporated organisations — including organisations that focus on service delivery, the statutory recognition and management of land rights and native title interests, administration of royalties; enterprise, tourism and business development; employment and training; social welfare and community development; arts and crafts; local government; as well as national, state and community representation of Indigenous people. The two papers selected for this Theme were written thirteen years apart and draw upon the insights of that broader body of work to investigate the positionality (the place and standing) of incorporated organisations within the field of Indigenous governance, and at the frontline of intercultural encounters with the Australian state.

An important contribution of the thesis papers under this theme, which is further drawn out below, is the analysis of the thick overlapping connections and allegiances between layers of Indigenous sociality — ranging across extended families and linked households, communities of interest and identity — in which a wide range of types of organisations have become an intrinsic feature of the political economy of Indigenous governance.
Indigenous organisations now act as influential governing formations in their own right. But perhaps more importantly, they are intimately locked into the broader landscape of Indigenous networked polities. The papers provide concrete examples of the many varied ways in which organisations also act as a source of intercultural penetration by Indigenous networks and cultures of governance into the very heart of the Australian state’s governmentality of Indigenous Affairs; and vice versa. Not surprisingly, many of the thesis papers document the position of organisations and their leaders as sites of very public contestation amongst Indigenous people, as well as with the state.

**A Society of Organisations?**

Under a policy of self-determination from the 1970s onwards, the Australian state actively facilitated the incorporation of Indigenous organisations, across a wide range of cultural geographies and scales. The result has been an efflorescence of organisations; there are currently an estimated 5,000 incorporated under different state, territory and national legislation. This suggests approximately 30-35,000 Indigenous men and women are serving as the governing leaders of organisations. Given the propensity of Indigenous leaders to sit concurrently on the governing boards of several different organisations, the overall number of governing members is likely to be less. This still constitutes a high level of representative responsibilities amongst adult Indigenous people.

This organisational growth has partly been the result of government departments actively encouraging and funding the creation of Indigenous organisations. In some cases, incorporation has been undertaken by Indigenous groups because it is a government requirement for receiving funds, holding assets and delivering services. The growth has also been the product of Indigenous agency and choice, as small, localised groups and their leaders have sought the autonomous conduct of their affairs through the establishment of their own organisations.

The papers document several consequences of this incorporating zeal. Firstly, for many Australians, organisations and their leaders have become the contemporary public face of Indigenous governance. Secondly, for many Indigenous people, organisations have come to concretely express their collective, community and regional polities and identities; organisations are the new ‘corporate tribes’ (Sutton 1995). Thirdly, an important parallel trend has been the penetration of Indigenous organisations into the
institutional arrangements of the Australian state’s field of governmentality in Indigenous affairs.

Today, the integration of Indigenous organisations into the daily life of their own communities is such that, as the title of this theme suggests, we can validly invoke Charles Perrow’s (1991: 725–62) insight about the growing organisational persona of north American society, to highlight a trajectory for Indigenous Australia as *A Society of Organisations*. That trajectory has considerable implications for future Indigenous governance.

**Issues of Organisational Autonomy, Scale and Capacity**

The two papers in this Theme describe some of the great variety of kinds of organisational structures and their governing arrangements that operate at different scales across Indigenous Australia. (Appendix C depicts more of these organisational formations, and Appendix A lists related publications that provide the supporting ethnographic documentation and analyses.)

**Papers 6 and 7** demonstrate the many ways in which organisations and their governing leaders are tightly embedded within the surrounding Indigenous networks and culture of governance (see also **Papers 5 & 8**). Indeed, as **Papers 6 & 7** report, some organisations come together into formal federations and informal alliances, creating networks of organisations connected across communities and regions. These networked organisations constitute another kind of superstructural governing node in Indigenous society.

Indigenous organisations are also the site for a growing specialist bureaucracy (both Indigenous and non-Indigenous) working as managers, administrators and staff. They constitute an influential sub-field whose professional capacity and own networked connections (both to their Indigenous networks and to networks within government department and political parties) have considerable influence on the effective governance of organisations.

The papers highlight that the leadership and governance of organisations are subject to the same systemic conditions underlying Indigenous mesh networks. For example, their governing members are subject to the same push-pull trajectory of relational autonomy that prioritises ‘looking after’ local and familial rights and interests, while still having to represent their organisation’s broader membership. Decision making by leaders of an organisation is influenced by their personal place and standing within the
broader hierarchy of leaders in the community and region. Organisations possess and distribute a wide range of resources and governance capital. Not surprisingly, individuals and groups seek access to them by asserting rights based on their network connections (see also Smith 1997, 1998).

One consequence of the embeddedness of organisations within these network dynamics is that they can come to operate as silos of factionalised power, thus undermining decision-making and the effectiveness of organisations in their dealings with both members and external stakeholders. This is exacerbated by the fact that many local organisations are often of such a small scale that continuity of knowledge, and sustained administrative, management and staffing capacity within them are hard to achieve.

The thesis papers argue that the governance arrangements and performance of Indigenous organisations are now also tightly bound to the extent of their dependence on government funding. This makes organisations vulnerable to unpredictable changes in government programs and policy agenda. Perversely, another consequence is to produce a replica of the state’s institutional architecture within Indigenous organisations whereby their planning, administration and decision-making processes mirror the timeframes, cycles and priorities of different government departments and Ministers.

An increasing number of organisations are similarly dependent upon private-sector and royalty agreement monies, and their governance is directed by the legal conditions of agreements, contracts, and special legislation. Some organisations, such as the Yarnteen Corporation described in Paper 7, are working to overcome the conditions of financial and governance dependency. But all are susceptible to the impacts of unpredictable changes in the state’s field of governmentality.

**Representation, Accountability and Legitimacy**

Given the intercultural positioning of Indigenous organisations, there are Indigenous and external dimensions to the assessment of their governance legitimacy and accountability. The papers in this theme identify some critical hot-spots where organisations are revealed to be particularly vulnerable in this regard.

**Paper 6** analyses the representative politics of native title organisations established by the Australian Government to provide native title services to Indigenous people under the newly enacted *Native Title Act 1993*. The paper was written in the context of a highly charged public debate in Australia about the legal recognition of Indigenous
rights and the statutory creation of these regional representative organisations across the country. It analyses the pressure routinely brought to bear by governments and the private sector on such organisations to demonstrate greater ‘certainty’ in their decision making, ‘stability’ of their leadership, and ‘inclusiveness’ in their representation.

In meeting external demands for accountability and ‘good’ governance, organisations also have to address and balance the Indigenous demands implicit in their networked positionality; i.e. for local accountability, subsidiarity of decision-making, recognition of relationality as the bases for governance, and for the leaders of organisations to operate in ways that are perceived to be culturally legitimate by their own members. These competing pressures raise weighty and competing challenges for organisations.

Both papers point to areas of significant incompatibility between the Indigenous governance and statist governmentality regarding their criterion for judging representation, accountability and legitimacy. In the eyes of the state, the benchmarks are oriented towards compliance with legislative and corporate regulations, financial accountability and efficient service delivery. In Indigenous society, the benchmarks are oriented to the extent to which an organisation’s governance is judged to align or resonate with the cultural values and principles of Indigenous nodal networked governance. This implies a cognitive orientation by people, leading to their attitudinal approval and behavioural consent or opposition.

Organisational Cultures of Governance

Paper 7 looks at an urban ‘family of organisations’, highlighting an underdeveloped area of research into Indigenous organisations; namely, the institutional and cognitive aspects of their governance (see also Paper 8).

The term cognition (from the Latin cognoscere, ‘to know’, ‘to conceptualise’ or ‘to recognise’) refers to the human faculty and processes of understanding and reasoning involved in the ability to apply knowledge and adapt to a certain environment (Lycan 1999). In Paper 1, ‘institution’ is defined following Shabbir Cheema (1997: 13) to mean the cognitive, normative and regulative systems, structures and processes that provide stability and meaning to behaviour.

In his analyses of Native American Indian governance, Stephen Cornell (2002) describes institutions as the rules of the game; the way things are and are to be done (see also Walker, George & Zelditch 1991: 6). Paper 7 identifies the central importance for the governance of Indigenous organisations of the normative and cognitive orientation
of its people (leaders, managers, staff) to the enactment and reproduction of their order-generating values and rules of the game.

The internal culture of any organisation is created routinely, and draws upon the cognitive and rules-based dimensions of behaviour, shared values and standards (verbal and non-verbal). These are modelled (or not) by its leaders and managers concerning how people within the organisation are expected to behave, what is valued and given priority, and what people have to do to fit in, be seen to do their job well and be rewarded.

The two papers in this theme describe Indigenous organisations as having distinctive internal cultures to do with their shared cultural institutions and cognitive orientation to networked governance, and their advocacy of Indigenous interests and priorities. Paper 7 examines the development of Yarnteen Corporation, an urban ‘family of organisations’ involved in economic development and business ventures. It documents the ways in which a robust internal governance culture was proactively embedded by Yarnteen’s leaders in the organisation’s modus operandi. This was done to promote its legitimacy and effectiveness and create a system of incentives and constraints for board members, management and staff.

For Yarnteen Corporation, its shared institutions and cognitive orientation created a form of governance capital that was perceived to be distinctly ‘Indigenous’ in character, and so strongly supported across the organisation. That internal culture contributed greatly to the stability of the organisation’s governing body and workforce. But Paper 7 also describes how contradictory representations of ‘family’ and ‘community’ can be used (by both Indigenous people and the state) to adversely judge the legitimacy and accountability of an organisation’s governance. Some cast it as fundamental to the organisation’s ‘good’ Indigenous governance and economic success; others as being antithetical to those. The Australian state has vacillated from one view to the other in its approach to Indigenous organisations, depending on its own changing narrative about the role of Indigenous culture.

The thesis papers show Indigenous organisations increasingly experimenting with their governance arrangements and giving more focussed attention to building strong internal cultures of governance. However, in the context of intense scrutiny by the state and private-sector funders, and their calls for greater certainty and stability of organisational governance, there is little external tolerance for experimentation.
Organisations as Brokers and Boundary Riders

Indigenous organisations and their leaders operate at the front stage of intercultural engagement with the Australian state. The thesis papers investigate various events and consequences associated with such encounters.

A distinctive feature of Indigenous organisations noted in several papers is their position as intercultural brokers of information, meaning, resources and processes between the Indigenous people and the state.34 In this role, many show a sophisticated ability for what Arturo Escobar (2008: 268) calls ‘articulatory politics’ where they act as advocates manoeuvring across Indigenous networks as well as the wider governance environment. Many Indigenous leaders of organisations also operate individually as ‘boundary riders’ (Nowotny 2005); working to maintain the perceived integrity and distinctiveness of the Indigenous field of governance and mediate or contain the impacts of the state’s governmentality.

This positionality entails its own ambiguities and pressures for organisations and their leaders. But for some Indigenous leaders, the intercultural position of their organisation becomes the source of additional power from the wider governance environment. This position can be used as the basis for strengthening their authority within Indigenous networks, and concurrently promoting greater credibility and power with the state and the private sector.

The thesis papers also demonstrate that even in the most commendably effective organisations, their field of governance is made subservient to the regulatory and statutory powers of the state, and by the workload of mundane bureaucratic procedures required of them. A particularly dense site of intercultural brokerage and contestation for organisations is therefore their upward accountability to the state, and downwards accountability to their members, for their use of resources and funding.

The papers also demonstrate that while the state has the weight of sovereign and funding power on its side, it also seeks traction and support from Indigenous communities and organisations for its own policy goals and practice in Indigenous affairs. For example, the state routinely seeks greater organisational engagement in the mainstream economic ventures and the delivery of specialist services (although the state’s reliance on Indigenous organisations has decreased in the last decade owing to its outsourcing of service-delivery to the private, NGO and church sectors). In the representative gap left after the abolition of ATSIC, the state has increasingly sought Indigenous peoples’ engagement in developing ‘new’ forms of representative
governance in communities, so as to provide it with a ‘one-stop shop’ for consultations and negotiations. This further promotes the organisational persona of Indigenous society, but with the noticeable difference that new governance arrangements fostered by the state are overwhelmingly ‘advisory’, with few substantial decision-making powers.

Summary

Today, the thick overlapping connections and allegiances between the different orders of networked formations — from extended families, local congeries, clan and community through to organisational, regional, companies and confederations of networks — are an intrinsic feature of the political economy of the field of Indigenous governance. Indigenous organisations now play a central and critical role — for better and for worse — in the Indigenous politics and calculations whereby different governance formations are activated and contested in dealing with the Australian state.

Organisations act as influential governing and sometimes superstructural nodes within Indigenous governing circuitries. They also act as powerful intercultural brokers and a source of penetration by Indigenous networks and cultures of governance into the very governmentality of the Australian state. But this intercultural front is also one of heavy insertion by the state of its own preferred values and institutions into the governance of Indigenous organisations. This mutual penetration makes such organisations the site of very public contestation in Indigenous affairs.
Paper 6: Representative Politics and the New Wave of Native Title Organisations


Introduction

The Native Title Act 1993 (NTA) has resulted in the statutory determination of a number of Aboriginal and Torres Strait Islander organisations now referred to as Native Title Representative Bodies (NTRBs). These organisations are arguably the linchpins of the NTA. They are empowered by statute to represent native title claimants and holders in a variety of circumstances and are already promoting themselves as the key inter-cultural brokers between native title interests and all other parties. Indeed, if it can be said that the High Court decision in Mabo v Queensland No. 2 and the passage of the NTA have fundamentally changed the nature of the relationships between Indigenous peoples and the Australian government, then the progressive establishment of a nationwide framework of NTRBs constitutes a similar, potentially fundamental development in Aboriginal political organisation. This paper explores, in a preliminary way, how that change is being constituted in the Indigenous and wider environment, and examines the politics of representation within which NTRBs are beginning to effect their presence.

Subsequent to the passage of the NTA, there has been considerable debate over the ‘right’ to represent native title clients and over the very meaning of ‘representativeness’. As these matters are being negotiated in the Indigenous domain, NTRBs are seeking to assert a regional approach to native title matters and a wider interpretation of the representative responsibilities assigned to them under the Act. This paper describes the current and emerging roles of NTRBs, and the nature of the politics of representation which are moulding their operation. It is argued that their future position is linked to, and constitutive of, an emerging regionalism that is being organisationally formalised within the Indigenous polity.
The Current Status of Representative Bodies

At August 1995, twenty-one NTRBs have been determined by the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs under s.202 of the NTA. Several more are expected to be determined in the near future. Some are statutory land councils with jurisdictions and functions established under Commonwealth and State land rights legislation. One is an Aboriginal and Torres Strait Islander Commission (ATSIC) regional authority with pre-existing, broader responsibilities. Some are non-statutory land councils of long-standing; others are well-established Aboriginal legal services. A number of the smaller NTRBs in Western Australia and Queensland have only been very recently established. The differing legislative and operational histories of these organisations (especially across States), as well as the variation in their estimated populations and geographic coverage all underscore the disparity evident in their approaches to representing native title interests.

The viability of the NTA will ultimately depend on these organisations being able to fulfil their statutory roles effectively. It is not surprising, therefore, that issues associated with their roles and responsibilities, organisational and staffing structures, and funding levels already loom large. At its November 1994 meeting, the ATSIC Board of Commissioners agreed that a ‘consolidation review’ should be undertaken of their effectiveness, and the appropriateness of native title funding arrangements (Altman and Smith 1995: iii). That review was conducted from late April to the end of August 1995 with a final report published in September (see Altman and Smith 1995). During the review period, I participated in extensive, minuted consultations with the NTRBs in each State, with aspiring NTRBs, with some claimant groups, the National Native Title Tribunal (NNTT), ATSIC State and regional offices, and with key Federal government stakeholders including the Office of Indigenous Affairs in Prime Minister and Cabinet, the Department of Finance, and Attorney-General’s Department (Altman and Smith 1995: 102-4).4

During the consultation process, a number of differing viewpoints were put forward by Indigenous organisations as to the current and likely future role of NTRBs, in which ‘representativeness’ and ‘representation’ emerged as crucial underlying issues.

Legislative Functions
Sections 202 and 203 of the NTA establish criteria for the determination of NTRBs by the Minister, define three main functional areas of responsibility, and propose a broad funding framework. The organisations are empowered to assist Indigenous people to make and present claims to the NNTT; represent them in negotiations and proceedings in relation to acts affecting native title and the provision of compensation; and in any other matter relevant to the operation of the Act.

Importantly, the statutory framework does not give NTRBs mandatory or exclusive functions, and it specifically allows the Minister to prescribe more than one in relation to an area. Whilst they are positively enabled to represent native title parties if requested, they are not obliged to undertake these responsibilities, nor are claimant groups or the NNTT required to utilise their services. The statute is vague as to the extent that they can initiate negotiations and proceedings and conversely, the extent to which they are reliant upon instructions from claimants and native title holders. This ambiguity in their representative authority was partly a reflection of State Government lobbying to avoid the establishment of a statutory-based land council regime across the entire continent. It was also partly based on the reluctance of development interests, at that time, to have to conduct negotiations through such representative organisations, preferring to deal directly with native title claimants and holders under the assumption this would prove more cost and time effective. And some Indigenous groups opposed the formation of a national land council system. The result is that NTRBs have been established with a poorly defined representative status.

The early reluctance to encourage a national coverage of NTRBs with strong jurisdictional powers was perhaps short sighted, but is giving ground as they begin to establish their representative effectiveness. The implementation of the ATSIC review will further consolidate their position through its recommendation that they assume sole jurisdictional representation of native title interests within their regions, and have explicit functions and mandatory areas of accountability laid out initially in regulations. Importantly, the review also recommends that early consideration be given to formalising these roles and responsibilities by statutory amendment.

Emerging Roles

As the process of native title claim determination is revealed to be time consuming and complex, with a multitude of Indigenous, government and private parties marshalled into the mediation process, NTRBs are becoming involved in a wide range of duties on behalf of native title parties. While some of these duties are identified in
s.202 of the NTA, others are being undertaken as the organisations assume broader roles in advocating Indigenous land interests. NTRBs may be ‘oiling the wheels’ of the Act as Pearson argues but, as the review report notes, they are also ‘clearly the workhorses of the native title regime’ (Commonwealth of Australia 1994: 324; Altman and Smith 1995: viii). Their current range of native title responsibilities, as assessed by the review committee, include:

• the establishment and management of offices;
• the development of professional expertise in native title and other land-based matters;
• research and preparation of claimant and compensation applications;
• coordination and conduct of meetings with native title and other Indigenous interest groups;
• native title mediation;
• responding to non-claimant and future act applications;
• site recording, clearance and protection;
• negotiations with resource developers and other non-Indigenous parties with an interest in land;
• negotiations with Commonwealth, State and Territory, and Local Governments;
• negotiations for s.21 and other regional agreements;
• liaison and coordination with other NTRBs;
• educational and information roles; and
• court litigation in respect to native title matters.

NTRBs argued to the review committee that native title is not just about claiming land and accordingly, are adopting a wide perspective of their representative role. An emphasis is being placed on regional coordination of the native title activities listed above, with other land issues. The organisations variously stated to the review that they are ‘representing the interests of potential native title holders’; ‘working to get native title land’; operating as ‘local level translators and educators’; ‘uniting Indigenous people in their region and State’; ‘providing grass roots organisation’; as well as ‘lobbying government’ and ‘driving the native title process’.
Interestingly, these broad roles are almost identical to those foreshadowed by Justice Woodward (1974: 68-9) over 20 years ago for the newly established Northern Territory Land Councils. Woodward argued that the Northern Territory Land Councils would carve out new directions, including possible future responsibilities of:

- developing Aboriginal policies on matters relating to land;
- representing Aboriginal people in negotiations with government and development interests in relation to land;
- protecting the interests of traditional owners concerning the use of land;
- making representations about priorities in expenditure for land purchase and management; and
- conciliating disputes.

Indeed, over a period of 20 years, the Land Councils progressively assumed such responsibilities. Influenced perhaps by the experience of the Northern Territory and New South Wales Land Councils, it has taken most NTRBs very little time to come up to political speed in asserting similarly wide, land-based responsibilities on behalf of their constituents.

Overwhelmingly, there is a realisation among the organisations that the sometimes limited offerings potentially available as claimable native title land nevertheless provide significant leverage in dealings with government and development interests. If handled astutely, this leverage will reinforce their political standing as they become involved in commercial transactions, resource agreements and related policy discussions with government. At this early stage in the implementation of the native title process, this is already apparent. A number of NTRBs are playing an instrumental role in facilitating consultations and agreements between native title, government and development interests.

For example, the Queensland State Government has sought to negotiate with prospective native title claimants via the Goolburri Land Council to secure the progress of the south-west Queensland and the Blackall to Gladstone gas pipelines. Funding from the Queensland Office of the Coordinator-General has enabled Indigenous interests along the pipeline route to begin holding meetings, identifying traditional land interests and sites, and conducting research and training programs. These negotiations are occurring under the auspices of the Land Council without any native title claim before the Tribunal. The Land Council has indicated that this process has enabled it to obtain
detailed land tenure histories for the area under development (a welcome breakthrough in that State) and to establish working protocols between potential native title holders and the State Government to secure future dealings. Further north, the Cape York Land Council is negotiating the basis for a regional agreement encompassing conservation, mining, tourism and cattle industry interests, covering land in Cape York Peninsula only part of which is subject to native title claim.

Similar examples of NTRB involvement in native title negotiations are evident in Western Australia. In Broome, Aboriginal groups with affiliations to land in the region of the town have, under the auspices of the Kimberley Land Council, set aside long-standing differences to form the Rubibi Working Group. That Group is undertaking strategic negotiations with developers and the Broome Shire Council, utilising the leverage of a series of claims to unalienated Crown land in and around the town to secure agreements relating to future coastal zone and sea management, town planning, site protection, and land designated for Indigenous economic development.

In the Northern Territory, the Northern Land Council has recently negotiated what it regards as a ‘milestone’ agreement between native title claimants of the former St Vidgeon’s pastoral lease and CRA over land subject to a native title claim. The so-called ‘Walgundu Exploration Agreement’ gives the company the right to explore over a period of 25 years and commits the parties to entering into negotiations for future mining, with criteria to be used in that case. It provides claimants with compensation provided at 5 per cent of CRA’s costs of exploration per year, covers site protection, and Aboriginal employment during the exploration phase. The agreement ensures that CRA will not oppose the native title claim; that claimants will not litigate against CRA due to the failure of the Northern Territory Government to follow the future act procedure laid out under the NTA; and that it will be valid regardless of whether the applicants succeed in their native title claim. Importantly, the agreement took only three months to negotiate and is also being hailed by CRA as an example of the very positive role which NTRBs can play in facilitating comprehensive consultations with prospective native title parties and securing widely accepted agreements (Commonwealth of Australia 1995: 1484-99).

Clearly, while State and Territory Governments and the mining industry have previously opposed any enhanced role by NTRBs, the views of some mining interests are changing as they come to recognise the importance to economic development prospects of having credible, professionally-run representative organisation on the
219 A Society of Organisations?

ground, which can ensure thorough, but relatively speedy consultations and negotiations with the correct native title parties.

The Politics of Native Title Representation

The assertion by NTRBs of a more encompassing representative role is being played out against the backdrop of contention over the meaning of ‘representativeness’ itself. The right to represent and the conditions upon which representativeness is constituted within the Aboriginal public domain is, in fact, a long-standing issue in Aboriginal affairs. Successive inquiries into the operation of the National Aboriginal Consultative Committee, the National Aboriginal Conference and ATSIC, have continued to raise matters related to the cultural bases and effectiveness of such representative structures and their decision-making processes (Coombs 1984; Martin 1995a; O’Donoghue 1985; Weaver 1984). Of particular concern has been the societal level at which organisational forms of self-determination can be constructed (especially via government legislation) which will be accorded legitimacy by Indigenous peoples. Issues now being debated about the ‘representativeness’ of NTRBs are firmly located within the historical debate over these matters, and within Indigenous politicking and action about them.

Under the NTA, the Commonwealth Minister must not determine a NTRB unless he or she is satisfied that it ‘is broadly representative of the Aboriginal peoples or Torres Strait Islanders in the area’. It is unclear what ‘representative’ in s.202 actually refers to and how it is assessed in order for an organisation to be legally determined. Presumably, given their proposed functions in native title matters, an organisation must be able to demonstrate that it has substantial support from a wide cross-section of Indigenous land-owning groups - the prospective native title holders after all - within their proposed region of jurisdiction. That is, it should have marshalled a sufficiently ‘representative’ Indigenous constituency, thereby securing an informally delegated ‘endorsement’ or authority to act for, and speak on behalf of, that constituency. But perhaps more importantly, once determined to be a NTRB, it should certainly proceed to represent and serve the native title interests of that constituency. Inevitably, these organisations are expected to be all representative things to all people. Both government and Indigenous people expect them not only to ensure equitable, ‘democratic’ access to their services, but to do so in a manner that is also culturally authorised from within Indigenous society.

However, there has been contention within some regions as to whether particular NTRBs have managed to secure the endorsement of a broadly representative
constituency, and whether that is reflected in their membership. Some have been criticised for selectively representing the interests of particular groups, or of doing so in an overly adversarial manner (Altman and Smith 1995). To assist in alleviating these tensions, the ATSIC review recommended steps be taken to formalise accountability to native title interests in their areas, to clearly define their functions and powers, and to develop systematic consultation and grievance procedures. Underlining the pressure on NTRBs to be widely representative of native title interests in their regions, is the extent to which Indigenous expectations for access to their services can be met. There are strong arguments put by NTRBs that the most equitable resolution to such access issues will occur by having native title management and funding coordinated regionally, rather than for a series of claimant groups to be separately and directly funded. Indeed, regional coordination allows for the representation of reasonably large cultural groupings, provides sufficient population and geographic coverage to generate economies of scale, enables ongoing mediation of debilitating conflicts within some claimant groups, and the development of strategic approaches that will be beneficial to the widest number of Indigenous people.

Conversely, some claimant groups have argued for access to direct funding, bypassing NTRBs, and for greater control of their claims under the native title process. There was clearly an intention in drafting the NTA that Indigenous native title parties should have choice in selecting the representation of their interests. That view was actively encouraged by the Prime Minister, in his second reading speech for the Native Title Bill, where he noted that NTRBs ‘will not have a monopoly on representing native title claimants; individual claimants or groups of claimants can go elsewhere’ (Hansard 16 November 1993: 2881). These comments inferred that NTRBs would have to compete with other organisations (including private law firms) for the right to represent.

Debate on the issue of the right to representation, and the ‘representativeness’ of NTRBs raises long-standing issues about self-determination; in this case, whether self-determination is necessarily equivalent to each claimant group being directly funded to be its own representative organisation. If it is, then one must ask, to what societal level should funded representation be delivered: to claimant groups that are separate language or cultural blocs; to communities; to clans; local descent groups; ceremonial associates; small family groups; to every individual with competing claims? Within the Indigenous domain there is unquestionably a social momentum towards the value of localised identities and towards small congeries of people attached to core locales. This pull
towards localism, or ‘atomism’ as Sutton describes it, is nevertheless engaged by a ‘collectivism’ which brings small-scale groups together by employing wider regional connections (social, historical, ceremonial and so on) to land as its basis (Sutton 1995a; see also Martin 1995b). It was precisely such a collectivist approach that was apparent in the Pitjantjatjara peoples’ successful efforts via the *Pitjantjatjara Land Rights Act 1981* passed by the South Australian Government, to have their land returned en bloc as part of a regional settlement, rather it being disaggregated to component Pitjantjatjara groups being allocated separate titles (see Toyne and Vachon 1984).

The same ‘atomist-collectivist tension’ Sutton (1995a: 1) notes at work in the problem of group definition and cohesion in native title claims, also operates at the organisational level of Indigenous politics. It is much in evidence in the politicking to do with access to funding, decision-making processes and competition over organisational jurisdictions. It is also apparent in the processes by which small groups seek and accept a wider organisational expression of their particular objectives (whether those be about health, legal assistance, service delivery or native title). But such an organisational approach to outcomes is precisely what many Indigenous groups have enthusiastically pursued over recent decades. There are now over 2,400 incorporated Indigenous associations in Australia, creating what Sutton aptly calls the ‘new corporate tribes’ (Sutton 1995b). This form of mainstream organisational expression within the Aboriginal domain is entirely legitimate, especially given the demands of contemporary governments for financial accountability, performance indicators and indeed, for legal incorporation as a precondition of funding. As well, in many cases, the bases of incorporated associations often reflect critical culturally-based parameters within a community or region, especially those concerning ties to country and particular locales, and the pivotal role of certain family groups. Overlaying these community and regionally-based incorporated organisations (and their often overlapping membership) is now the ATSIC regional framework.

Clearly then, alongside the pull of atomism, there is also a persistent and strong assertion of Indigenous interests via larger-scale organisations. In spite of this, there is still an inclination to see Indigenous representative legitimacy and self-determination as most appropriately based on small-scale local groups, and certainly to see social justice and equity issues as residing in the a priori cultural ‘rightness’ of such localism and diversity. However, the continuing amalgamation of Indigenous groups via legal incorporation requires this view to be reassessed. Arguably, self-determination can also
lie in the process of groups developing an organisational platform from a regional set of native title interests.

Evidence gained from the NTA process over the past two years indicates that a ‘micro-representative’ approach oriented to the local level (in this case, to every prospective claimant group), while seemingly equitable, may in fact diminish equally legitimate Indigenous aspirations to mobilise the greater political experience and regional effectiveness made possible through organisations such as NTRBs. In spite of some notable attempts to form breakaway land councils, the experience under the *Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)* overwhelmingly supports the argument that land-based rights have been successfully protected and advanced by the developing professionalism and political astuteness of the larger land councils (see Altman and Dillon 1988; Altman and Smith 1995; Martin 1995a).

NTRBs further argue that a micro-representative approach positively counteracts the accumulation of professional expertise in native title matters. Experience of the native title process confirms that adopting an open-ended ‘micro’ approach on representation has had unforeseen cost consequences (in particular, soaring legal bills), mitigated against the lodgement of well-researched claims and has actively fuelled fragmentation within and between potential claimants. The approach has also encouraged the pursuit of narrow, legally based considerations on the part of some private law firms who focus attention on their immediate clients, rather than on considerations of inclusiveness and the dynamics of Indigenous land ownership. Poorly prepared claims can result in protracted mediation, potentially costly litigation and limited short-term outcomes for claimants.

In the end, it is likely that NTRBs will be seen, by the present Commonwealth Government at least, as the preferred option for the most equitable and efficient management of these matters. More recently, some key mining interests have also noted that the Northern Territory model of land councils with clear statutory functions and responsibilities, is now an ‘extremely attractive’ one for them under the NTA. Realising the enormous complexity in identifying potential native title holders, and the need to have thorough, expert consultations carried out for the purposes of negotiating resource agreements, companies such as CRA are recognising the benefits of having NTRBs ‘sort out’ these problems (Wand 1995: 1493-94)\(^7\) But this does not solve the issue of what constitutes representativeness; rather it focuses that aspect squarely on to the organisations in question.
In fact, none of the NTRBs currently determined are ‘representative’ in the sense of using the democratic electoral procedures employed by ATSIC. Nor do the majority have organisational structures that can be said to be based on Indigenous principles of land-based authority. If such a structure is indeed possible, it has been most approximated by the Northern Territory Land Councils in their attempts over 20 years to fashion governing structures that incorporate the major community-based, land interest groups in their respective regions. NTRBs are not based upon traditional authority structures, even though they are being required to establish their public legitimacy partly in terms of being able to speak for, and on behalf of, land-owning groups. First and foremost, they are a new class of legislatively created institutions located at the interface between Indigenous land values and aspirations, and those of the wider Australian political and economic system. They occupy an interstitial political position where they translate and negotiate issues between native title and other stakeholders. To perform this role they will not only have to be representative, but also continue to deliver the support of their constituency. To do this they need memberships, decision-making processes and governing structures that reflect — in more than just appearance — the major native title interests in their regions.

However, there will be limits to representation that such organisations can afford; limits that are both justifiable and necessary. The Commonwealth’s seeming initial endorsement of a micro-level view of self-determination is being rapidly tempered by the realities of funding. Simply put, there will never be enough funds to enable each claimant group to be its own NTRB, nor even for NTRBs to concurrently proceed with all potential native title claims within their regions. Pragmatic representation will clearly be in order. The organisations will be required to make decisions about priorities between claims based upon equitable criteria, available resources and strategic assessments of how best to advance Indigenous native title interests. Given resource and staff limitations, this will mean that some claims or compensation proposals will be judged of lower priority than others so that, for example, some individual interests may be placed below those of wider land-owning groups.

Moreover, as advocates for their constituents, it may be the case that some, having greater land-based credentials than others, will be more consistently or effectively represented in native title claims. While it is reasonable to expect a NTRB to fully investigate all asserted native title claims in its region, it is not realistic to expect it to finally represent all those asserted interests. In fact, one could argue that to do so would
be eminently ‘un-Aboriginal’. For if the ‘representativeness’ of some NTRBs is an issue, then surely so is the ‘representativeness’ of the groups and individuals proposing themselves as claimants. Some will be recognised within the Indigenous domain as owners of particular areas; others will not be. The range of connections to land are multiple, overlapping and subject to being performed and witnessed within the Indigenous arena. These land-based ties are actively explored, constructed and redefined over each individual’s lifetime. The preparation of a native title claim will involve these same processes of assertion, negotiation, and confirmation or denial of ownership interests.

In this actively-constituted Indigenous domain, NTRBs must not only be well informed of the variety of native title rights and interests being asserted, but be able to recognise and act upon the fact that some claims to land are regarded as more central and legitimate, while others are regarded less highly, or as entirely spurious. The non-Aboriginal preoccupation with equity and appeals procedures should not pre-empt Indigenous decisions about these matters by requiring the inclusion of individuals into a claimant group who are deemed to have no rightful or legitimate claims according to Aboriginal criteria (whether those criteria look to Aboriginal law, historical association, succession, ceremony, marital affiliations and so on), or by requiring NTRBs to represent all proposals put to it. That said, NTRBs must be able to put forward good reasons for not representing a particular claimant proposal, or for placing it at a lower level of priority than others. In the native title arena, the politics of representation are squarely located within family and community politics, the regional politics of land ownership and management, and the wider politics of funding. For these reasons, NTRBs should be legislatively required to fully consult with all potential native title interests in such matters, and to take instructions from native title claimants. In this regard, the ATSIC review recommends that NTRBs be responsible to their clients in a manner consistent with s.23 of the ALRA which aims to build legal protections to ensure land councils’ powers are not abused.

Native Title Representation and Political Regionalism

In 1994, Noel Pearson explained to the Parliamentary Joint Committee on Native Title the Indigenous politics of representation as he saw them applying to the NTRBs, arguing that:

We cannot have 320,000 incorporated organisations. There has got to be a point at which people surrender their jealous control to more rational
regional service delivery ... at the end of the day if we are going to fuel the fantasy that we need to give absolute local control to people, and you are just giving everybody five bucks each, that is not going to result in good administration of important legislation like this.

There has got to be a point at which people of a region have to understand that, if their interests are going to be protected under legislation such as this, then they need to put aside their local differences, to get behind and have membership of a regional organisation (Commonwealth of Australia 1994: 324-5).

In the midst of this politicised arena of representation, many NTRBs are positioning themselves as influential regional voices. Their managers help constitute the regional and national Aboriginal leadership, and many are linked to networks of Indigenous stakeholders and to key individuals in government agencies. Almost all have focused their operations at a regional level minimally matching that of an ATSIC regional council, or to a series of major cultural blocs. Despite the lack of defined functions, they are already utilising the NTA as leverage to further the political and economic interests of people in their regions. Ongoing issues to do with the adequacy of their representativeness will be moulded by their success in securing significant gains for their constituents. There are real dangers though, that NTRBs could lose credibility if they do not move quickly, through strategic use of the claims process, the right to negotiate provisions, and the leverage currently available through the outstanding issue of native title on pastoral leases, to get some tangible outcomes for their regional constituents.⁹ As noted earlier, some are seeking to advance these matters by negotiating land-related regional agreements which could be linked to wider native title resolutions in the future.

Relationships with regional councils will be critical. A number of NTRBs have extremely close links with ATSIC regional councils — in some cases, ATSIC councillors and commissioners are executive members of NTRBs. The ATSIC elected Indigenous structure, and especially its regional council system, is held out by the Commission as the key to its future development. The Commission has a statutory responsibility to devolve budgetary decision making to regional councils which have, in turn, gained substantial control over ATSIC funding at regional levels. From 1995, they have full delegations to approve regional projects for funding that previously they only endorsed (ATSIC 1995: 3). The influence in ATSIC of a regionally-oriented policy perspective is evident in the pressure by some regional councils to emulate the...
‘authority’ model of the Torres Strait Regional Authority; that is, to transform the councils into more financially independent regional authorities.\textsuperscript{10}

While ATSIC’s own version of regionalism is being actively constituted as a form of Indigenous political authenticity, criticisms have been made as to whether regional councils serve and speak for the range of Aboriginal interests in their regions. That is, the very same issue of representativeness impinges on the legitimacy of ATSIC regional councils as it does with NTRBs. Sullivan (1995) reports that in the Kimberley region, some organisations (including the Kimberley Land Council) have well-established memberships which feel disempowered by the ATSIC regional council system. In seeking to resolve this issue, the Kimberley Land Council has moved to consider ways in which a ‘partnership’ between ATSIC and ‘key community based representative organisations’ might better advance regional agreements in respect to service delivery, and the development of regional Indigenous ‘self-governing structures’ (Yu 1995a: 52).\textsuperscript{11} In other regions, ATSIC councils and NTRBs are already closely aligned. In the Murchison-Gascoyne region, for example, the ATSIC regional council has been instrumental in establishing and providing substantial funding to the Yamatji Sea and Land Council in the absence of monies from ATSIC’s national allocation, and the Yamatji Council has received determination as a NTRB.

The future relationship between the NTRBs and ATSIC regional councils could be critical, especially with the possible transition of ATSIC councils into regional authorities, and in the context of negotiations for both land-based and service delivery regional agreements. The politics of representation, focused on the development of a regional polity, may involve NTRBs and ATSIC regional councils vying for leadership of a regional constituency. On the other hand, with strategic cooperation between NTRBs, ATSIC regional councils and other Indigenous organisations, representational politics could prove to be a powerfully unifying device in which NTRBs constitute a ‘further evolution’ in the ‘realignment and renegotiation of the ... structural relationship which exists between governments and Aboriginal people’ (Yu 1995b: 13).

**Beyond Representativeness**

Beyond the immediate issue of establishing representative credibility, NTRBs are developing, at varying rates, into a national network of strong, professional organisations with a decisive input into the native title process and related policy considerations. Already there are working coalitions of NTRBs within States which meet to formulate strategic approaches on the full range of native title issues. There are
moves afoot to establish a national coalition. These organisational extensions of the NTRB framework will in themselves raise important policy issues that will need to be responded to by State, Territory and Commonwealth Governments. One of the major dilemmas for government in the early debates about native title legislation was to find a national organisation capable of representing Indigenous land interests. At a time when key individual Aboriginal leaders were being publicly criticised for not being able to speak on behalf of a broad enough constituency, ATSIC played a significant role, delivering national Aboriginal support based on its elected regional councils (ATSIC 1994: 22). Increasingly, NTRBs will assume this role, especially at the regional level, but also at the wider State and national level if they continue to amalgamate into larger political coalitions.

As they become influential power brokers within regional Aboriginal politics and regional economies, NTRBs could assert a growing impact in State and Federal political and policy arenas. For example, they are quickly becoming key players in the critical pressure points in native title relations between the States and the Commonwealth, especially in States such as Western Australia where the government is actively obstructing initiatives by both NTRBs and some elements of the mining industry itself to get on with the native title process. The fact that NTRBs are actively seeking to negotiate regional agreements with resource and other development interests will force State and Federal Governments to clarify their own policy approach to regional agreements and to formulate a preferred process for government involvement.

NTRBs will play an important role acting on behalf of native title claimants in relation to potential amendments to the NTA, providing government with a crucial consultative option at the regional level. Under interim regulations, they will have an important role in relation to Prescribed Bodies Corporate and native title holders regarding land use and management. These regional responsibilities link directly into critical land-related issues at the national level. For example, the Indigenous Land Corporation will need to consider directing its land purchase and management strategies according to native title outcomes dependent on the activities of NTRBs.

As NTRBs gain in professional experience and negotiating skills, and as their representative base strengthens, there may be increased tension between them, the NNTT and State counterpart Tribunals over jurisdictions and appropriate roles. The organisations will undoubtedly argue for the centrality of their role in ascertaining the views and acting on behalf of their Indigenous constituency. It will be critical for the
NNTT and State Tribunals to realise that their own areas of expertise do not lie in the Indigenous domain, and to recognise NTRBs as legitimate and increasingly effective organisational representatives of native title interests. Indeed, such recognition can only serve to help develop such effectiveness. If the political lessons of the land council system in the Northern Territory hold true for NTRBs (see Altman and Dillon 1988; Martin 1995a), especially in a post-native title claim period, their position will be consolidated as influential advocates for Indigenous land-based rights and interests. In the meantime, there are clearly a number of important matters that remain to be resolved if they are to become effective. In particular, all are in need of a stable regime of sufficient funding to undertake their native title responsibilities; representativeness does not come cheaply. They are also in need of an enhanced statutory framework which clearly defines mandatory areas of responsibility and accountability to their Indigenous clients. While the Commonwealth continues to be reluctant to take this step, key mining industry spokespeople are already arguing its likely benefits.  

ATSIC will need to quickly and efficiently respond to their needs, not simply for program funds, but for corporate and administrative assistance. If NTRBs can establish themselves on a sound representative and management footing, there is every possibility that this emerging national institutional framework could mark a decisively new stage in Aboriginal politics. In particular, these organisations will become powerful political voices for a constituency, some of whom will have substantial decision-making powers over economic development. As such, they will generate a regional, land-based politicism with which ATSIC regional councils, governments and developers will have to contend.
Notes: Paper 6

1. I would like to thank Jon Altman, Hilary Bek, Julie Finlayson, David Martin and Neil Westbury for helpful comment and criticisms of earlier drafts of this paper. I nevertheless take full responsibility for any errors and the views expressed.

2. These are commonly called Representative Bodies and are abbreviated to NTRBs throughout the paper. While it is slightly cumbersome to have the abbreviation appear too frequently, it is used to avoid the more boring repetition of ‘Representative Bodies’.

3. The recommendations of the review committee were accepted by the ATSIC Board of Commissioners in September and ATSIC is establishing a separate branch in central office to proceed with implementation of the report. Cabinet has noted the report recommendations and has agreed to adjust ATSIC funds so that NTRBs will be able to effectively perform their functions and facilitate the operation of the NTA at this crucial, early stage.

4. I participated in consultations in Brisbane, Tin Can Bay, Toowoomba, Rockhampton, Bundaberg, Mackay, Townsville, Cairns, Thursday Island, Mt Isa, Burketown, Adelaide, Alice Springs, Darwin, Broome, Derby, Port Hedland, Perth, Kalgoorlie and Canberra. I also attended a Canberra workshop of NTRBs conducted by the Native Titles Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies, at which Professor Jon Altman and I conducted sessions with NTRB staff on the review recommendations. I did not attend the New South Wales and Victorian consultations with NTRBs which were carried out by another group from the review committee. The review committee was chaired by the ATSIC Commissioner Mr Guy Parker and included Mr Murray Chapman (Assistant General Manager, Land, Heritage and Culture Branch, ATSIC), Mr Neil Westbury (Assistant Secretary, Native Title Special Projects Branch, Office of Indigenous Affairs), Professor Jon Altman (Director, Centre for Aboriginal Economic Policy Research, Australian National University) and myself, Ms Diane Smith (Research Fellow, Centre for Aboriginal Economic Policy Research, Australian National University).

5. This is the same percentage as applies in respect of exploration agreements under the **Aboriginal Land Rights Act (Northern Territory) 1976**. The agreement also ensures that compensation may be received in any form, including the provision of
benefits to the local Ngukurr community, with Aboriginal people making final decisions as to the form compensation takes.

6. These numbers are approximate and provided by the Registrar of Incorporated Associations, ATSIC, Canberra. They include associations established under Commonwealth legislation only.

7. Mr Paul Wand, Vice-President, Aboriginal Relations, of CRA further argued to the Parliamentary Joint Committee on Native Title and the Indigenous Land Fund (PJC) that CRA ‘strongly endorse the need to have provisions in the NTA that will give standing and authority to the relevant Land Councils or regional councils [that is, to the NTRBs] to enter into agreements that will be legally binding and enforceable for the duration of those agreements’ (CRA Submission to the PJC, see Commonwealth of Australia 1995: 1515).

8. It is also being tempered by the realisation amongst claimant groups that they should more appropriately organise themselves to be Prescribed Bodies Corporate. These are the incorporated associations able to be established under the NTA (ss.55-60) to hold native title rights in trust for native title holders. The native title holding members of Prescribed Bodies will have substantial decision-making powers over their particular areas of native title land. There appears to have been no initial statutory impediment to a NTRB also becoming a Prescribed Body Corporate, but subsequent regulations passed for the latter on 20 December 1994 seem to actively preclude this possibility.

9. The same comment can be applied to the NNTT.

10. See for example, Sullivan 1995; Menham 1995.

11. See also similar comments about the need for a partnership between NTRBs and ATSIC at the regional level by Daryl Pearce, Director of the Northern Land Council made at the same seminar (Pearce 1995).

12. CRA have recently called for a clearer statutory basis for NTRBs that ‘will give standing and authority’ to them, arguing that it would serve to make agreements and negotiations that legally binding upon both the NTRBs and the native title parties they represent (see Commonwealth of Australia 1995: 1515).
References: Paper 6


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Paper 7: The Business of Governing: Building
Institutional Capital in an Urban Enterprise


In the wider community, people who have a business idea and the means to develop their idea can develop their own enterprise at their own initiative. It is not as straightforward in Aboriginal communities. This is because Aboriginal people are invariably members of wider family groups and communities, and individuals are not completely free to undertake private enterprise … Similarly, opportunities are frequently seen as communal assets—belonging to clan groups or to communities, not to individuals … Indigenous social and cultural imperatives often result in the creation of decision-making and ownership structures that make enterprise ownership and management inefficient, unwieldy, impossible … Indigenous decision-making structures are about social and political representation, whereas optimum business decision-making should be about expertise, experience, knowledge and talent (Ah Mat 2003: 6).

The notion that all Indigenous communities are the same is another of the myths or misunderstandings that has made its way into the policy and psyche of successive governments. Indigenous communities are diverse … Diversity is not only in terms of language groups, clans or country, it goes further. Some communities may see economic growth as their primary goal, while others may accord more importance to cultural richness and taking care of country. It is important that differing Indigenous traditions and values be recognised and accommodated in a way that contributes to building strong communities rather than undermine them (Armstrong 2007: 75–6).

Introduction
Behind the interest in Indigenous community governance lies a concern for the improved socioeconomic well being of Indigenous people. International research has found that there is a ‘development dividend’ (see Kaufmann 2005) attached to what is commonly referred to as ‘good governance’, and that it applies to quite poor countries and Indigenous societies (see Cornell and Kalt 1990; Kaufmann, Kraay and Mastruzzi 2005). In Australia, Indigenous communities are familiar with the cycle of business and economic development failures, and there is evidence that weak governance capacity is a contributing factor (Hunt and Smith 2006, 2007). In other words, Indigenous economic development is a governance issue.

The prime issue addressed in this chapter is whether there are particular kinds of organisational governance that might facilitate Indigenous economic success. The governance factors that impede Indigenous economic success have been extensively documented in Australia, to the point where there appears to be a public fixation on a deficit model of Indigenous economic development (see Dodson and Smith 2003 for a summary). This chapter focuses on the forms of organisational culture, governance representation, institutional frameworks and decision-making that facilitate rather than undermine economic success. This concern goes to the heart of ‘who’ should be the relevant Indigenous actors in the governance of economic initiatives, and the extent to which ‘governing for business’ should reflect Indigenous cultural values, relationships and systems of authority.

In Australia, these are hotly contested matters. The Indigenous commentators whose quotes open this chapter highlight one of the biggest challenges for Indigenous Australians in their governance arrangements today—namely, mediating the considerable tensions, expectations, and contemporary myths surrounding the role of ‘community’ and ‘family’ in Indigenous societies and their economic development. Many stakeholders agree with Richard Ah Mat above, that the social and cultural imperatives which are part of Indigenous family and community life are problematic for the kind of governance that is thought necessary for generating successful businesses and other economic development outcomes. Others identify ‘family’ and ‘community’ as potential sources of social and cultural capital, but ones that need to be strategically managed and ‘balanced’ within an organisation’s governance arrangements and business objectives.

Indigenous organisations attempting to operate businesses seem to be particularly vulnerable. Their viability as businesses can be quickly eroded, not only by divisive
conflicts created by community and family politics, but also by the unrealistic demands of government and the private sector, which hold their own ideological views about the role that ‘community’ and ‘family’ should and should not play in governance and economic development. For urban organisations and leaders engaged in business enterprises, key areas of vulnerability and challenge include:

- negotiating what constitutes ‘the community’ and ‘family’ in the light of historical resettlement, ongoing high rates of mobility, and the often tangled web of urban relationships and land-ownership rights;
- negotiating processes of representation and decision making that support their economic goals, at the same time as building the internal and external legitimacy of their governance;
- responding to the diverse views and cultural values that Indigenous people have about their community, families and their governance needs;
- balancing Indigenous calls for more inclusive ‘community’ participation in, and access to, the services and benefits provided by organisations, alongside the hard-headed decision making and corporate governance required for economic success;
- responding to government pressure for ‘whole-of-community’ participation and representation, in circumstances where the community may be heterogeneous or fragmented; and
- negotiating the funding labyrinth of governments, and their underlying assumptions that ‘urban communities’ have ‘easier’ access to mainstream services, infrastructure, employment and economic opportunities.

This chapter looks at the establishment and operation of an urban Indigenous organisation in Newcastle—the Yarnteen Aboriginal and Torres Strait Islanders Corporation (YATSIC)—and how it has tackled the challenges of ‘governing for business’ within a complex community and economic setting. Yarnteen Corporation has a reputation for outstanding business and service delivery success that has been sustained over a 20 year period. Its Indigenous leaders have instigated specific strategies in respect to ‘family’ and ‘community’ when designing a governance model for the organisation. The paper proceeds by first unpacking the two social institutions of ‘family’ and ‘community’—in both their broader Indigenous and Newcastle specific contexts—and then examines the corporation’s governance solutions to these.
Importantly, Yarnteen’s leaders have consciously constructed an internal governance culture and institutional environment to support its economic functions and goals. The organisation’s economic success is directly related to these strategies. Specifically, Yarnteen has built up a foundation of institutional and governance capital that invests it with resilience, practical capacity, and business flexibility that is ‘paying a development dividend’. It appears to have done this without forsaking its cultural identity as an ‘Aboriginal organisation in the Newcastle community’. This is a considerable achievement given the difficulties highlighted by Richard Ah Mat, which seem to have contributed to the failure of so many other Indigenous community organisations and businesses.

The Problem with ‘Community’ and ‘Family’?

The concept of the ‘Indigenous community’ remains fuzzy and confusing. It continues to be associated with discrete geographical settlements, where it evokes ideas of a shared, idealised culture and a unity of purpose and action among its members (see Peters-Little 2000). In this way, ‘community’ and a homogeneity of culture and interests have come to be conflated in the public mind.

But this is not the case. A ‘community’ can be defined as a network of people and organisations that are linked together by webs of relationships, cultural identity, traditions, rules, shared histories, or simply common interests and goals (Hunt and Smith 2006, 2007). Indigenous communities are diverse in their cultures, historical experiences, governance histories and location. In Indigenous Australia, communities include not only discrete remote locations and rural settlements (of which there are over 1000; see Taylor 2006) but also ‘communities of identity’ whose members share a common cultural identity but are residentially dispersed across a region or set of locations. There are also Indigenous ‘communities of interest’ comprising different groups who unite for a common purpose, but may have different cultural identities and rights (see Hunt and Smith 2007: 4; Smith 2005: 24–5).

Today, approximately three-quarters of Indigenous Australians live in urban areas, with 30 per cent residing in major cities (Taylor 2006). While some are permanent residents of particular towns, many others are periodic urban dwellers who travel between towns and their hinterland rural communities, where they make use of a series of ‘usual residences’. The high population turnover associated with this pattern of movement between cities and rural communities ‘is such that Indigenous people in the city are not just similar to those in country areas—to a large extent they are the ‘same’
people spatially displaced at different stages of their lives’ (Taylor 2006: 3). In other words, reference to ‘urban Indigenous communities’ needs to be qualified in terms of their mobility, cultural heterogeneity and contemporary social complexity.

Many Indigenous Australians have built up strong historical attachments to particular urban residential ‘hubs’, which have become an integral part of their contemporary identities. The resident Indigenous ‘community’ in such locations is not homogenous. More often, it comprises a mixed constituency of large extended families and related individuals, who come and go. These families form social networks within their urban location that stretch outwards to connect to other family members and ‘communities’ in surrounding regions (see Macdonald 2000; Peters-Little 2000: 412; Smith 2000; Sutton 1998). As a consequence, there are usually many ‘communities’ within a community, and extended families invariably form the foundations for these.

The governance of these fluid and compositionally complex urban communities is extremely challenging. A contributing factor has been the tidal wave of organisational incorporation that has occurred over the past 30 years. Today, there are an estimated 5000 incorporated community and regional organisations across Australia, with an estimated (minimum) 30 000 governing board members at their helm. To some extent, this growth has been the result of a large number of government agencies taking an interest in Indigenous corporate affairs and socioeconomic outcomes. However, it has also been the product of Indigenous agency and choice, as small urban Indigenous groups, and more recently regional alliances of urban organisation and communities, have sought greater autonomy and control in the conduct of their community affairs, delivery of services, and business and enterprise development.

While there have been important practical, political and funding advantages to incorporation, some organisations have become silos of factional power in communities, competing with each other for members and local legitimacy, as well as scarce funds, resources and staff. The well documented result is that community organisations can find themselves subject to debilitating internal conflict, poor governance and financial management, and are sometimes at odds with their own membership and each other.

This situation has been exacerbated by the lack of national policy clarity about who these urban organisations are supposed to represent and how they are to be governed. Are different governance arrangements needed for organisations that deliver community services, as opposed to those operating business enterprises? As Leah Armstrong
highlights in the opening quote to this chapter, an overly simplistic view of ‘community’ has become entrenched in government policy, program and funding frameworks, where it is equated with the expectation that there should be a collective, community-wide basis to service delivery and the distribution of any benefits flowing from government funding. This has flowed through to expectations about the governance of organisations which have been tagged by governments as being ‘community organisations’. These are subject to idealistic expectations that they will have ‘community representation’, ‘community participation’, engage in ‘community consultations’ and so on.\(^3\)

Governments and the private sector commonly prefer to deal with local organisations that are ‘representative’ in this manner. They then look to these organisations to speak for and make decisions on behalf of ‘the community’, when this is invariably a highly fluid, mixed set of sub-groups. Even organisations set up to represent a specific location, or sub-group within a location, are still expected to treat their members as a community of like-minded people with similar interests, goals and priorities. Under such institutional conditions, governments have promoted the ‘community’ as a benchmark for fair representation, equitable distribution of resources and benefits, proper consultation, the source of legitimacy, and the rightful recipient of ‘downwards’ accountability.

Hand in hand with the murky concept of community goes that of ‘family’. While the important role of extended families in the domestic economies and social systems of Indigenous communities is well documented (see Finlayson 1991; Macdonald 2000; Smith 2000; Sutton 1998), it is not clear to what extent (or how) they might provide a positive basis for governance and economic development. Indeed, it is commonly asserted that Indigenous family relationships are highly problematic for good organisational governance and undermine economic development outcomes. The family is viewed according to a dysfunctional, deficit model, not as a form of contemporary social and economic capital.

Yet the notion of ‘family’ has long been the central ordering principle within Indigenous Australian societies, both in their traditional and contemporary modes. Invoked in almost every context and in every discussion, ‘family’ is the core unit, at both an actual and conceptual level, in Indigenous social and economic life (see Smith 2005; Sutton 1998). In particular, the extended family is the primary residential form,
with each individual’s investment in family relationships widely distributed across expanding networks of relatedness.

Today, families of polity (cf. Sutton 1998) form the backbone of Indigenous communities and many local organisations, thereby linking an extended family group identity to organisational identities and forms of political representation. In this manner, extended families not only have a form of internal governance, they are also embedded into other layers of governance at community and regional levels, and outwards.

So, why is it that family participation in governance and the business arena is seen so negatively? Increasingly, Indigenous families in communities have come to be associated with images of organisational nepotism and corruption, disputation and violence, debilitating factionalism, self-interested decision making, insular thinking and low business expertise. The transformation of the Indigenous family from a positive to a negative symbol has a long history in Australian colonialism. In recent times, its image has further deteriorated under public and media criticism of family violence and dysfunction in some communities, and their role in poor organisational management and governance. In regard to the latter, a report by the Office of the Registrar of Aboriginal Corporations (ORAC) found that:

The matter that Indigenous people make the most complaints to ORAC about is ‘nepotism’ within Indigenous corporations. Unmanaged nepotism has many adverse consequences, including high disputation, and will undermine an otherwise functioning program and corporation. It is a risk that funding agencies need to manage well. A key to managing it is understanding what it means and agreeing when action by the funding agency is necessary. Nepotism is widely understood to mean advantages obtained through family relationships, and is not necessarily illegal (ORAC 2004: 19).

The involvement of families in enterprise and commercial projects is seen as especially problematic. The Indigenous family lies at the heart of values of reciprocity, mutual responsibility and obligation. Because of this, it is argued that these institutional rules of family life cannot be trusted in the world of capitalism, business management and profit making. The family has thus become positioned as the antithesis of accountability, transparency and fairness; a form of ‘cultural virus that infects economic development’ (Ah Mat 2003: 3). For many stakeholders, ‘community’ is posed as the
preferable unit for a more legitimate, inclusive form of governance, and for generating economic development.

There is certainly a plethora of evidence documenting the negative impacts of family politics on organisational governance, community life, and business success. But is that the whole story? Does family involvement in economic development initiatives and governance arrangements have to operate as a deficient cultural institution? Do core Indigenous values and relationships have to be entirely excluded from the governance of economic development initiatives in order for them to be successful? Can the two be reconciled? The experience of Yarnteen Corporation provides evidence for some alternative conclusions and options.

**Community and Organisational Governance in Newcastle**

With a population of 146,000, the industrial town of Newcastle on the central coast of New South Wales (NSW) is the second largest town in the state. According to 2006 Census results, around two per cent of its residents are Indigenous. The Aboriginal ‘community’ largely comprises families who resettled in the town several decades ago, who have strong, continuing cultural ties both to the town itself and to surrounding rural communities and families across NSW (Ball 1985; Hall and Jonas 1985; Jonas 1991; Smith 1996, 2005). There is also a small group of Torres Strait Islanders living and working in the town, who have links to Islander communities in northern Queensland and the Torres Strait. An early survey of Indigenous households in the town carried out in the mid 1980s by the local Awabakal Cooperative reported that 75 per cent of those households were from outside the area (Hall and Jonas 1985). This movement into Newcastle created an estimated 700 per cent increase in the city’s Indigenous population over the twenty years between 1971 and 1991 (Arthur 1994).

Importantly, amidst this flow of people there is a stable core of family members who have called Newcastle home for over four decades. These ‘immigrant’ families were instrumental in establishing the early Aboriginal service delivery organisations and local Aboriginal land councils in the town and surrounding region. Recent assertions of a local native title claim by an Indigenous family in the town, as well as the proliferation of traditional owner groups in the larger Newcastle-Hunter Valley region in recent years, have inserted issues of ‘land ownership’ versus ‘historical’ residence into the wider community dynamics. To date, there has been no native title land returned in the Newcastle town area.
The Aboriginal ‘community’ of Newcastle is therefore compositionally complex, comprising numerous extended family groups who have their Indigeneity in common, but who have family histories and relationships that link them to different resettlement phases, different cultural identities, and different regional communities. The so-called Newcastle ‘Indigenous community’ is in fact a network of dispersed nodes of governance in the form of organisations, senior leaders and key families. Some strands of the network are more closely connected than others.

It is not surprising then that there is no single ‘community’ governing body. Rather, the Indigenous residents in Newcastle are represented by an extremely large number of organisations based in the town and surrounding Hunter Valley region. Some organisations are required to be widely representative under their statutory rules, while others are associated with particular families or service needs. There are community tensions that occasionally erupt into disputes over services and the governance of organisations, and which spill into attempts by different groups to ‘take over’. At the same time, there are also positive relationships between a number of the families and organisations whose senior leaders meet regularly at forums and community events, forming an influential peer network in the town. A number have worked for decades at regional, state and national levels on Indigenous political, governance and policy issues.

The formation of the Awabakal Aboriginal Co-operative Ltd in 1976 was a pivotal event in creating a sense of Aboriginal identity in Newcastle. ‘The co-op’ was established as a response to the unmet service and employment needs of the growing number of Aboriginal people who had migrated to the town in the 1960–70s. It focused on community development initiatives and started several long-standing housing, health, welfare, economic and training initiatives.

The co-op also played an extremely important role as the incubator of other organisations that play an important role in the town today. Because some ‘younger’ organisations have been incubated out of older, apical organisations there is, in effect, a ‘genealogical connection’ between groups of organisations who support each other’s work and goals. Yarnteen is an influential node in this urban network.

**Yarnteen—A Quiet Economic Success**

Yarnteen Corporation has a long-standing reputation for both its business success and community development outcomes on several fronts. It successfully runs a major bulk warehousing and bagging facility for grains, protein meal and fertiliser—Port Hunter Commodities—which commenced trading in 1994. This venture commenced
with one warehouse and bagging plant, and now has three state-of-the-art warehouses with storage capacity for 70,000 metric tonnes. It succeeded in gaining accreditation from the Australian Quarantine Inspection Service to conduct ‘cleaning’ of non-compliant imports, making it the only warehousing operation to do so in the port area.

In 1992, the corporation was one of the first urban organisations to operate a Community Development Employment Projects (CDEP) scheme, and it provided a range of social and cultural services and economic development opportunities for Aboriginal and Torres Strait Islander residents of the town and the wider Hunter River region (Smith 1996). It was one of a small number of CDEP organisations to subsequently participate in 2001–02 in the Australian Government’s Indigenous Employment Centre trial, successfully placing 20 people into full-time work and then going on to become a fully-fledged Indigenous Employment Centre.

Subsequently, Yarnteen received a CDEP ‘Achievement Award for Innovation’ from the Australian Government in recognition of the advances it made in the use of technology to network CDEP organisations. More recently, the organisation has consistently been on the front foot in responding to the recent radical changes to the CDEP scheme.

From the beginning, an integral part of its economic and employment initiatives has been the provision of in-house training, professional development and case management support to individuals. The corporation recently established the Indigenous Creative Enterprise Centre. This enterprise addressed the ‘digital divide’ by offering the Indigenous community in Newcastle access to computers and technology for skills and small business development. It has provided financial support and professional mentoring to the Arwarbukarl Cultural Resource Association. This is a dedicated cultural organisation whose main activities are ‘protection and continual practice and teaching of our culture and the revival of the local Awabakal language’ (YATSIC 2005). More recently, Yarnteen has expanded activities into small business training functions.

In 2006, Yarnteen extended its business portfolio by opening a car wash business in Port Macquarie. It aimed to capitalise on the growing demand to conserve water in areas under restrictions and provide a customer friendly car wash service. It sought the most recent technology—this time from the United States of America—to develop ‘green’ water recycling processes.
Yarnteen Pty Ltd was also created to operate as a property investment vehicle that enables the corporation to build an asset base for future investments. It currently owns land and warehouses at the Newcastle Port, 100 acres at Wollombi that it operates as a cultural and conference camp accessible to all Newcastle’s Indigenous residents, and major residential property and buildings in town and interstate.

**Yarnteen’s Governance History**

Different institutional elements (such as norms, values, policies, regulations and routines) evolve as a product of the unique governance history of each organisation. These internally sourced institutions govern the behaviour of an organisation, its leaders and staff.

Not surprisingly, the governance history of Yarnteen Corporation has both urban and rural influences. Like many other Aboriginal organisations in the Hunter region, Yarnteen had its beginnings in the Awabakal Co-operative. An early internal review by leaders of the co-op led to several of its functional programs being ‘farmed out’ to organisations that were set up to take on the program roles. These organisations were incubated and mentored by the co-op until they became independent service delivery organisations in their own right.

Yarnteen was one such incubated organisation, becoming incorporated in June 1991. The leadership of the Awabakal Co-op stayed closely involved in mentoring the early development of Yarnteen and its emerging leadership. This process of organisational mentoring and incubation has in turn become a signature feature of Yarnteen’s development.

While the corporation’s purpose and objectives evolved over the years in keeping with its growth, there has always been a strong focus on economic development at the heart of its operations. Reflecting back on the organisation’s governance history, Yarnteen leaders identify several ‘key factors that influenced [its] governance structure’ right from the beginning (pers. comm.; see also YATSIC 2005). The two founding leaders (one Aboriginal, the other Torres Strait Islander) say they were particularly keen to make an enduring change for the better in the economic circumstances of their families. They wanted greater economic independence for their own families and, in that way, to act as an economic role model for the wider Indigenous community: ‘From the first, our organisation stressed its desire to become a full agent in our own development’ (YATSIC 2005).
In order to do this, the leadership felt strongly that:

the governance structure was … an important strategy to achieve the long-term objectives and economic self sufficiency of the organisation. Our number one priority was to have a governance structure that was sensitive to and compatible with the culturally [sic] diversity and interests of our community, but importantly that offered stability and contributed to good governance rather than undermining it (Armstrong 2003).

In particular, we aimed to create a balance between economic and social obligations for greater community capacity building … Our goal to empower Indigenous individuals and organisations to achieve self-determination is being achieved through our governance structure (YATSIC 2005).

From the beginning, a first-order consideration in designing Yarnteen’s organisational governance was a recognition amongst the founding Awabakal and corporation leaders ‘that the Indigenous community around Newcastle area is made up of many different family and clan groups … who have resettled in the region in search of better employment opportunities’ (YATSIC 2005). They wanted to avoid the problems that other organisations had experienced with open-ended, amorphous community participation leading to unwieldy representative structures, and to focus on a core group of families with whom they had well-established connections. They had also witnessed first hand the debilitating effects of community politics on the governance of earlier NSW co-operatives and Local Aboriginal Land Councils. These organisations were regarded as having ‘lost’ valuable financial assets and economic ventures because of factionalised disputes over membership, representation, and community access to benefits.

The organisation’s leaders also wanted to create ‘a balance between economic and social obligations for greater community capacity building’. However, they also ‘held the view that focusing only on the social aspects of people’s lives may not produce lasting changes to individual families or communities’ (YATSIC 2005). They clearly ‘recognised the importance of business in supporting a healthy community’ (cf. Jonas 1991: 12).

This positive assessment of the potential role of family, in tandem with their reservations about a ‘whole of community’ approach to business, and a desire to secure a strategic balance between cultural, social and economic goals, has set the tenor of Yarnteen’s governance and institutional operations since 1991.
Yarnteens Governance Model

Yarnteens founding leaders believed that culturally-based decision making processes could form an effective basis for governing arrangements, but within a tight representative model. The leaders identified a core set of large extended families with long-term ties to Newcastle as the organisation’s main membership group. They proceeded to establish the organisation’s system of governing representation, decision making and membership around this particular subset of the wider community.

Given the problems, expectations and misunderstandings associated with the notion of family representative models in organisational governance, it is useful to examine how Yarnteens managed the potential negative impacts and built upon the positives in its governance for economic development. And furthermore, how it addressed the external pressure for wider community participation and access to its economic success.

The organisation stresses that it does not purport to represent the whole Aboriginal community of Newcastle. It did not feel bound to seek its board representatives from across the diversity of groups residing and travelling through the town. It did, on the other hand, see itself as having a broad community development remit in many of its service delivery functions, several of which are accessible to all Indigenous residents. These functions are not seen as necessitating the inclusion of the whole community into its representative structure. As a senior leader on the board noted: ‘It’s ok to have one group of people cooking the cake, if everyone else eventually gets a slice of it’. Yarnteens leaders saw their commitment to deliver particular cultural, employment and training services to the wider community as part of their ability to spread some of the benefits of their economic success more widely, but without jeopardising their business viability.

These seemingly contradictory strategies — the one business, the other community/cultural — have been operationalised within the organisation’s governance and institutional environment. In 1991, a Yarnteens Management Committee was established which represented four major extended family groups who had resettled in the Newcastle-Hunter region and ‘adopted’ the town over several decades. At that time, the organisation acknowledged that the traditional landowners of the region were the ‘Awabakal’, even though when it was first established none were thought to remain. The Management Committee started with 10 members, and is now called the Yarnteens Board. New representatives on the board are nominated and selected from the core
member families. The board oversees the business and some of the cultural initiatives of Yarnteen, but these functions are differently structured.

The corporation’s governance model for board representation and ‘membership’ for its economic ventures is tightly circumscribed to the core group of extended families. Its community development initiatives, on the other hand, are more inclusive and focus on its wider community ‘constituency’, which is the wider Newcastle Indigenous population. These residents can access and benefit from a range of ‘community’ initiatives and services provided by the organisation. The ‘community’ services operate out of separately incorporated organisations, under the umbrella of Yarnteen Corporation. The boards of these organisations also have a wider set of representatives on their governing boards.

In effect, Yarnteen’s leadership designed separate approaches to its ‘membership’ and its ‘constituency’. The organisation’s members are the core families, and they stand at the heart of board membership and are the beneficial members of the economic ventures. Its constituents are drawn from the wider community, and are the people to whom cultural, employment, training and other social services are directed. This distinction appears to have been extremely beneficial in helping to quarantine the economic arm of the organisation from its other functions.

However, as a consequence of the tight governing structure created for its business ventures, the organisation has been seen in some quarters of the Newcastle Indigenous community and by some government departments as being ‘exclusive’, unrepresentative and ‘not a community organisation’. But in light of its transparent governance strategy for economic success and its diverse delivery of community services, this is clearly not the case. However, these assertions highlight the considerable pressure that governments can apply to Indigenous business organisations to be ‘whole-of-community’ and how they equate this with ‘good governance’. It also highlights the pressures that arise from within the wider Indigenous community when some groups feel that a local organisation should distribute its economic benefits more widely to all residents of the community. Neither of these expectations is applied to non-Indigenous private sector businesses in Newcastle.

The tight family representative model appears to have directly contributed to remarkable stability within the governing board. Eight out of the current 10 people are foundation members of the organisation. There have been significant benefits for the
organisation as a result of this representative stability. One important advantage appears to be the creation of considerable governance ‘capital’. For example:

- board members have been able to build a strong shared commitment to the organisation’s long-term economic vision;
- the board is seen to have considerable legitimacy in the eyes of its members and staff;
- a solid foundation of trust and openness has been progressively developed within the board;
- there is a collegial relationship of partnership and honesty between the board and senior management (many of whom are also long-term employees of the organisation);
- a decision-making process has developed over time that is familiar and reliable; and
- board members can fall back on their history of consensus-building and experience of having resolved problems.

Stability is not only a feature of the governing board, but also of management and staff. Several senior staff members have been employed for as long as the original board members. Of the 37 people employed full-time in 2003–04 (YATSIC 2005), 29 were Indigenous and eight non-Indigenous, which is evidence of a very high level of Indigenous participation and employment. This figure includes 24 males and 13 females—with women represented in management as well as office staffing areas.

With such stability of leadership and staff an organisation could easily settle into a convenient comfort zone in its governance and business initiatives. Yet Yarnteen seems to have been able to avoid the associated pitfalls of insularity, narrowing expertise, failing performance, and resistance to change. It has also designed a set of effective buffers against potential family factionalism, disputes and self-interested decision making, which have been evident in other organisations with tight family-based representative models. The implementation of a four-pronged strategy appears to have been influential in achieving these outcomes, and includes the development of:

- structural flexibility and diversification;
- a strong, internal governance culture;
- diverse and deep institutional capital; and
accountable, professional leadership.

**Structural Flexibility and Diversification**

Over the years as Yarnteen has grown, it has retained operational flexibility by routinely reviewing its strategic direction and diversifying its structure to respond to changing economic and commercial conditions. The corporation adopted an ‘incubation strategy’ to facilitate the establishment of offshoot organisations, which have taken over specific functional parts of its operation.

For example, in 2004, Yarnteen undertook an internally instigated review of its governance, organisational structure and functions. As a result, it decided to minimise possible risk to its business enterprises, whose assets were identified as being open to potential ‘social stripping’ by broader community constituents, and to the risk of the potential failure of any of the organisation’s more community oriented services. As a result of that review, the corporation set up two separately incorporated organisations with their own boards—Youloe-ta Indigenous Development Association and Yamuloong Incorporated Association—to deliver their community-based employment and training services.

Youloe-ta now manages the original Yarnteen CDEP scheme and operates the Indigenous Employment Centre. It also runs a conference facility, an Aboriginal bush foods centre for school groups, and training and employment mentoring services. At one stage, along with Yamuloong, it was a wholly-owned subsidiary of Yarnteen.

Yamuloong Association was established as an Aboriginal Registered Training Organisation to provide nationally accredited training in business administration, small business mentoring, and information and technology training. It was subsequently re-incorporated into Youloe-ta after another Yarnteen-initiated review determined that it required better corporate support.

These separately incorporated bodies have continued to retain close links with the corporation. This group of organisations refer to themselves collectively as the ‘Yarnteen family of organisations’ or ‘the Yarnteen group’ (see Fig. 8.1) and includes Port Hunter Commodities Pty Ltd, Riverside Car and Boat Wash, Indigenous Creative Enterprise Centre, and Yarnteen Pty Ltd as wholly-owned subsidiaries, plus the incubated offshoots.

Over the course of its operations, Yarnteen has also assisted Newcastle Aboriginal residents with business start up, operational advice and mentoring. These incubated
enterprises have included: an Indigenous housing construction company, a transport company, cultural tourism accommodation, and a plumbing business. These operate as self-employed businesses.

This alliance of organisations comprises a networked governance model. Yarnteen Corporation acts as a ‘hub’, maintaining a valued relationship of mentoring, management support and financial advice for the incubated offshoots. At the same time, as mentioned
Fig. 8.1: The ‘Yarnteens family’ of organisations

Source: Yarnteens Aboriginal and Torres Strait Islanders Corporation.
above, it has legally quarantined its economic ventures from potential financial liability and stripping by retaining them as wholly-owned subsidiaries. The incubated organisations have separate boards on which there is representation from the Yarnteen Board, but a majority of other community members.

This strategy of ‘planned organisational devolution’ and ‘strategic incubation’ reinforces the demarcation of Yarnteen’s economic pursuits alongside its partnership approach to community service-delivery and cultural goals.

It is noteworthy that the cultural metaphor of ‘family’ has been used as a model for developing this form of devolved, networked governance. A major advantage of this model lies in its flexibility, its tolerance of a diversity of identities, its capacity to extend close working relationships to new components, and the benefits of inter-dependency—in much the same way as extended families do in Indigenous communities.

The relationship between the incubated organisations and the ‘mother’ corporation is seen by both staff and leaders as being flexible and egalitarian. The groups cooperate for particular purposes, but each regards itself as undertaking valued functional roles and responsibilities over which it has autonomy. This type of networked governance operates like a close coalition of autonomous parts and appears to be well suited to undertaking business in parallel with separate community functions.

A Durable Governance Culture

Yarnteen has exceptionally good corporate governance. The organisation is accorded legitimacy by external stakeholders and regulators—it has passed government-instigated reviews and financial audits, and continues to receive favourable assessments from the private sector. An annual report is published each year, and has been since its inception. Its administrative systems and planning processes are kept straightforward and are understood by staff and governing members, and management and staff are qualified in a range of skills and professional in their conduct.

The Chair of the Yarnteen Board convenes well run, minuted meetings, and board members say they are properly provided with clear information and considered advice by the Executive Director and Chair. There appears to be consistent attendance at meetings by board members. Their collective view is that there is a proper focus on the big issues during meetings, and that individual members come along prepared to do their job. A factor in the effectiveness of the board’s decision making is that the members are confident in the accuracy of the financial information and strategic
business advice they are provided. Board members ensure they understand the complex financial matters brought before them by consistently asking questions of management, and discussing potential business risks and options.

A primary factor in building these governance skills for business has been the provision by the Executive Director of ongoing, in-house training for board members on issues including their financial roles and responsibilities, business planning, risk management, consensus decision making, and board practice. In collaboration with the Executive Director, the board has developed a ‘Board Values Statement’ that seeks to promote the members’ shared commitment to transparent, honest decision making, fairness, and internal and external accountability. As a consequence of these internal professional development initiatives, the board is familiar with strategic financial planning and their business transitions appear to be well managed (see Smith 1996, 2006).

The separation of powers between the board and Executive Director is generally understood and implemented, contrary to many Indigenous organisations. But importantly, the Yarnteen approach to this ‘good governance’ prescription remains a flexible one. There is a close working relationship of mutual support between the board and senior management. Individual board members also collaborate with staff on more operational tasks, and staff members periodically contribute to strategic planning and goal setting for the organisation. In other words, the governance arrangement could more accurately be described as ‘separate, but working together’.

This ‘governance partnership’ is somewhat contrary to the standard principle that proposes a much stricter division between the roles and responsibilities of boards and management. Yet Yarnteen’s approach seems to enable it to make better combined use of its knowledge, skills and experience across the layers of the organisation. This has promoted resilience and a strong shared commitment within the organisation.

Board members and senior management espouse a joint approach to balancing the need for both business innovation and stability—a philosophy that has been described by the Executive Director as ‘restless self-renewal’. In these diverse ways, the organisation has developed a valuable reserve of corporate governance capital to sustain its economic goals, which can be called upon in times of planned internal transition or externally instigated change. Perhaps more importantly, though, alongside this corporate practice, Yarnteen’s leaders have actively created a broader and durable ‘governance culture’ within the organisation, its subsidiaries and offshoots.
An organisation’s ‘governance culture’ can be defined as the system of formal and informal traditions, collective values, and culturally-shared mechanisms for behavioural accountability, incentives and censure that direct staff, management and leaders to conform to the organisation’s policies, vision and goals (see Bresser and Millonig 2003; Cornell and Kalt 1995; Hunt and Smith 2007). The formal components of an organisation’s governance culture may include its written policy documents, dispute and appeal procedures, vision statements and strategic plans. Its informal aspects are typically unwritten, but nonetheless prevail in people’s behaviour and interaction within the organisation; they tell individuals how to do things and how to relate to each other.

In practice, a great deal of what happens in organisational governance falls into this informal area. Informal governance works at the level of individuals, through processes such as how conflicts and appeals are mediated, praise and reward given, behavioural sanctions applied, collective identity reaffirmed, and through the style or personality of decision-making and management.

The leaders of Yarnteen have embedded a pervasive ‘governance culture’ within the organisation which actively promotes a particular set of norms. These include fairness, mutual respect, the value of personal contribution, accountability and teamwork in the work environment, and a shared commitment to the organisation’s long-term success and autonomy. Importantly, these values are promoted in a manner that reinforces collective support for the style of governance as being distinctly Aboriginal and therefore legitimate.

This collective support is further reinforced by the prevalence of Aboriginal humour, a decision making style that resonates with Aboriginal consensus and conflict mediation processes, and the perception that all members of the organisation—from board members to young staff—are ‘one family’. These characteristics are regularly articulated by people as valued qualities of the organisation’s ‘cultural identity’ (Armstrong 2007: 75). And board members emphasise their desire to maintain this style of governance:

We make decisions like a washing machine. First we just push it all around, everything round and round and have a good talk about every part of it. Then we come to a decision. Once a decision is made, board members think it is important to stick to it … then we agree as one. Once a decision is passed, that’s it, it’s finished. Then we’re under one agreement, we get on with it (Yarnteen Corporation Board member).
This governance culture does not simply sit at the top with the Yarnteen Board and Executive Director; it has been seeded by the leadership throughout the management and staff, and the family of organisations. At the heart of this governance culture lies a process of institution building that has been deliberately embedded in Yarnteen’s modus operandi.

**Building Institutional Capital**

Institutions can be defined as the ‘rules of the game’, the socially and culturally legitimated behavioural expectations that can be rewarded if followed, or sanctioned if violated. Rules and their related processes are the organising tools of governance. They tell the leaders, staff and members of an organisation how it should work, what decisions are made on behalf of members, and who may make them. Effective institutions are those that are capable of regulating and channelling both individual and collective behaviour.

Institutional weakness has been highlighted as a critical factor in the poor governance of many Indigenous organisations and governments (Cornell 1995; Hunt and Smith 2007; Sterritt 2002). In the case of Yarnteen, its leaders have created and sustained a range of governance institutions. These provide a system of incentives, rewards, constraints and limits, which direct the board, senior management and individual staff members to behave and perform in ways that support and strengthen the organisation’s economic and service delivery objectives and strategies. Following Hunt and Smith (2007) and Oliver (1997), the richness or depth of this system creates a form of ‘institutional capital’ for Yarnteen.

In the context of economic development, institutional capital can be defined as the specific conditions in an organisation’s internal and external institutional context that allow the formation of sustained business success and competitive advantage in the commercial arena (see Bresser and Millonig 2003: 225–2; and Scott 1995: 35–9). Scott (1995) and Bresser and Millonig (2003) distinguish three interacting components or pillars of institutional capital: regulative, normative, and cognitive. Each of these is applicable and evident in Yarnteen and its offshoot organisations.

Regulative institutions focus on rules (more often formal than informal) that are monitored and sanctioned in the case of possible corruption, bias, violation or poor corporate performance. To this end, Yarnteen’s leaders have designed and implemented customised written policies, conflict resolution and appeals processes, procedures for the periodic review of individual performance, and regular internal reviews of its
economic portfolio and community development functions. Senior and executive management participate in regular updates to monitor the organisation’s commercial and corporate performance in respect to these.

These internal regulations are overwhelmingly seen as beneficial within the corporation, and so act as a source of institutional capital. Externally imposed government regulative mechanisms (such as mandatory government audits, departmental reviews, and financial and program reporting procedures) are invariably seen as overly burdensome and a source of erratic, but coercive pressure. The perception within Yarnteen is that the extent of regulatory scrutiny by government undermines its resilience and focus, rather than enabling its governance. The board and senior management of the organisation do give considerable attention to fulfilling their external compliance and financial responsibilities, but as the Executive Director notes, ‘best practice organisations look to achieving this themselves and do not rely on external organisations to regulate or enforce this through external controls’ (Armstrong 2003: 7).

Yarnteen’s normative institutions comprise the norms and values which define the types of behaviours that are considered desirable, appropriate, and correct. The fact that these are uniformly seen as culturally legitimate by staff, management and board members means that they have deep acceptance and influence within the organisation. As a consequence, individual compliance with the organisation’s codes of conduct, vision statement, the board’s value statement and corporate responsibilities, and individual performance milestones, is considered to be both a behavioural and cultural obligation. The adoption and practice of a code of ethical values by the board is taken seriously as an example of the standards to be maintained by people throughout the organisation (see Armstrong 2003).

These normative institutions assist Yarnteen’s leadership to modify structures, routines and business strategies as necessary, and so help to ameliorate potentially adverse affects that might arise from long-term board membership and employment of particular staff. Another influential aspect of the normative environment within the organisation is the expectation that members of the staff, management and board will routinely activate their networks into the wider business and public sector, and with regional Aboriginal communities. This further assists in preventing insularity of ideas and thinking.
The third element of Yarnteen’s institutional environment is its cognitive capital. This relates to the ways in which individuals perceive and interpret their work and community life; a reality that is always a social and cultural construction. The cognitive institutional component of an organisation can be defined as the sum understanding of its internalised values and norms; that is, all the aspects of institutions that are taken for granted at a subconscious level.

Compared to the normative dimension, the cognitive component emphasises subjective assumptions, expectations and pressures. In this realm, Yarnteen has developed considerable collective cognitive capital shaped around its members’ close identification with its history, governance, goals and operation as a distinctly ‘Aboriginal organisation’, with Aboriginal values and behaviours, and ‘family’ relationships between the organisations. Within the corporation, these relationships and shared understandings are seen to positively facilitate success rather than undermine it.

The institutional strengths of the Yarnteen—regulative, normative and cognitive—are thus multidimensional and comprise both internal and external dimensions. Particularly influential institutions appear to be those that have been generated and embedded internally by the organisation’s own leaders and staff, not those developed and imposed from outside.

These institutional strategies have taken time and commitment to implement. For many organisations they are the first things to go by the wayside when resources and people are stretched. Yet Yarnteen’s rich institutional environment has generated considerable governance and economic benefits. Because they are shared and routinely followed by staff, management and board members alike, they become the vehicle for collective goal setting and action. The staff of Yarnteen say they feel part of this strategic institutional and governance approach and, as a consequence, a culture of teamwork and loyalty to the organisation has taken root. Not surprisingly then, in comparison with many other organisations, Yarnteen has had a very low turnover of employees and board members. Overall, its institution-building efforts are a form of capital that acts to buffer and neutralise the potential disadvantages of long-term board membership, select family representative structures, and debilitating external demands and pressures.

**Leadership for Economic Development**

The leadership of Yarnteen has been the catalyst for building the organisation’s governance culture and institutional capital. In 2006, I carried out interviews and
informal discussions with board members, the executive, managers and staff on the issue of leadership (see Smith 2006). The qualities of Aboriginal leaders seen to be necessary include:

- ‘humility’;
- ‘being part of the Aboriginal community’;
- ‘having a passion for helping their community not just themselves’;
- being ‘selfless’;
- ‘having a vision of what’s possible’;
- ‘experience in politics’;
- being ‘able to mentor younger people’;
- ‘able to talk to all kinds of people, and listen well’; and
- ‘able to get agreement and consensus’.

Yarnteen’s leadership is of a very high quality and has been a critical factor in the success of its governance for economic development. Its leaders are both male and female. They have strong links into the local and regional Indigenous community, and extensive networks into the state and national leadership. Several have national experience on representative organisations, councils and boards. They are extremely well qualified in their management, governance and financial expertise.

The Executive Director and Chair of Yarnteen have an extremely sophisticated understanding of governance best practice and strategies. The concept is frequently discussed in board meetings. Governance training has been provided in-house; senior managers have participated in external leadership workshops; several board members and senior managers have presented conference and workshop papers on the topic; and the Executive Director has undertaken the Australian Company Directors’ Course. The combined effect is to ensure that the board is not easily swayed by any particular subset of family or factional interests, and takes considered economic risks. Single, strong voices cannot prevail against the board’s collective assessment of issues, and there are robust guidelines for fair governance that members actively attempt to meet.

Leadership succession is currently an issue on the table for the organisation and it is starting to trial different strategies. The resilience of Yarnteen’s governance culture and institutional capital is intimately associated with its current senior leadership. A future
Conclusion: The Business of ‘Governing for Business’

How do we live at this ‘place’ where the two worlds meet and remain Indigenous? Indigenous people want to participate in the wider economic, social and cultural lives that are enjoyed by other Australians. But they will not be successful and cannot be expected to succeed as long as they are denied the opportunities and the tools to enable cultural integrity and community survival (Leah Armstrong 2007: 75).

Yarnteen is an example of an organisation with effective, legitimate governance for economic development. It operates in a complex urban community environment and national context, where the challenges facing Indigenous businesses are substantial, and their corporate governance and financial failure is common. The Yarnteen family of organisations has an extremely high reputation in the wider private and public sectors, where it is seen to be a model for other organisations, and a sound investment opportunity. Its economic and strategic success is durable, and raises several important implications for other Indigenous organisations attempting to develop robust governance for sustained enterprise and cultural development.

First, the cultural ‘self’ in Yarnteen’s governance is a complex pastiche that is a product of the Aboriginal history of Newcastle and its early organisations. This history is one of regional mobility and resettlement, long residence in the town by a core group of extended families, continuing strong cultural identities, and the incubation of a network of service delivery organisations in the town and surrounding region. The corporation’s governance strategies and tactics have been based around understanding and managing both the constraints and benefits of that community environment and cultural identity.

Second, Yarnteen’s leaders have adopted a deliberate and effective strategy to insulate the organisation from debilitating community conflicts and jealousies, by keeping its representative structure tight and sticking to its core enterprise development goals at the same time as ensuring that the organisation positively contributes to wider community cultural and social goals. In this way, the organisation manages to maintain a delicate balance between ‘family’ and ‘community’. Alongside these structural strategies, the strength of its internal culture and institutional capital has enabled the corporation to create a set of workable limits and constraints on individual self-interest.
and family factionalism. Other organisations might consider the benefits that seem to flow from establishing a legal and structural demarcation between business and social/cultural initiatives, and from developing their governance representation and membership to support that distinction.

Third, fundamental to the organisation’s economic success has been its internal governance culture and institutional capital. Effective governance is a prerequisite for mobilising other forms of capital and provides better conditions under which that capital can be developed and sustained. An organisation’s institutional environment is a major driver of competitive commercial advantage. The leaders of Yarnteen Corporation have actively managed both their internal and external institutional contexts, and progressively built up deep reserves of regulative, normative and cognitive capital that have enabled it to remain proactive in assessing, taking up and managing economic opportunities.

And fourth, organisational leadership is essential if well designed governance and economic success are to be developed and sustained. Effective leaders are the fundamental drivers of institution building within an organisation. Without their commitment and demonstrated practice in this fundamental area, an organisation will lack the institutional environment that promotes flexibility, resilience and collective performance.

There is little doubt that it is the combination of governance, leadership, organisational flexibility, and institutional strength that has sustained this extraordinarily successful urban enterprise. Furthermore, in achieving this success the organisation has not had to turn its back on its cultural identity, its community and family relationships. Yarnteen not only works in an Aboriginal way, but also meets external demands for effective corporate governance, business standards and financial accountability.
Notes: Paper 7

1. Sometimes these ‘hubs’ are discrete communities. But they also include pastoral stations, fringe camps, and suburbs and neighbourhoods within towns and cities that have a long historical association by particular Indigenous groups and families.

2. Approximately 2500 Indigenous organisations are incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSIA), each of which is encouraged to have a maximum of 12 directors (see Office of the Registrar of Aboriginal and Torres Strait Islander Corporations 2007). In addition, there are approximately an equal number of Indigenous corporations incorporated under state and territory incorporations laws.

3. See for example, the long list of reports from government reviews and inquiries over the last three decades; perhaps most prominently set out in various reports by the House of Representatives Standing Committee into Indigenous Affairs.

4. See Edmunds (1990) for an account of the impacts of colonisation on Indigenous family life and socialisation practices; Smith (1991: 5–6) for a summary of some of the key colonial interventions in Indigenous families and the increasingly negative portrayal of family life and relationships; and also Daly and Smith (2003), in which the ‘deficit’ and ‘asset’ views of families are considered in respect to their impact on the well-being of Indigenous children.

5. As of 1 May 2008, this Australian Government office is now called the Office of the Registrar of Indigenous Corporations (ORIC).


7. ‘Awabakal’ is the spelling of the name for the traditional land-owning group of the Newcastle area, which was used by the founding leaders of the co-operative when it first formed in 1976. At that time, it was thought that no representatives of the original traditional group remained. The leaders of the co-operative adopted the name as a mark of respect for the traditional lands and culture of that group. Recently, a native title claim has been made by extant members who are asserting
traditional ownership, and a contemporary linguistic orthography has developed that spells the same name as ‘Arwarbukarl’.

8. See Champion (2002) for an account of these employment trials.

9. Under a prestigious partnership it negotiated with Microsoft Australia, Yarnteen developed an innovative website to assist networking and best practice exchange between CDEP organisations.
References


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Theme Five:
Governance and Governmentality in the Intercultural Space
Overview of Theme Five: Governance and Governmentality in the Intercultural Space


In her 1998 Wentworth Lecture, Indigenous educator and leader, the late Dr Raymatja Marika, drew attention to a Yolngu word that had informed their rebuilding of governance for local education at Yirrkala in East Arnhem Land:

Ganma is the name of a lagoon where salt and fresh water meet. Water is a symbol of knowledge … and the metaphor of the meeting of two bodies of water. It’s a way of talking about the knowledge and governance systems of two cultures working together … The terms ‘both ways’ and ‘two ways’ are now used more or less interchangeably, and have come to indicate the acceptance of a mixing of western and Indigenous knowledge systems, including about governance.

... The water circulates silently underneath, and there are lines of foam circulating across the surface. The swelling and retreating of the tides and the wet season floods can be seen in the two bodies of water meeting (Marika 1998).

Theme Five examines the intercultural space that Raymatja Marika alludes to in the concept of *ganma*; as both affect and affective of the Australian state and Indigenous people encountering each other through their distinctive fields of governance and governmentality.

Paper 8 investigates the two tropes posed in the title of this thesis, drawing on my extensive fieldwork research carried out with leaders, organisations and families in West Arnhem Land over more than thirty years. The paper is complemented by the collective thesis papers, but especially the ethnographic analyses of Papers 2, 3 and 4, which also address the intercultural space.

The paper addresses the ways in which the Indigenous field of networked governing power and agency are interpreted, negotiated and represented in the context of often
high-pressured demands for both continuity and change. The paper analyses a complex chain of governance events involving Indigenous leaders negotiating with government to establish a regionalised form of local government for West Arnhem Land. The process was carried out within a rapidly changing policy environment, and drew the state and Indigenous leaders into close and sustained proximity for several years.

A particular contribution of this paper is its analysis of the motivations and strategies of the Indigenous leaders involved in persistently reasserting their governance agency, priorities and values into the negotiation process. Another contribution of the paper is its analysis of the cultural and institutional dimensions of the intercultural encounters occurring. Importantly, while some governance events and intercultural relationships were conspicuous by their contestation and mutual resistances; others were conspicuously more benign and enabling.

Turbulence and Emergence

Raymatja Marika’s eloquent description of the inherently turbulent, metamorphic condition of the intercultural resonates with the ethnographic analyses of Paper 8. It shows the intercultural to be a highly nuanced, dynamic space where things are happening — emerging, changing, in transition — where turbulence can be observed. From this perspective, the intercultural is a contact zone of heightened externalisation, essentialisation and incommensurability.

The chain of governance events examined in Paper 8 were rife with intercultural turbulence where ‘large changes can have negligible effects and small ones can have significant ones’ (Bryant 2007: 129). Consequences were unpredictable and open to attenuation and amplification by particular individuals; not only powerful Indigenous leaders and senior bureaucrats, but also by the range of advisors on both sides. Given that the intercultural is not a bounded place, the paper describes how turbulence is generated by contestation over governance and culture. This produces ripples of consequences that emerge across Indigenous networks as well as the wider governance environment.

Patterns of Articulation

Paper 8 indicates that the articulation and penetration of governance and governmentality is not uniform, but rather erratic, multi-directional and characterised by surges. Different agents, institutional instruments and processes from each field
encounter each other at different points in time and space, invoking different motivations, rules and values.

We should not lose sight, however, of the implications of the comments noted in the thesis by Dunduwuy 2, David Mowarlarli and Raymatja Marika. They remind us that turbulence and emergence are productive of underlying, durable patterns. This analytic approach introduces insights from chaos and complexity theories; that is, what at first may appear to be an absence of regularity, structure and relations in a system is in fact more ordered and patterned than previously understood. It can be explained, though not predicted and controlled.\textsuperscript{35} The thesis papers identify deep cultural patterns of order-organisation in both fields of governance and governmentality; patterns which the state and Indigenous people insert into their encounters with each other.

But as suggested by Ulf Hannerz’s metaphor of ‘cultural flow’ and Raymatja Marika’s ‘\textit{ganma}’, even as one perceives structure and pattern, it becomes fluid and ‘entirely dependent on ongoing process’ (1992: 4). The patterning of intercultural articulation therefore encompasses both recognisable relationships, events and conditions, as well as their inherent unpredictability and potentially multiple trajectories.

**Revealing Value and Power**

One predictably unpredictable aspect of intercultural encounters between Indigenous people and the state has to do the pattern of value and relative power that is revealed when the two fields articulate. Paper 8 identifies the issues of representative leadership, decision making, accountability and discourses about ‘law and order’ as particularly high-value points of intercultural contestation. During the governance events described, particular realms of sanctity (or high value) are protectively obscured from the interfering gaze of the Other. Those realms include the sacred Dreaming and restricted ceremonial knowledge of Indigenous Australians; the Ministerial cabinet-in-confidence discussions of the Australian state; the policy making processes of departments; or the commercial-in-confidence data of mining companies.

In other words, the intercultural space reveals ‘no-go’ or exclusion zones where boundaries are reasserted, just as much as it opens up interfaces and contact. The paper argues that these mutual exclusion zones are areas where Indigenous and statist sources of power are most concentrated, and therefore potentially most at risk of loss or diminution from the uncontrolled intervention of the Other. These zones also act to
reinforce Indigenous people’s perception of there being separate and different Indigenous and non-Indigenous ‘domains’ of governance and culture.

Another pattern revealed in the state’s encounters with Indigenous governance is that of the modes of concentrated power and the forms of capital they bring to bear. These include not only the state’s physical instruments of intervention, facilitation and coercion, but also its statutory, jurisdictional, economic, cultural, symbolic and institutional capital (Bourdieu 1999: 57–67). These can be said to constitute a form of meta-governance capital through which the Australian state exercises considerable relative power over Indigenous cultures of governance.

But the pattern of state power is not always experienced by Indigenous people and their organisations as ever-present, overwhelming or uniform. Indeed, Paper 8 indicates that when wielded via the agency of government departments and bureaucrats, the state’s power may be just as situational and difficult to sustain, and subject to Indigenous assessments of its motivation and legitimacy. On the bases of those assessments, Indigenous people and organisations activate their own articulatory politics of governance.

From this standpoint, Paper 8 reveals that in the context of a power and resource imbalance that clearly favours the Australian state, the intercultural articulation of the two fields creates a pattern of shifting interdependency between them. The fact that Indigenous networks are deeply embedded within the state’s governmentality of Indigenous affairs, and their organisations heavily reliant upon state financial largesse, could be taken to suggest that Indigenous Australians need the benefits of a relationship with the state more than the state does. However, Paper 8 reveals an important dimension of intercultural articulation that tends to be overlooked; namely encounters are two-way penetrations of power (albeit of different kinds and magnitudes), not unidirectional.

In certain governance events, the state is rendered vulnerable and dependent in exercising its power as a result of the agency and tactics of Indigenous people as they assert their preferred modes and values of governance. The state finds itself having to respond to the cultural dimensions of Indigenous nodal-networked governance, even while remaining highly ambivalent about these. In such ways, the Indigenous penetration of the state undermines the latter’s naturalised assumption of a dominant position of power.
**Intercultural Representations**

The pattern of intercultural articulation between the fields of state governmentality and Indigenous governance is shown in Paper 8 to be particularly influenced by a set of ‘Self-Other’ representations that are co-dependent. These play a vital part in determining the patterns of power and agency mobilised by both sides. For example, when experiencing the state in its mode of unilateral intervention and regulation, Indigenous leaders deploy tactics of subversive agency and the ‘art of not being governed’ (Scott 2009).

On such occasions, the intercultural space is experienced by both the state and Indigenous Australians as an arena of alienating mutual aversions and essentialisms. For example, the state is represented by Indigenous people and their supporters as punitive, cunning and evasive. Indigenous Australians are represented by the state and its supporters as poorly governed and nepotistic, and their culture as problematic for ‘good governance’. This set of mutually averse representations then serves to further embed a pattern of contested power and agency. This is perhaps the more common scholarly and public media accounting of the intercultural articulation.

However, Paper 8 also documents an under-researched aspect of the articulation between fields of governance and governmentality; namely, when wariness and cynicism are mutually suspended in the context of more personalised pattern of face-to-face engagement, which is positively characterised by both sides as constructive and beneficial. In this pattern of encounters, the state is represented by Indigenous people as enabling, ‘working with us’ as a facilitator of a ‘two-way’ process. Indigenous Australians are represented by the state as ‘working with us to develop strong governance’. The intercultural turbulence generated in this mode of encounter is actually productive of mutual accommodation, condoned innovation and realignment. The role of individual agents in both fields is shown to be pivotal in creating such intercultural moments of trust and common ground.

**Summary**

Theme Five draws out a more nuanced approach to the intercultural articulation of the fields of governance and governmentality. It is a zone of contact and exclusion characterised by turbulence and emergence. This generates a complex patterning of asymmetrical interdependence that often generates conflict and incommensurability, but can also be productive of mutual engagement and accommodation. In other words, there
is a continuum of modes of articulation, each associated with particular kinds of ‘Self-Other’ representations, a shifting interdependency, and different modes of power and agency. Some of the articulatory politics that come to the fore are debilitating in their outcomes; others leave room for strategic negotiation and accommodation.

In all cases, the articulation around the fields of governance and governmentality reveal areas of high cultural value and boundary exclusion. To that extent Indigenous governance and governmentality operate as culturally distinctive formations, alongside their complex intercultural entanglement.
Paper 8: Cultures of Governance and the Governance of Culture: Transforming and Containing Indigenous Institutions in West Arnhem Land


You can’t make people good by Act of Parliament (Oscar Wilde, *A Woman of No Importance*, Act 1).

We’ve had all our meetings and we had to be professional. We had to do our governance properly. We had all that governance training—now we’re good! But the government people who pushed that ‘good governance’ idea; they aren’t here. Where are they? They want us to govern, then they should let us govern (West Arnhem Shire Transitional Committee member).

Introduction

In the 40 years since the 1967 referendum in Australia\(^1\), governments have developed legislation, policies, and a multitude of institutional mechanisms in their attempts to govern the Indigenous population and address its entrenched socioeconomic disadvantage. These interventions into Indigenous lives by the state have been primarily predicated on western values, institutions and beliefs about what constitutes ‘good governance’ and, accordingly, what Indigenous Australians should do to develop it.

Implicit in these government strategies has been a deep-seated lack of confidence in Indigenous ‘culture’ itself, exacerbated by contradictory underlying assumptions. On the one hand, the hope of policy makers is that if they can only unlock the ‘da Vinci Code’ of Indigenous culture they will somehow be able to design more ‘culturally appropriate’ government programs and service delivery, thereby more effectively securing government policy objectives. On the other hand, Indigenous culture is often pathologised by politicians, bureaucrats, the public, and the media. It is viewed as a form of inherited virus that will inevitably contaminate and undermine western standards of ‘good governance’. So, ‘Acts of Parliament’ and the often unilateral imposition of the state’s sovereign powers are deemed to be necessary to ‘protect’ Indigenous people from the governance disabilities of their own culture. At such times,
the Australian state reasserts its own ‘culture of governance’—that is, the set of shared values, government institutions, powers, laws, modes of behaviour and norms—in an attempt to direct and mould Indigenous cultures and their systems of governance into its own democratic likeness.

This chapter poses two symbiotic concepts—the ‘governance of culture’ and ‘cultures of governance’—as tools to analyse the nature of the tangled engagement between contemporary Indigenous and non-Indigenous ‘cultures of governance’ in Australia. Points of interaction focus on the institutional and practice level of governments, and Indigenous communities, their leaders and organisations.

Institutions are the glue of governance; they are the ‘rules of the game’, the formal and informal ways in which things get done. As such, institutions are pre-eminently about power and who gets to exercise it. In the intercultural context of post-colonial governance in Australia, institutions represent a rich site of visible interaction and contestation between the Australian state and Indigenous peoples.

Employing these two concepts, this chapter first examines how the Australian state attempts, through its policy, statutory and bureaucratic institutions, to govern contemporary Indigenous cultures and their different systems of governance. The same concepts are then used to explore the ways in which Indigenous people use their culturally-based institutions to buffer and reassert the legitimacy of their governance arrangements and decision-making authority. In doing so, Indigenous governance institutions are being re-imagined, recreated, transformed and constrained—both from within and without. But the institutions of the Australian state, in the arena of policy and implementation, are also being affected. Both sets of mutual transformation and containment are investigated.

The analysis focuses specifically on a case study conducted over the last five years in West Arnhem Land. There, Indigenous people (referred to as Bininj in the local Kunwinjku language) and the Northern Territory (NT) Government have been involved in planning the establishment of a regionalised form of local government, for the purposes of delivering essential municipal services and infrastructure to the region as a whole. Some of the Bininj leaders involved are relatives of families with whom I worked over 25 years ago when employed by the Northern Land Council to map land-tenure systems in West Arnhem Land.

In the course of working towards their goal of a strong regional organisation, several Bininj community organisations and their elected leaders have attempted to build
elements of a new ‘culture of governance’. To do so, they have used a range of techniques and tools to design innovative governance institutions and structures, and to imbue them with practical capability and legitimacy.

In this chapter I examine the design techniques and their points of intersection with government processes, and consider the implications for both the Bininj and government parties. Not all the initiatives and solutions are seen as legitimate or effective by the state, or by some Indigenous community members. How the disjunctions between the two cultures of governance are contested and negotiated forms a large part of the analysis. Whether the process has led to the desired (and different) practical outcomes sought by the Indigenous and non-Indigenous (or Balanda in Kunwinjku language) participants involved, and whether there has been any growth in their mutual comprehension are considered by way of conclusion.

**The Research Process**

The research on which this paper draws is ethnographic, multi-sited, and aims to make both a practical and a policy contribution, and so deserves a brief account. Over a 25 year period I have undertaken sporadic field based research with Indigenous families and groups in West Arnhem Land on their traditional land tenure patterns and social organisation. This work has included mapping clan countries and sacred sites, assessing the socioeconomic impact of mining and other resource agreements, and reviewing the operation and performance of Indigenous organisations. An integral part of the research has been analyses of the wider government policy, legal and funding environment within which Indigenous rights, interests and institutions have been recognised or limited.

My research frequently ventured into the cultures of government bureaucracy and departments. Most recently, between 2003 and 2006, I was engaged as a part-time policy researcher by the NT Government’s Department of Community Development, Sport and Cultural Affairs (DCDSCA) under contract with my employer, the Centre for Aboriginal Economic Policy Research (CAEPR) at The Australian National University. During that period, I provided research analysis, evaluation and advice to the Department regarding the effectiveness of government policy, projects and implementation regarding Indigenous governance, community development and regionalisation.

In 2004, I was invited by two of the department’s Community Development Officers (CDOs) to work with them on planning and implementation for a specific regional local
government initiative in West Arnhem Land. Shortly after, I was asked by the Indigenous members of the newly-formed West Arnhem Land Regional Authority (WCARA) Interim Council representing the communities and organisations involved, to continue this work with them and attend their meetings. This, in turn, further engaged me in departmental (as well as inter-agency and cross-government) meetings about the local government reform over 2004–06.

In late 2006, after my contract with the Department had finished and I returned to my university, the Interim Council requested that the WCARA process become part of the national Indigenous community governance research that I was jointly involved in conducting. Subsequently, I have continued to work in the capacity of researcher and ‘special advisor’ to the Indigenous members of this West Arnhem regional committee.

These overlapping professional roles enabled me to experience first hand the different government, bureaucratic, and Indigenous culturally-based perspectives, strategies and agency at play in the regional initiative. Whilst it was by no means inclusive of all the parties involved, and on occasions problematic, the multi-sited research generated an unusually broad set of insights into the complex and rapidly changing intercultural process.

Seeing Governance Like a State

Perhaps no people ever had more rudimentary rules of law and government than those savages … with hardly any government over the wandering clan except the undefined authority of the ‘bully’ of the tribe (Tylor 1894:150).

… in many Aboriginal communities, social organisation has completely broken down. The people have shown they are incapable of governing themselves. There is no point in consulting them about the creation of authority; authority has to be created for them. Their lives will then better match our own (Hirst 2007).

How we see governance makes a difference. As the commentators above suggest, from colonial settlement through to today, Indigenous governance has often seemed invisible, unknowable, and underdeveloped to non-Indigenous Australians. It has been treated as a kind of ‘gubernare nullius’

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, a tabula rasa onto which could be written the language, norms and institutions of western liberal statecraft and control.

In Seeing Like a State, James Scott (1998: 3) argues that efforts to permanently settle highly mobile sub-populations like nomads, gypsies, vagrants, and hunter-gatherers has
been a perennial project of the modern state, underwritten by strategies to standardise and simplify ‘what was a social hieroglyph into a legible and administratively more convenient format’. In Australia, British colonists similarly went to considerable lengths to make the alien social and institutional ‘hieroglyph’ of Indigenous governance and leadership legible to themselves.

In the early days of the colony, Indigenous groups were perceived to be acephalous, lawless and unruly. Metal ‘kingplates’ and ‘queenplates’ were bestowed on favoured elders—hung around their necks to make them visible to the British authorities. People were often forcibly relocated from their lands and centralised into artificial communities where ‘councils of elders’, ‘chiefs’, ‘kings’ and ‘queens’, ‘princes’ and ‘headmen’ were created by missionaries and government reserve managers as part of an arsenal of techniques to govern and immobilise people. This naming of Indigenous governance was about state surveillance and control.

Today, western democratic concepts, structures and governance institutions continue to be imposed through such devices as legislative and policy frameworks that require the incorporation of social groups into organisations; the ordering concepts of democratic elections and voting systems; the asserted primacy of individual citizenship over collective rights; and via the statutory naming of newly-created categories of people on whom are bestowed specified decision-making rights, responsibilities and authority by the state.

The allocated mark of condoned authority is still used by governments. There are now legal categories of people—such as ‘traditional owners’, ‘authorised claimants’ and ‘native title holders’— who have to be registered and certified, and ‘councillors’, ‘chairpersons’, ‘bodies corporate’ and ‘governing boards’ who are required to operate under legal and constitutional guidelines.³

Government’s own ‘culture of governance’ in Indigenous affairs is based on institutionalised forms of policy, program and grant funding that are supported by the tools of financial compliance and accountability, service delivery outcomes, administrative review, and technical audits. These tools are activated by the ever-changing face of government departments, agencies and committees, which work to defend their relative influence, functional ‘territories’ and budgetary power.

Aligned to departmental territories are vast bureaucratic networks where influential senior officers formulate policy frameworks and devise implementation strategies for
government consideration. In doing so, they create their own internal language for the operation of Indigenous affairs.\textsuperscript{4}

For most public servants, the face of Indigenous governance is incorporated community organisations, of which there are an estimated 5000 across Australia. Even in the most well-intentioned policy approaches, the governance of Indigenous organisations is invariably made subservient and overwhelmed by the workload of mundane bureaucratic procedures and financial reporting that they are required to undertake.

As public servants are increasingly centralised and work behind the key-coded locked doors of departmental offices, they become further distanced from the practical realities of Indigenous community governance. The overall effect has been a growing field-based disengagement of bureaucrats from Indigenous communities, and a widening misalignment between government policy and departmental practice.

For Indigenous communities and their organisations, the state does not exist ‘up there’, at a disembodied remove from them. The sovereign governing power of the state is plain for Indigenous people to see on a daily basis. They experience it in the form of visiting public servants, the ever-changing rules of service delivery and funding, the deluge of information gathering by governments, and the burdensome routine of meetings and consultations.

In the local interaction between the state and Indigenous people, there are mutual blind spots where government policy rationales and decision-making processes are just as opaque and confounding to Indigenous people, as Indigenous governance processes and institutions are to governments and their officers.

But amongst the spaces of mutual unintelligibility of each other’s ‘social hieroglyphs’ (cf. Scott 1998), some individual government field officers do make the room to develop personal relationships of trust with leaders and organisations, and so are better able to negotiate with them, provide credible advice, and undertake community development work. Similarly, some Indigenous leaders and organisations look for room to build relationships with particular public servants and, through them negotiate the conditions under which they can better exercise their own authority, make decisions and mobilise action. They do so, however, in an environment of seemingly constant policy change and containment by the state. In the process they occasionally transform aspects of their own governance cultures, and subvert the techniques and
institutions by which the state seeks to govern their culture and deny their self-governance.

This institutional interplay between ‘cultures of governance’ and the state’s goal of ‘governing Indigenous culture’ is fully evident in the West Arnhem Land process of regionalising local government.

The NT View of Governance

Northern Territory Government discussions with Indigenous leaders from West Arnhem Land about establishing a regional local government began in late 2002 under the reform agenda of the Building Stronger Regions, Stronger Futures (BSRSF) policy. Since then, the progress of the West Arnhem initiative has been subject to a constantly changing policy environment within the NT Government. The impacts of this have been exacerbated by equally tumultuous policy reforms at the national level.

The collaborative phase

The BSRSF policy was one in the long line of efforts by both the NT and Australian Governments to create various kinds of representative and administrative ‘regions’ over the Indigenous population. In the NT, its antecedents lay in the previous Government’s policy initiative known as the Reform and Development Agenda (RADA). This policy sought to amalgamate the existing 65 local governing bodies into around 20 ‘larger and more sustainable’ councils, ‘ideally representing and delivering services to at least 2000 people’. A key goal of RADA was the creation of ‘Indigenous governments with legitimate authority’ (Coles 2004).

The BSRSF policy similarly sought the voluntary amalgamation of community councils into large-scale local governments, which were to be called Regional Authorities, with 20 expected to be established. The policy vision was to enact ‘a radical transformation in the method of service delivery and regional Indigenous governance’ (Ah Kit 2002; see also Ah Kit 2003: 2–3) in collaboration with community councils and their leaders.

The rationale was the perceived parlous state of local government councils in the Territory, characterised by one NT Minister as constituting a ‘stark crisis’ of governance that included widespread ‘organisational bankruptcy’, ‘institutional incapacity’, ‘ineffective service delivery, fraud and corruption by staff and leaders, a high turnover of key non-Indigenous staff’, and an ‘historical legacy of poor governance’ (Ah Kit 2002: 1).
Evidence for that view came not only from lurid media accounts, but also from DCDSCA audits and compliance reviews of community councils. Those reported indicated that close to 50 per cent of local government bodies were either ‘highly dysfunctional’ or ‘at risk’ in terms of their financial management, service delivery and governance.

A critical factor underlying this failure rate has been the issue of scale. The average population serviced by Indigenous community and association councils is 670 persons (Local Government Association of the Northern Territory (LGANT) 2003: 4). In other words, many small, isolated community councils simply do not have the population size, economies of scale, resources, administrative systems, personnel or management expertise to adequately meet either their existing or potential service delivery obligations (Tapsell 2003).

In launching the BSRSF policy, the NT Government argued that ‘effective and legitimate frameworks for regional governance [would be] the foundations for any regional development strategy that will be sustainable over time’ (Ah Kit 2003). The policy intention was that regional authorities would:

- have jurisdiction and powers as regionalised forms of local government under the *Local Government Act 1978 (NT)*;
- be established by ‘voluntary agreement’ between councils and require a ‘substantial majority of residents in favour’;
- be able to undertake ‘regional decision making to determine priorities, establish service delivery policies and allocate resources’; and
- ‘provide for decision-making structures that meet the needs of the communities to be governed and, where applicable incorporate strong relationships with cultural decision-making arrangements and particularly traditional owners’ (Ah Kit 2003).

The policy emphasis was to be on the flexibility of structures and timeframes, and the development of culturally-based representative and electoral arrangements.

A review of the *Local Government Act 1978 (NT)* was proposed to provide a better statutory foundation for regionalised local government.\(^7\)

In mid 2004, at the end of the policy’s first year of implementation, the Australian Government abolished the Aboriginal and Torres Strait Islander Commission (ATSIC). ATSIC had been a statutory-based national forum for Indigenous Australians, based on
the election of representatives from every state and territory. Its abolition, and the attendant dismantling of the regional council structure, left a major representative vacuum in the NT, as elsewhere. So, while one form of statutory regionalism was being abolished, the proposed regional local governments came to be seen as a possible alternative in the eyes of some in the NT and Australian Governments, and of some former ATSIC regional councillors as well.

To cement what became a fortuitous convergence of policy directions, support for regional authorities was included in a bilateral Overarching Agreement on Indigenous Affairs negotiated between the NT and Australian Governments in mid 2005. A schedule to the agreement set out shared goals for the two Governments, which included working together to ensure:

- ‘effective and legitimate representation’;
- that ‘the establishment of Regional Authorities involves voluntary amalgamations of community councils based on extensive and effective consultation to ensure constitutions reflect local aspirations, and have cultural legitimacy’; and
- that the ‘amalgamation of community councils into Regional Authorities effectively addresses current problems of scale, improves service delivery, reduces staff turnover and ensures greater coordination and continuity of interest in community economic and social development’ (see Schedules 1 and 2.3 to the ‘Overarching Bilateral Agreement on Indigenous Affairs’, 2005).^8

However, little more than 18 months later, in late 2006, the BSRSF policy framework was dramatically reformed by the NT Government and replaced with what was named the New Local Government policy.^9

What had happened? The sudden demise of the BSRSF policy owed much to the ideological dissatisfaction and implementation difficulties experienced by government bureaucrats in trying to accommodate Indigenous ideas about ‘regions’ and representation for local government, and their consensus modes of decision making about these matters. Discussion and decision making took time, internal negotiation and sensitive facilitation—all of which challenged the capacity, commitment and resources of both the NT and Australian Governments. The political imperative for fast results chaffed at the more measured pace of voluntary regionalisation, and in the meantime, several NT community and association councils had collapsed owing to poor financial administration and governance.
Reverting to coercion

The *New Local Government* policy framework attempted to contain the inherent slipperiness and flexibility of Indigenous governance institutions and decision-making processes. The policy did away with any formal recognition of culturally-based processes for determining local government regions, and effectively turned a blind eye to the potential for using Indigenous governance systems and issues of cultural geographies as the basis for the shire model.

Regionalisation was still the goal, but it was to be mandatory and meet government-imposed deadlines. To signal this major policy turnaround, Regional Authorities were renamed ‘Shires’. There were to be only nine in total, and their boundaries would be determined by government.

Indigenous input was corralled into newly-formed ‘Transitional Committees’ created by government to provide it with ‘advice’ about the establishment of each shire. Government, private sector and non-Indigenous stakeholders were able to participate on these committees, widening the range of parties and views. An ‘Advisory Board’ was established to support the implementation process and provide recommendations to the Minister for Local Government. Its members and the Chair (an experienced Indigenous leader) were appointed by the Minister.

The new policy proposed that the shires:

will be democratically elected by the people, just like everywhere else in Australia. All councils including the municipals will have a minimum of six and a maximum of twelve councillors … [and that] All Territorians who are registered on the electoral roll will have a say in who will represent their community by voting at the council election (DLGHS 2007).

A ‘one-size fits all’ approach was applied. The shires would have a single common governance structure, each with the same cap on the total numbers of representatives, and each sharing a single model constitution designed by the DLGHS and Parliamentary Counsel. All would deliver the same mandatory set of ‘core’ local government services, to be identified by government and set out in the new legislation.
In the early days of this NT policy reversal, in June 2007, the Australian Government responded to a damning report on child abuse in NT Indigenous communities (Anderson and Wild 2007) and, without notice to the NT Government, initiated a unilateral intervention to takeover the administration of some 60 remote Indigenous communities, including those in the West Arnhem region. As part of the intervention, the Australian Government would compulsorily acquire leaseholds for discrete Indigenous settlements for an estimated minimum period of five years. All communities located on Aboriginal inalienable freehold land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) would have their permit systems revoked, and legislation was drafted and passed to enact changes to this Act.

Australian Government administrators (to be called ‘government business managers’), answerable to the Emergency Response Taskforce comprising Australian Army and Department of Families, Community Services and Indigenous Affairs and other government officials, were placed into ‘priority’ communities. Their job was to oversight mandatory health checks on children and to coordinate the intervention requirements in each community.

In late 2007, national elections were held and the Labor Party was elected as the Australian Government. In the early phase of its first term, it committed to evaluate the implementation of the NT intervention, whilst continuing with its basic strategies.

**Regionalisation in West Arnhem Land**

In the context of this hyperactive policy environment—with its extreme swings from collaboration to coercion and intervention—the Indigenous organisations and leaders involved in the West Arnhem initiative were forced to cope with several major, imposed changes of direction.

**The collaborative phase**

Indigenous leaders from West Arnhem community organisations became involved in the regionalisation process in mid 2003 as part of what was referred to as the ‘Top End Triangle’ (TET), comprising representatives from the Pine Creek, Coomalie, Kunbarllanjnja, Warruwi, Minjilang, and Jabiru local government councils. In December 2003, at a meeting of TET representatives, members of the Minjilang, Warruwi and Kunbarllanjnja Community Councils split from the other representatives in the TET group. They perceived there to be a lack of communal purpose between the *Bininj* and Balanda organisations, and felt that priorities were weighted to the latter.
The West Arnhem Land representatives began to see the potential for an ‘Indigenous Regional Authority’ and to work towards the establishment of what they eventually called the ‘West Central Arnhem Regional Authority’ (WCARA). At this stage, the nearby Jabiru Council stayed out of the process, and the Coomalie and Pine Creek Councils decided to proceed together in a separate initiative.

The initial leaders of the WCARA process were Bininj elected representatives from three community councils and two outstation resource organisations, including:

- Kunbarllanjnja Community Government Council;
- Warruwi Community Incorporated;
- Minjilang Community Incorporated;
- Demed Outstation Resource Association Incorporated; and
- Jibulwanagu Outstation Resource Association Aboriginal Corporation.

Together with their Chief Executive Officers (CEOs), up to three representatives from each organisation began meeting every six to eight weeks and, in August 2004, formed the WCARA Transitional Council with the goal of progressing discussions about amalgamation into a single regional authority. Representatives from the Local Government Association of the NT (LGANT) and the Commonwealth Office of Indigenous Policy Coordination also attended these meetings.

Interim Council members initially talked about the regionalisation policy both as an opportunity to secure greater authority and control for Bininj people over the things that mattered to them, and to exercise greater influence over government funding and service delivery to the region:

We will get to say what we want in our communities, we will set the priorities … We have control over this project … We will create policies and strategies that achieve more local employment and better services … We will have a much stronger voice speaking as one to government … The government always has a hidden agenda; we want our say from the word go (Members of the WCARA Interim Council).

The proposed area for the regional authority was approximately 25,000km2—all of it inalienable Aboriginal freehold land under the ALRA. The area encompassed several inter-related language and landowning groups, three large discrete community
settlements (two of which were on islands), and numerous small dispersed outstations (see Fig. 4.1).

The process was substantially facilitated by DLGHS and particularly through the efforts of two of its CDOs. From 2003 onwards, this male/female team travelled extensively throughout West Arnhem Land, disseminating information and holding discussions with community leaders and organisations about the BSRSF regionalisation policy. In doing so, they developed a large network of contacts with senior leaders and family groups, and built up strong relationships and considerable personal trust with local Indigenous residents. Through this community development approach, they facilitated the formation of the Interim Council and subsequently were asked to act as the secretariat for their meetings.

Fig. 4.1: The proposed region for the West Central Arnhem Regional Authority, under the BSRSF policy.

In mid July 2005, a ‘Memorandum of Understanding’ signed between the Department of Local Government, Housing and Sport (DLGHS) and the participating organisations formally committed all parties to support the decision-making work of the Interim Council to establish a regional authority for West Arnhem. A timeframe of December 2005 was proposed for its establishment.
Over that early period there was scepticism amongst community residents and Interim Council members about the extent of the NT Government’s commitment to full Indigenous participation in regionalisation. Fears were expressed that the Government would simply impose a solution rather than negotiating with residents and their elected representatives.

Despite these reservations, the WCARA Interim Council met regularly between 2004–06. The workload was intensive for both the members and the departmental officers involved, as they navigated a complex organisational and legal transition. The proposed regional authority structure meant that the three existing community councils would have to be entirely dissolved as local government organisations. New election processes would also have to be designed and held for regional councillors, and the local government assets, functions, staff and administrative systems of the separate councils would have to be transferred across to the new authority. The BSRSF policy sought cost-sharing and resource efficiencies, so a rationalisation of some staffing positions was also proposed.

During this phase, the WCARA Interim Council made a number of collective decisions about the authority’s governance and organisational structure, administrative arrangements, business planning, its system of representation, external boundaries, election procedures, headquarters, and service delivery roles (see Fig. 4.2).

**Fig. 4.2: Proposed representative structure for the West Central Arnhem Regional Authority.**
During 2005–06, the Interim Council participated in regular governance capacity-building sessions at their meetings, and spent considerable time developing a culturally-based constitution with a unique Preamble. A vision statement for the regional authority aimed: ‘To develop safe communities for families, provide real jobs for local Indigenous people, and promote economic development through strong legitimate governance’.

Considerable work was involved in developing this constitution, designing a ward system for voting that was based on a Bininj cultural geography, and documenting a business plan for the authority. The process required considerable time and commitment from senior government bureaucrats, extensive community development work, as well as legal, funding and administrative support from both the NT and Australian Governments. To coordinate Government efforts, the DCDSCA convened a Project Management Group with officers from the NT and Australian Governments and LGANT. This inter-departmental group met every six to eight weeks over 2005–06.

But after the NT Labor Government was re-elected in 2005, its restructuring and renaming of the DCDSCA (which became the DLGHS) had significant consequences for the regionalisation process. In particular, the participation of government officers changed frequently on the Project Management Group for WCARA. Nevertheless, the group drafted a transitional funding framework for the region, considered mechanisms for streamlining the transitions to regional programs, and held interviews to employ a Transitional Manager to steer the administrative amalgamation of staff and community council resources.

Over three years had passed since the TET group first met. The Interim Council anticipated the establishment of the regional authority within just a few months. In late 2006, however, rumours abounded that the NT Government was contemplating changes to the BSRSF policy. In early 2007, a New Local Government policy was fully formulated by DLGHS and a detailed implementation plan put to the NT Cabinet for consideration. It required several NT Cabinet meetings in the first half of 2007 for the new policy to be officially endorsed. The policy was immediately implemented by DLGHS.

Coercive implementation

What did this mean for the WCARA Interim Council and participating community organisations, perched, as it were, on the brink of establishing their own authority?
First, the WCARA Interim Council was told by the Department that it would now be required to include Maningrida community and Jabiru township. The new ‘region’ was thereby extended to cover approximately 32,200km$^2$ and an estimated total population of some 5000–6000 people (see Fig. 4.3).

**Fig. 4.3: The required region for the West Arnhem Shire under the New Local Government policy.**

This larger shire involved an even more complex set of organisational and governance transitions. Like Kunbarllanjnja, the Maningrida Community Council is a local government under the *Local Government Act 1978 (NT)*, and so would have to be entirely dissolved as a local government organisation and its relevant functions transferred to the new shire. Additional discussions would be needed with the
Bawinanga Aboriginal Corporation, which provided services to numerous outstations, and with Jabiru town and its Council.

The mandatory inclusion of Jabiru confronted the WCARA Interim Council with a challenging issue—until then the proposed regional organisation included only Bininj communities and organisations, and covered inalienable Aboriginal freehold land. Jabiru’s inclusion extended the region beyond the boundaries of Indigenous-owned land, which meant the Indigenous members of the Interim Council would have to accommodate a non-Indigenous town, its residents and elected representatives, and its different cultural values and priorities. In other words, a very different kind of regional local government was being proposed under the new NT policy.

Second, Interim Council members were extremely angry that their collective decision-making role had been usurped. They were told by the Department that they would henceforth be referred to as a ‘Shire Transitional Committee’ and have an identified consultation and advisory role. They would be required to provide their suggestions to the Advisory Board that serviced the NT Minister for Local Government, who would make all the final decisions about their organisational structure.

Decision-making power about the management, staffing, financial status and business plans of the new shire was abruptly reclaimed by government bureaucrats. A CEO was hired for them through a DLGHS process in which the new Transitional Committee had little involvement. A Transitional Shire Manager, who was an officer from the Department appointed by the Minister, became the legal face of the shire delegated to act as its decision-making Council, until such time as members were elected.

One committee member summarised the impact of the changes in these terms:

the NT Government is thinking ahead of us before we get to make our own decisions. It’s running ahead of us. It’s not even talking to us first about these things—so we are just talking about things that the government has already decided. We are already cooked—the cake has already been cooked by the government. We’re not involved in making that cake; the government has made the decisions ahead of us (WCARA Interim Council Member).

Third, the Council was no longer seen by government to be ‘representative’ owing to its requirement that members from Maningrida and Jabiru should be included. A West Arnhem Shire Transitional Committee (WASTC) replaced the WCARA Interim
Council, and a cap was put on the total membership by the Department. This meant that the number of representatives on the old Interim Council had to be cut down in order to include new members. Consequently, it was a smaller core of senior leaders from the Interim Council who moved across to the new committee.

Maningrida and Jabiru were initially unhappy to be told to enter into a regional process in which, until then, they had chosen not to participate. Not surprisingly, it took their representatives some time to familiarise themselves with the issues and decisions already made. Initially, they felt marginalised from what had become a very united team of representatives on the WCARA Interim Council.

From the point of view of the Interim Council members, they felt they were being told to start all over again, having to reconsider issues and decisions that they had already considered and made. They also realised that it would mean a considerable delay in the establishment of the new organisation.

Fourth, the culturally-based institutions that the WCARA Interim Council had designed, such as their constitution and preamble, were effectively thrown out. Also tossed aside was their solution for ward representation, which had sought to balance a Bininj nomination process for the single traditional-owner representative, alongside Balanda election procedures for three other representatives.

The overall effect was to relegate the Interim Council and its new Transitional Committee guise to a consultative, advisory role. The sense of disempowerment was felt keenly by all members:

Those foundations [for the regional authority] were built four years ago, and then they just get knocked from under us by the government. The horse hobbles are still there on us. That government just like a stockman sitting on the fence, they put the hobbles on us to keep us tied down. We’ve been put in the paddock and we’ve eaten every bit of grass. When our hobbles get rusty and we look like we might get out and free to eat some new green grass, someone just comes in and puts a new set of hobbles on us (WCARA Interim Council member).

But what was extraordinary at this point was that the WCARA Interim Council members decided to continue to participate in the process. The fact that they did is testimony to the significant headway they had made in working together as a team, and the effort they had put into designing their own governance institutions and making
consensus decisions. As a consequence of this, they had developed a strong commitment to each other and to a shared vision of a future regional forum through which they hoped to exercise greater self-governance. They had also developed a significant sense of trust in the two CDOs working with them, whom they felt would continue to provide them with frank and robust advice about the new policy demands of government.

In order to stay engaged in the radically reshaped process, the Indigenous participants had to use every opportunity to strategically and persistently reinsert their own governance priorities and goals. This has included grappling with a non-Indigenous culture of governance within their meetings and negotiating a space for the development and exercise of their own institutions and values.

**Re-imagining Indigenous Governance**

The *Bininj* leaders involved in this regional governance process have used their traditional rules, values and system of social organisation to re-imagine their contemporary governance needs and solutions. An important driving force behind this has been the desire to create a regional organisation that will better reflect *Bininj* cultural values and institutions: ‘We will have a council that respects and works with our culture’.

Some of this re-imagining has been highly formalised; some has been spontaneously informal. Meetings of the Interim Council (and then the WASTC) were an important catalyst for designing workable governance structures and institutions, and highlighted the differences between *Bininj* and government expectations and concepts.

The ‘glue’ (cf. Cornell and Kalt 2000) of *Bininj* governance lies in its institutions; that is, in its own ‘rules of the game’, the way things should be done. These give legitimacy to practice, and include laws, kinship and marriage systems, behavioural and gender norms, family values, religious beliefs and moral system, principles of land ownership, ceremony and ritual, and so on (see Kesteven and Smith 1984; Smith 2007). Not surprisingly then, the creation and transformation of governance institutions became a focus for innovation, containment and contestation by *Bininj* and government bureaucrats alike.

**Constructing the region**

The tools and concepts employed by the state to construct the new local government ‘region’ diverged greatly from those of *Bininj*. The NT Government emphasised the
need for an ‘efficient’ scale of population for local government and to have boundaries precisely mapped:

Half of the existing Territory councils are too small to provide and pay for the services that communities should expect to receive. Many of the councils are too small to attract experienced senior staff to run the services … The shires will be big enough to negotiate with the Territory and Federal Governments on behalf of their communities (McAdam 2007).

Rather than employing the cultural-community blocs recommended by the WCARA Interim Council, voters were to be congregated by requiring them to officially register against their place of residence as the basis for voting in particular wards. In the early phase of the BSRSF policy framework, Bininj leaders employed a ‘cultural geography’ in their construction of the new region. Their primary criteria for creating the external regional boundary was about ‘who’ should be included and excluded from the new region, on the basis of dense layers of traditional land-owning relationships and networks. In other words, the region and its boundary was, first and foremost, a negotiated interpretation by leaders of who legitimately constitutes the regional Bininj ‘self’.

In the second policy phase of regionalisation, this internal reading of the cultural boundaries of relatedness was forced to expand as a result of the above-mentioned mandatory inclusion of the Maningrida and Jabiru communities—neither of whom was initially included under Bininj criteria for the proposed region.

To this extent, the new, larger shire boundary has been an evolving compromise between Bininj concepts of what is the culturally relevant geography for the region, and the NT Government’s consideration of what constitutes the best scale to secure its goal of greater cost and service delivery efficiency. In this instance, the legal and policy powers of the state enforced a major constraint on the re-imagined Bininj regional ‘self’.

Nevertheless, throughout the process, Bininj leaders continued to generate a correlation between their core cultural metaphor of ‘one family’ and the proposed region:

We need to stick together and look after each other … It [the committee and proposed regional shire] has brought families together in the region … We have had to work hard and we have become one big family (WCARA Interim Council members).
The overarching Bininj metaphor of ‘one family’ denotes a core institution that underlies individual and kin-group identity. It has been used frequently by members of both the WCARA and WASTC to invoke the values of mutual support and reciprocity, loyalty, and shared work efforts that are seen to lie at the heart of Indigenous ‘family’ life. Its use in the regional context seeks to imbue the proposed shire and its governance arrangements with the cultural legitimacy derived from the concept of ‘family’.

This metaphor also has a domesticating power. The leaders on the earlier WCARA Interim Council have continued to invoke it during WASTC meetings in order to extend the ‘ties that bind’ to the newly included communities of Maningrida and Jabiru. Their purpose has been to ease the transition of the new committee members from the status of ‘strangers’ or ‘outsiders’ to being part of the close family that is forming a new ‘collective self’ for regional local government.

At every point of engagement in this convoluted and complicated process, the Bininj leaders have denied the ordering power of the NT Government’s approach to creating boundaries for the region and its composite wards. During a discussion about the newly imposed external boundaries, one leader succinctly expressed an opinion that was common within the earlier Interim Council:

In the Balanda word that will be a boundary there. But it’s just a service line. It’s just a line for the government. You see this line? It’s not there. We’re not going to trip over that boundary line when we’re walking out on our country. This line is local government, it’s not for traditional owners’ land—we know our own land, every little place; long time, from start’ (WASTC member).

The Bininj members of the Council/Committee are themselves traditional owners and have consistently argued that regionalised local government should not impinge on their cultural and legal rights under the ALRA. From the start, they have been keen to ensure their decisions do not undermine those primary rights, or exacerbate tensions over land ownership. For that reason, they initially decided there should be no mapped internal boundaries for the proposed electoral wards. These were to be kept deliberately invisible so that they could continue to be managed under the Bininj system of knowledge and control of country. However, the current policy requires that all shire internal ward and external regional boundaries be mapped and made visible.

In the Bininj-government interplay that continues over the issue of boundaries, the Bininj representatives continue to reinforce the importance of locally relevant cultural
geographies as the foundation for their governance solutions. They strategically use this ordering mode to resist the externally imposed institutions of government, which work to re-group and re-order Bininj people into neatly bounded geographies:

We said to people [out in communities] don’t be worried about that line out there. That’s a service line. They think it will cut them off from everyone else. But it’s not a line for Bininj land. Your right cannot be disturbed by that idea (WCARA Interim Council member).

**Seeing the pattern of Indigenous governance**

The pattern of traditional Bininj governance, visually reproduced in much of their art, ceremony and ritual can be understood as a ‘nodal network’. This type of network is formed by the interconnectedness and interdependence of essentially autonomous units and actors (each constituting ‘nodes’), where the constituent linkages can facilitate or inhibit the functioning of the overall system. A ‘governance network’ then refers to the interconnected distribution and exercise of a group’s decision making and leadership to achieve their collective goals.

*Bininj* governance networks in West Arnhem Land comprise clan groups, interrelated by complex webs of kinship, land-ownership identities, marriage systems, historical alliances and ceremonies (see Kesteven and Smith 1984; Smith 2007). In these networks there are ‘nodes’ or points of individual agency and decision making, where particular male and female leaders who have respect and influence are able to mobilise people and resources to create order and collectively get things done. In highly decentralised systems of social organisation like those in West Arnhem Land, governance nodes such as leaders and organisations enable decision making to coalesce and be implemented. In this system, nodal leaders constitute the circuitry of governing order and authority that enables things to be achieved over time.

*Bininj* networked governance in West Arnhem can be deciphered, although it is often invisible to outsiders. It has its own culture or world view—a way of thinking about the matters that need to be governed, and ways of reproducing the patterns of interconnectedness that underlie the networks needed for governance. It has a set of technologies, powers and processes for exerting influence and power, and for prompting action amongst people. It is able to marshal resources via nodal leaders and organisations. And it employs a set of institutions, or rules, which enable nodal leaders to legitimately activate governance networks.
The Bininj members of the WASTC are part of nodal leadership networks that stretch across West Arnhem and well beyond. They have striven to create a representative structure for the regional authority, and now the shire, that is based on their governance culture of nodal networks. Much of their effort and motivation has not been immediately intelligible to Balanda in the region, or to government officers. And when they have become intelligible, Bininj proposals are not always acceptable to Balanda, who have different ideas of what constitutes ‘good’, ‘effective’ and ‘legitimate’ governance.

The NT Government and its departmental officers insist that a democratic standard be applied to the future number and election of shire representatives. Representation, they assert, should properly be based on the total population of each constituent ward in the region: ‘Under New Local Government, councils will be democratically elected by the people, just like everywhere else in Australia’\(^1^2\).

As one NT Government officer stated at a WASTC meeting:

> The next complexity factor for us [government] is, this is a democracy and everyone should have a vote—one person, one vote. Another challenge is remoteness and the dispersed nature of the population, plus the cultural groupings of small communities. These can’t be the basis for wards and representation. We don’t want loose cultural groupings, but we want bigger wards so that we keep the total number of representatives to ten or twelve.

Bininj members of the committee see this interpretation of democracy as being fundamentally at odds with their own governance institutions. They feel it to be unfair and unequal. From their perspective, representatives are seen as:

people who have got picked by their communities and elders in their area. They didn’t just come for nothing. It’s each council and elders who picked those people to represent their people. When we first started off we wanted everyone to be equal (WASTC member).

The Bininj view of ‘equal’ is based on each main cultural-community bloc having an equal number of representatives for each ward, irrespective of the population or geographic size of the ward:

Our main issue is that it is ‘all equal’, so we don’t upset people. We have to be very careful. Every person out there knows we are working together on this—we got a jury out there. When we go back to our community we have
to behave properly and make our decisions properly so people in our communities can see us paying respect and behaving properly.

… We decided we wanted three reps for each ward because they are the right people; not on a population basis. Remember we talked about that [i.e. representation] three years ago, and we said each ward should get ‘equal vote’, ‘equal number’; that’s fair for everyone’ (WASTC members).

There is disquiet about this view of equality amongst some Balanda CEOs on the WASTC who work for councils in the communities that have a large population. They too stress the democratic benchmark of ‘one person, one vote’. But at several committee meetings about the issue, the Bininj members—including those from the communities with large populations—reconfirmed their strong preference for having an equal number of representatives for each ward. They also pointed out to government officers that the Bininj approach was in fact similar to that of the Australian Senate in its representative arrangements.

Bininj leaders continued to apply the same logic of ‘all equal’ to representation for the proposed shire; that is, each major community with its participating council and outstation organisation would have an equal number of representatives regardless of population size (see Fig. 4.4).

**Fig. 4.4: The proposed representative structure for the West Arnhem Shire under the New Local Government policy.**
Negotiations about this are continuing between committee members and departmental officers. The Advisory Board is attempting to operate as a go-between for the WASTC, putting their views forward to the Minister and supporting the value of their cultural logic.

This is an important issue for committee members who are attempting to reconcile the two different cultures of governance operating in the process, at the same time as striving to arrive at a culturally legitimate solution that will gain the backing of their community members. Bininj members prefer to take major governance issues back to their communities for further consideration. This has meant considerable discussion and negotiation within the committee and the participating organisations.

**Governing ‘two-ways’**

An early activity of the Bininj committee was to design a logo\(^\text{13}\) for the WCARA. The logo is a visual map of the regional Bininj ‘self’ (see Fig. 4.5). It depicts two turtles—one saltwater, the other freshwater—to indicate the inclusion of people from the coastal and island communities, as well as the inland communities of West Arnhem. The turtles allude to the ancient interaction between two mythological creatures, and ‘the two coming together’ to resolve their differences. The logo also depicts Bininj and Balanda hands clasped together, to symbolise the two collaborating for the benefit of all residents of the region. This vision was expressed by one committee member as ‘working two-ways’.

Fig. 4.5: The proposed logo of the West Arnhem Shire Transition Committee and the former regional authority.
The WASTC readily adopted the logo as being a positive symbol of how Bininj and Balanda could work together as a shire. As one senior member of the committee explained:

This is how we are working two ways. We are using our Arrarrakpi [Bininj/Indigenous] concept and using it with this Balanda concept.

The WCARA constitutional preamble drafted by the Interim Council also embedded this ‘two-way’ approach, stating that:

This Preamble is grounded in the traditional Aboriginal law, language and systems of self-governance for the region. It brings this view to the implementation of local government administrative systems that provide service delivery to all peoples of our area.

The WASTC adopted the preamble, confirming their intention to continue to use Bininj traditional systems of culture and governance in order to:

- strengthen the legitimacy of the Regional Authority [shire], and use the [shire] to strengthen traditional systems of governance. Through this vision and commitment we seek to maintain observance and respect for traditional values, and to join the responsibilities and structures of traditional authority with those of local government to achieve a high quality of life and a wide range of opportunities and choices … We are developing our own rules that include our culture. In our own culture we have our own rules that are very strong and we are bringing this into the [regional local government].

The logo and preamble subsequently became important devices for positively accommodating Jabiru Town Council and its largely Balanda population. As one committee member noted: ‘It’s [the logo] a good one because the handshaking now takes in Jabiru as well. It includes Balanda as well’.

The principle of ‘working two ways’ to develop governance solutions for the new shire has, at its core, a Bininj process of innovation and active adaptation. A consistent benchmark has been the Bininj committee members’ need to ensure that the process has internal cultural legitimacy.

This process was contested by government. For example, a component of the new policy was the NT Government’s requirement that all shires adopt a single common constitution. This effectively meant that the WCARA preamble and constitution were no longer relevant. Over several meetings, however, the newly formed WASTC Council
negotiated through the Advisory Board that the preamble could become part of the
shire’s business plans (which were being developed by departmental officers). They
also began compiling a Governance Reference Manual of their draft policies and
decisions to guide future elected shire representatives and managers. They subsequently
gained departmental agreement to have the preamble and governance manual included
as an official document in the shire’s strategic development plan. These were significant
breakthroughs.

**Transforming institutions**

Over the four-and-a-half years of their operation, a number of formal and informal
governance institutions (rules) have been generated by the Interim Council and
Transitional Committee. This ‘rule innovation’ often occurred in the course of their
meetings. It was there that members attempted to create workable solutions to some of
the challenging problems caused by the disjunctions that kept arising between the two
cultures of governance.

The litmus test at meetings was that *Bininj*-generated rules needed not only to be
seen as culturally legitimate, but to be immediately useful. If they were, then committee
members adopted them quickly. For example, in the middle of one committee meeting
when new members had arrived, the chairperson announced to all participants:

I don’t like to say people’s name. *Bininj* way, I can’t say that name. So
when you move and second a resolution can you please say your name out
loud yourself so you can have your name put down on the minutes.

The chairperson effectively resolved what might otherwise have been an awkward
situation for himself by designing an impromptu procedural rule that enabled him to
continue directing the passage of resolutions in the formal Balanda style, without having
to forgo his observance of an important *Bininj* etiquette rule that restricted his public use
of people’s personal names. The new rule was immediately acted upon as everyone
could see its practical benefits for themselves as well as for the chairperson.

At the beginning of another meeting, before the commencement of business, a
committee member made an announcement:

Before we start with that agenda I just want to say something about my
cousin sister’s boy over there [referring to a young man sitting across the
table who had recently been chosen by his community council organisation
as a representative on the committee]. Well, *Bininj* way, that boy can’t look
at me or talk to me—nothing. He shouldn’t be sitting here in this room. I talked to his mother last night and we decided that for these meetings he can talk to me and he can speak up. He comes here, he’s got to do his job. That means he might have to talk to me and I gotta listen to him talking about his idea. But *Bininj* way he would get into trouble if he does that. So, just for these meeting here, we making a new rule: he can talk and look at me. But only here, not for outside; that still *Bininj* way out there.

In response to this statement, the other committee members at the meeting (both *Bininj* and Balanda) made supportive comments and agreed to the new rule.

In this instance, a senior leader and his close relative had designed a new rule that had the hallmarks of the cognitive tool of compartmentalisation. This process enables people to organise things (ideas, events, relationships) into discrete units or categories, each of which has its own properties of boundedness and isolation, at the same time as having some form of limited or controlled relation with the other parts (see Spiro and Jehng 1991; Strauss and Quinn 1997). Cognitive compartmentalisation is a particularly useful tool in intercultural contexts. It means that seemingly contradictory ideas or behaviours can be observed and held, without either being undermined or elevated over the other.

In the example above, a new rule was created for a specific context, which addressed a widely recognised kin-based behaviour that required certain kinds of avoidance and deferential behaviour to be observed between two classes of relatives. Failure to observe the avoidance rule would incur family and public censure, and perhaps, retribution. The new rule enabled the WASTC members who stood in such a kin relationship to each other to effectively suspend the accepted customary rule of kin avoidance and so behave differently in the meeting. Outside the room, at breaks in the meeting, the norm of avoidance behaviour quietly reasserted itself.

By compartmentalising this ‘meeting behaviour’ under a new rule, the potentially negative consequences were not only ameliorated for the individuals concerned, the new behaviour was also disambiguated. That is, it was made collectively comprehensible to all the other members of the committee, and able to be assessed by them as being culturally legitimate owing to the fact that it was a derivative of the more fundamental customary norm. This became an accepted process of rule transformation at the meetings.
An important effect of this process of cognitive compartmentalisation is that the cultural authority of underlying customary institutions is buffered from the potentially negative impacts of contradictory new rules by those contradictions being contained and nullified. Compartmentalisation also enables the Bininj worldview of the continuity and inalienability of their laws to be maintained, at the same time as allowing condoned institutional innovation to occur.

Other examples of rule innovation have occurred at meetings in the more formal context of governance capacity development and training sessions. These sessions have been conducted with Bininj representatives from the very beginnings of the regional initiative, and have been provided by the same male and female team of CDOs from the DLGHS, with personal input from my governance research (see Evans, Appo and Smith 2006; Smith 2007).

The training sessions focused on a wide range of governance issues including governing roles and responsibilities, the concept of separation of powers, systems of representation, organisational models to support regionalisation, policies for codes of conduct and conflict of interest, meeting procedures, human resource management and employment contract conditions, communication with community residents, and so on.

In each session, the Bininj committee members discussed the non-Indigenous concepts and values, alongside their own. They raised a range of cultural issues that might potentially undermine the legitimacy and enforcement of new governance rules. They tested proposed rules against potential community and cultural scenarios, and revised them to enhance their workability and legitimacy.

Members often shared ideas about how they might collectively and individually enforce their governance policies and rules. Each session culminated in the committee drafting new governing institutions, for example, in the form of written policies, agreed procedures and resolutions. Through this process, the Bininj leaders on the committee steadily developed a growing confidence in their capacity to work together as a team, and to make and enforce collective decisions, policies and other rules.

In these situations, committee members have been creating shared meanings about their expected and actual behaviour, roles and responsibilities, which then provide the groundwork for forming new governing rules. The rules that work most effectively are those which appear to fit four fundamental criteria.
First, they give priority to people’s pre-existing cultural knowledge, norms, systems of authority, and experiences. Second, they have been designed collectively and in a practical governance context. Third, they can be put to immediate practical use; and fourth, they can continue to be adapted to suit changing governance needs.

As Spiro and Jehng (1991: 163–205) have noted, this calls for considerable cognitive flexibility at both an intra- and inter-personal level. It suggests that a Bininj culture of governance is created and maintained through interaction and practice. This enables nodal leaders to act as instigators of new and old meanings, and to mobilise consensus and action around those. That is, nodal leaders are able to tailor concepts and social value to create new institutions in ways that have legitimacy in the eyes of the rest of the network. Importantly though, Bininj innovation and practice are firmly located within an intercultural frame. Legitimacy and effectiveness are judged and shaped as much by the concepts and institutions of the state as those of Bininj people.

Conversely, when governance institutions are imposed from the outside and have no grounding in the pre-existing meanings and experience of Bininj culture, those rules have a weak hold on people’s values and behaviour. Such externally generated rules cannot be easily compartmentalised and so can undermine existing cultural institutions of governance. They also tend to have less cognitive flexibility and therefore cannot easily be customised or reassembled by Bininj to meet changed circumstances.

**Conclusion**

In the second phase of its policy reform agenda, the NT Government sought to reassert its own culture of governance in an attempt to contain, mould and rename Indigenous systems of governance and their attendant institutions, and in an effort to hasten the process of regionalisation. In the course of working to achieve their goal of a strong regional organisation, Bininj community organisations and their elected leaders have attempted to design elements of a new ‘culture of governance’. To do this, they have used formal and informal techniques and tools to create innovative governance institutions and structures, and imbue them with legitimacy and practical capability.

At its heart, the intercultural contest occurring within the West Arnhem initiative is over power and authority itself:

They don’t trust us to make our own decisions. There has been a lot of terminology that has been used in the history of this shire, and that term is democracy. Can you define what democracy is for us? We keep hearing
about it, but we don’t get to do it. We don’t get to make our decisions about these things.

… I don’t see any democracy—you just get told what to do: lump it, or do it … What kind of message do we take to our people? Do we just tell them that in two years down the track we will have the power maybe; that sometime in the future we will get to make the decisions? Poor bugger blackfella that’s what we are (WASTC members).

Committee members overwhelmingly see this intercultural contestation as more than just a struggle for regionalised local government. It is a process by which they hope to secure greater self-governance and control over the longer term. It remains to be seen whether regionalised local government delivers on its promises and expectations in West Arnhem. In the meantime, there is much that can be learned from the process to date.

The new NT Government policy framework states that its:

intention in seeking [its latest] fundamental reform of local government is to create certainty and stability through strong regional local governments that will have a similar capacity to that of the municipal councils … The need is for orderly transitional and implementation arrangements (McAdam 2006).

But policy implementation has been anything but orderly. This is more than simply a consequence of the real world complexities of implementation catching up with the policy vision. The local government reform process has been wracked by problems created by the institutional failings of the government’s own culture of governance, including differences of political opinion within the government and cabinet. Several NT Ministers have appeared reluctant to commit to the New Local Government policy, preferring the more flexible and culturally-inclusive approach laid out in the BSRSF.

In 2008, erratic government commitment to its own policy led to the NT Cabinet allowing non-Indigenous residents in the Litchfield region west of Darwin to opt out of regionalisation, while still requiring Indigenous residents in other regions of the NT to continue. As a consequence, some of the Indigenous communities who were told in early 2007 that they had to amalgamate into larger regions are now questioning why they should continue to be involved, or why they need to rush to meet a government-imposed deadline of the middle of 2008.14
Another recent Government decision to set an unusually low cap on the rate payments from pastoralists and the mining sector caused considerable disquiet within the bureaucracy and amongst several members of the WASTC. In this highly charged environment, in mid 2008, the NT Minister responsible for overseeing the New Local Government policy and two senior departmental officers resigned. These officers were centrally involved in the West Arnhem Shire process.

The WASTC has not been surprised by the erratic governance of government, with all its policy reversals, changing implementation rules, and rapid turnover of bureaucratic faces at their meetings. The nub of contention for committee members has consistently focused on whether they actually have genuine decision making powers or not. This issue has especially arisen in the context of departmental reassertion of its decision making powers under the New Local Government policy. Consequently, implementation of that policy has been transformed and contained by its engagement with persistently asserted Indigenous governance institutions and agency.

Today, a growing number of Indigenous Australians are re-imagining what constitutes legitimate representation, decision making and leadership for their community governance arrangements. They are doing this at different societal scales and experimenting with models of governance. More specifically, the West Arnhem case study describes the ways in which principles of networked governance, nodal leadership, institutional innovation, and the cognitive tools of compartmentalisation are being used—both consciously and unconsciously—by Bininj people as interpretative instruments with which to design new governance arrangements that suit larger scale cultural geographies and retain cultural legitimacy.

Indigenous leaders play a pivotal role in mobilising deep-seated cultural understandings and imperatives in order to do this. When their transformations and experiments have resonated with their peer network of leaders and with their members (their ‘jury’), and are judged to be ‘fair’ and ‘equal’ in Indigenous terms, then the new rules and structures have gained internal legitimacy. In this way, it has been the nodal leaders and their networks who have created an internal culture of governance, but it is the ‘governed’ (the ‘jury’ of community members) who have enabled new governance institutions to be implemented and sustained.

To be imbued with legitimacy, new governance institutions have to be tested and proven useful in the real world. If new rules and ways of looking at governance prove workable and legitimate—not only in the Indigenous arena, but in the wider
The Intercultural Space

intercultural arena of government policy—then they may receive endorsement within the policy implementation processes. But if governance rules are imposed by external agents, or if they cannot be enforced without damaging fundamental Indigenous cultural values and ways of behaving, then those governed will inevitably deliver a verdict of failure and resist the application of the rules.

There are limits to the extent to which Indigenous Australians can currently transform and reassemble their institutions of governance. One set of constraining factors lies within Indigenous cultures of governance themselves. In West Arnhem Land, the Indigenous cultural drive towards localism and small-scale autonomy acts to impose social limits to political aggregation. When internal legitimacy and trust waver, the group to be governed tends to default back to small localised networks of close kin.

As a consequence, there can be significant difficulties in sustaining the horizontal social spread of new governance institutions. Indigenous networks—especially those of leaders—can facilitate this horizontal extension, in particular to the regional level. But transforming and deepening the legitimacy of Indigenous institutions to enable larger scale cultural geographies of governance requires time, facilitation and ongoing discussion in order to generate the wider consensus and support needed at the local levels.

New governance institutions that appear to preference the rights and interests of some groups or individuals over others, or which diminish valued group norms, do not generate sufficient cognitive or cultural traction to sustain their ordering power. Nor will they be sustained if they are unable to accommodate the layered and networked nature of power and decision making in Indigenous societies. Institution building that is based on the flexible reassembly of pre-existing Indigenous norms and ideas about what is ‘equal’, ‘proper’ and ‘fair’ appears to have greater effectiveness, both in meeting the challenge of new situations and in winning the support of the members of a community or organisation.

Another significant factor limiting Indigenous transformation of governance institutions arises from the external environment. Contemporary Indigenous governance initiatives are embedded in, not separate from, the institutions and power of the state and its culture of governance. In Australia, the state exercises overwhelming jurisdictional, institutional and financial powers through which it governs Indigenous culture and seeks to make Indigenous governance and people ‘good’ in western terms. As one member of the WASTC summarised this relative power imbalance:
We Bininj have small power, only little backstop, just one backstop.
Whitefellas, government, got plenty backstop behind them. They can come in any time and tell us what to do. They got the power.

But Indigenous processes of institutional transformation have the power to subvert, contain and modify the agenda of the state’s own culture of governance and its efforts to govern Indigenous culture. This partly explains why, in Australian Indigenous affairs, policy implementation inevitably becomes disorderly and uncertain, leading to processes and outcomes on the ground that are often entirely different from those originally intended. This has been the case in West Arnhem Land.

Indigenous societies do not exist frozen in time as outdated ‘cultural museums’ (cf. Vanstone 2005). They have a long history of highly sophisticated innovations in their governing institutions. Furthermore, Indigenous leaders are often adept at connecting into non-Indigenous policy, bureaucratic nodes and political networks in order to achieve their own priorities. Astute government officers who pay attention to, and build relationships of trust into, those networks are themselves better able to act as intermediaries between the two cultures of governance, and to carry out community development work to support governance initiatives at local and regional levels.

From this it is clear that in order for contemporary institutional transformation of Indigenous governance to be effective and sustainable a number of conditions must be met. First and foremost, new governance institutions must be initiated by Indigenous people themselves on the basis of their informed consent. Second, the role of trusted and respected leaders is critical to institution building. Third, it must be undertaken in ways that resonate with community members’ views of what is considered to be culturally legitimate and practically workable. Fourth, external coercion and the imposition of governance institutions have little traction in changing behaviour or building commitment and responsibility. And fifth, the facilitation and community development work of trusted government officers can make a major contribution to the implementation of enabling policies about governance.

But it appears that in these matters the state is a slow learner; or rather, in the case of West Arnhem regionalisation, its desire to retain decision-making power and control appears to have inhibited its learning and outcomes. In some ways, the state has been less innovative than Bininj in designing effective institutions to carry out its governance objectives. In the end, the state seems to have failed to recognise the value and benefits of Bininj decision making, to see that Bininj leaders can resolve complex governance
problems with innovative strategies, and that their solutions can actually facilitate
government policy implementation. In the end, it may well be that regardless of the
power differential, the *Bininj* understanding of the state’s governance culture is greater
than the state’s comprehension and control of *Bininj* governance culture.
Notes: Paper 8

1. The 1967 referendum made two changes to the Australian Constitution. These changes enabled the Commonwealth Government to make laws for all of the Australian people by amending s. 51 of the Constitution (previously, people of ‘the Aboriginal race in any State’ were excluded); and to take account of Aboriginal people in determining the population of Australia by repealing s. 127 of the Constitution (formerly, Indigenous people had been haphazardly included in the census, but not counted for the purposes of Commonwealth funding grants to the states or territories).

2. The word ‘governance’ is derived from the Latin word *gubernare* meaning ‘rudder’, conveying ‘the action of steering a ship’. The word was first used in 12th century France, where it was a technical term designating the administration of a bailliage (the jurisdiction or district of a bailiff; bailiwick in English). From France, it crossed the channel and in England came to designate the method of organising feudal power (see de Alcantara 1998; Kooiman 2003; and Plumptre and Graham 1999 for a definitional autobiography of the concept). Just as the British legal concept of *terra nullius* was used to usurp control over the lands of Indigenous Australians, the related idea that they had no government, no chiefs, and no enduring form of authority, law and order was used to justify the imposition of British jurisdiction and the common law over Indigenous lands and people.

3. This categorisation for the purposes of making Indigenous people visible and susceptible to external control is not restricted to governance. It is especially apparent in the history of the census enumeration by Australian governments, where people are renamed and so transformed into ‘households’, ‘household reference person’, ‘nuclear families’, ‘visitors’ etc. (see Morphy 2007). In resource negotiations with private sector companies, people are renamed and transformed into ‘stakeholders’, ‘land owners’, ‘historical peoples’, ‘beneficiaries’, ‘affected groups’ etc. (see Holcombe 2005; Howitt and Suchet 2004; Smith 1995). In the social security system they are renamed and reconstituted as ‘sole parents’, ‘welfare dependents’, and people ‘in breach’ (see Smith 1992).

4. In contemporary Indigenous Affairs, public servants have created powerful policy names such as ‘coordination’, ‘whole-of-government’, ‘joined up government’,


6. These include six municipal councils, 31 community government councils that are incorporated under NT legislation, and 28 association councils that are constituted under Commonwealth legislation. Approximately 80 per cent of these councils are situated on Aboriginal inalienable freehold land and so must operate within the statutory context of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA), which provides protection and recognition for the rights and interests of traditional owners in matters of land access, use, planning, and management.

7. This review was never carried out. A new Local Government Bill was eventually introduced to the NT Legislative Assembly in February 2008; it was debated in the mid year sittings and enacted in the second half of 2008. The Bill implements the radically changed ‘New Local Government’ policy that was commenced in 2007, not the BSRSF policy launched in 2003.

8. The *Overarching Agreement On Indigenous Affairs* Between the Commonwealth of Australia and the Northern Territory of Australia 2005–2010 and associated schedules are available at:


9. See ‘Local Government Reform’ on the DLGHS website at:


10. See Smith (2007) for a more detailed account of the West Central Arnhem regionalisation process during the WCARA phase, and the traditional patterns of land-tenure and social organisation involved.

11. Kunbarllanjnja is a local government under the *Local Government Act 1978* (NT) and so will be entirely dissolved; whereas Warruwi and Minjilang are Association Councils that are treated as if they are local governments by the NT Government for the purposes of receiving relevant government funding. They can maintain their organisational incorporation for other community purposes, but must transfer
their local government type functions and funding to the new authority. Note that Kunbarllanjnja spelling was chosen by the Community Local Government Council as its name; Gunbalanya is the older form of spelling for the entire settlement.

12. See DLGHS website, ‘Governing’ at:

[accessed 5 May 2008].

13. The logo for the WCARA was chosen from a regional design competition. The winning design was created by Mr Ahmat Brahim, an Indigenous man with traditional ties to the region, and whose father has been a member of both the WCARA Interim Council and the WASTC. The transitional committee later affirmed their choice of the logo for its new shire.

14. A media release by LGANT (2008) noted that following this decision ‘other councils are asking about the Government’s processes and timetable for bringing in the reforms … The Government’s action in abandoning the Top End Shire proposal has set a precedent which is leaving councils with an emerging feeling of mistrust, of being led to believe one thing only to find it has changed dramatically to something else. They say they are losing faith in the Government’s plan since the resignation of the previous Minister and since the change was introduced’.

15. LGANT estimates that the regional local governments in the NT will lose between $14–18 million in foregone rates from pastoral and mining industry as a result of the NT Government decision.
References: Paper 8


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Conclusion
Conclusion: Towards a Conceptual and Theoretical Framework

The research content of each publication together with the thematic overviews and analyses provide a solid research platform from which to now synthesise their theoretical implications into a new overarching meta-view. This will enable a more integrated orientation to the cultural conditions and intercultural articulation of the fields of Indigenous governance and statist governmentality to be developed.

Along with Jan Pronk (2008: 72), I am inclined to believe that ‘a comprehensive normative theory of governance is neither possible nor desirable’. What is needed, however, is an understanding that has internal consistency in its parts, and demonstrates a high degree of external consistency with the long-term field observations and ethnographic evidence presented in the thesis publications. Accordingly, in this Conclusion, a set of more highly abstracted comprehensions are designed. On a more pragmatic level, the Conclusion also highlights the significance of the newly abstracted meta-framework, for the ongoing relationship between Indigenous Australians and the state, and their practices of governance and governmentality.

Theorising Governance

The analyses of the papers collectively build on the work of Pierre Bourdieu, Loic Wacquant and Michel Foucault, enabling governance and governmentality both to be theorised as encultured fields. In other words, they are relational and enacted forms of order-organisation that are internally structured around distinctive modes of power, agency and leadership. These fields draw upon and reproduce particular institutions (i.e. the ‘rules of the game’) and valued forms of specialist governance capital (i.e. personal qualities, communication and skills, modes of power, expertise, resources and knowledge). Individuals and entities strategically accumulate and deploy different forms of governance capital in order to achieve desired outcomes.

Governance and governmentality are thus squarely posed as being as much about people as they are about structures and systems. In particular, the published papers demonstrate that such fields should be understood as being more dynamic and chaotic than perhaps envisaged by Bourdieu and Foucault, but also as being more patterned in their cultural formation and intercultural articulation (1993, 1999). This elaborated concept recognises the capacity of fields to generate distinctive conditions and qualities relative to each other (thus enabling similarity and/or difference to be asserted and
contested). It also identifies the fact that fields may internally generate sub-fields which can demonstrate marked disjunctions and differences from each other. In this way, the concept of field moves beyond an either/or analytic approach to issues of cultural difference and domain versus the intercultural.

Governance is comprised of a multiplicity of interconnected dimensions, actors and interests (public, private, market and political). These are entangled and interdependent, not neatly separated systems generating different kinds of order and power. And the power to act is not uniformly distributed or accessible amongst people and entities. Such a conceptualisation highlights the blurring of boundaries and power between actors, and the fact that a field or sub-field of governance may or may not persist over time and space. In this way, the concept alerts us to power relations of dependence, interdependence and asymmetry. Governance is therefore theorised as being more than simply the organisation of collective order through the ‘rules of the game’. It is also about the perceived legitimacy of the game itself and its consequences in real time for real people.

**Culture Matters**

The second theoretical insight generated by the collective papers is that culture must be treated as a phenomenon to be documented, explained and re-integrated into an understanding of the Australian state and its governmentality, and not simply relegated to an Indigenous exotica. Culture underpins the _raison d’etre_ (doing) and _d’etat_ (being) of how Indigenous people govern themselves, _and_ how the state constructs its governmentality and governs itself. Culture therefore matters as an explanatory variable for their intercultural encounters and contestation, and for their potential points of common ground.

As encultured fields, Indigenous governance and the state’s governmentality each has distinctive, internally-structured power relationships and hierarchies, modes of agency, institutional standards, forms of capital and valued ways of organising conduct. Importantly, governance and governmentality are shown to not only encompass their own systemic imperatives towards particular forms of stability, regulation and resilience, but also towards particular modes of contestation, innovation, breakdown and realignment. The particular contribution of the thesis is in its exposition and modelling of the specificity of this epistemic condition in each field; albeit with a greater focus on the field of Indigenous governance.
This understanding emphasises culture to be consequential; a thing of power and agency affecting weighty individual and collective issues. These issues include contested representations of ‘culture’ itself. This theoretical understanding should not be reduced to naive cultural relativism or determinism. Rather, it argues there are developmental patterns and cycles that are separately perpetuated in each field, with different cultural turning points and trajectories associated with such systemic mechanisms. Furthermore, people and entities activate and manipulate these for their own purposes; one of which is the exercise of power and authority.

**Theorising Power and Agency**

The third theoretical insight that can be drawn from the collective thesis papers is the need to reintroduce the complexity and creativity of group and individual agency back into concepts of power, governmentality and governance.

This understanding views people not just as zombie carriers of culture, but as historical animals carrying within themselves acquired sensibilities and habits of social order which are the sedimented deposits of their past experiences and ways of doing things. It also re-centres the importance of individual agency, where people bring their personal judgments, influence, choices and idiosyncratic motivations to bear on encultured dispositions and relationships.

Accordingly, agency in the fields of governance and governmentality must be grasped in terms of a more nuanced conceptualisation that encompasses people’s *predispositions* (cognitive orientation and interpretative mechanisms), their *ability* (intention and power), *capabilities* and *capital* (skills, expertise knowledge, renown and reputation), and *willingness* (motivation and occasion) to accomplish things in the world they inhabit.

Modes of governing agency therefore have a cultural configuration or pattern that is recognisable by individuals and groups, and open to their assessment and manipulation. Furthermore, theorising governance and governmentality as encultured fields highlights the fact that agency itself is shaped and potentially reconfigured in the intercultural space, as a result of the multiplicity of agents and different modes of power at play there.

The combined thesis analyses enable a similar expansion of the concept of power beyond being a generalised capacity or right to act in conducting others’ conduct. Barry Hindess’s (1996: 143) sympathetic critique of Michel Foucault for ignoring ‘altogether
questions to do with the *legitimacy of power*’ [emphasis added] is not only warranted, but arguably also an impediment to understanding and theorising the exercise and relations of power within the field of Indigenous governance, and its articulation with the governmentality of the Australian state.

The ethnographic evidence warrants power being theorised as having several dimensions\(^\text{36}\) that constitute a repertoire or ensemble; including:

1. power as personal renown and individual potency in particular situations;
2. relational power, or the power to shape social interactions and mobilise others into action;
3. strategic power, or the ability to instrumentally shape the conditions, environment, and institutional rules of the ‘game’ under which others act;
4. structural power, or the power to shape the social and cultural field of action, condoning or promoting certain behaviours and modes of interaction, while restricting or denying others;
5. symbolic power, or power to shape diverse forms of representations of the world, and to mobilise and motivate others in respect to those; and finally
6. cosmological power, or the power to shape meaning and the understandings of people about life-as-such, based on a relationship with a metaphysical world and beings.

This broader theoretical understanding recognises that different dimensions of power will be preferred and routinely called upon by actors within the encultured fields of governance and governmentality. The insight here is the injunction to consider the cultural moorings of both agency and power as ‘injecting a biasing form of endogeneity’ (Kahan, Braman & Jenkins-Smith 2010) thereby reinforcing preferred values and dispositions about their practice.

This alludes to how *legitimacy* can be understood. Specifically, power and agency need to be seen to be done (and done) *in particular ways* if they are to be deemed credible and worthy of support by significant others. People’s personal and collective understandings are thus critical to creating and assessing the authorising conditions of legitimacy — for both governance and governmentality. The intercultural articulation of distinctive ensembles of power and agency must be treated as a phenomenon that immediately foregrounds contestation over legitimacy. Resolutions to such contestation
will lie neither entirely in one field nor the other. This is the case not only in respect to encounters between Indigenous people and the state, but also internally within the field of Indigenous cultures of governance.

One practical implication is that when governing arrangements are imposed unilaterally on Indigenous people by the state, without taking account of the encultured modes of Indigenous power and agency, they are invariably counterproductive to the establishment of common ground, let alone workable forms of Indigenous governance. Similarly, reified essentialisms about Indigenous agency and modes of power (whether by Indigenous people, or the state) serve poorly as the bases for viable governance. Furthermore, while Indigenous agency and choice are clearly critical to credible innovation and realignments in their ways of governing, Indigenous governance must now also be understood as fundamentally encompassed by a wider governance environment and the relative meta-governance capital of the state.

Theorising the Australian State and Governmentality

The fourth theoretical element that can be drawn from the thesis analyses concerns the Australian state and its field of governmentality. Here a broader understanding can be developed wherein the agency of the state extends not only to rendering Indigenous society governable, but also to governing its own conduct.

In the arena of Indigenous affairs, the state is theorised as being a cultural, as well as a political and sovereign territorial artefact. The thesis papers challenge the reification of the state as unitary, coherent and rational. Rather, it should be understood as polycentric and multi-directional, having a cultural logic to its governmentality and self-governance, and possessing a distinctive ensemble of meta-governance capital (including power) that is deployed by powerful individual agents and entities via a shifting institutional architecture.

The thesis papers reveal a distinctive developmental pattern to the state’s governmentality in Indigenous affairs; one of oscillating engagement and retreat that gravitates around a profound ambivalence to Indigenous culture, family life and relationships, and the conditions of nodal networked governance. These are all invariably represented by the state as being problematic for Indigenous people’s participation in democratic ‘good governance’.

The current phase of the developmental pattern of the state’s field of governmentality can be understood not as one of post-colonialism or post-modernism, but as one of
‘liquid modernity’. In 2000 and 2005, Zygmunt Bauman published two books, Liquid Modernity and Liquid Life in which he drew upon the mechanics of fluidity to provide a metaphor through which to grasp the subtle change in the conditions and experience of modernity. He characterised this as a transition from a territorialised nation-bound, labour-bound modernity to a condition of liquid modernity characterised by an attenuated public sphere, expanding globalisation, the diminution of the citizen, reification of change and growth, and the falling apart of effective agencies of collective action.

Zygmunt Bauman (2000: 3, 2005: 147) reflected on Karl Marx’s prediction in the Communist Manifesto that ‘All fixed, fast frozen relations, with their ancient and venerable prejudices and opinions, are swept away, all new-formed ones become antiquated before they can ossify’ to argue that we are now experiencing life under conditions of liquid modernity. Under such circumstances, change, disengagement and a lack of solidity become the new constant (Bauman 2000: 13, 120). Bauman identifies one change in particular as seminal; namely:

the renunciation, phasing out or selling off by the state of all major appurtenances of its role as the principal (perhaps monopolistic) purveyor of certainty and security, followed by its refusal to endorse the certainty/security aspirations of its subjects (ibid: 184).

This insight can be usefully elaborated upon in respect to the current disposition of the Australian state. Under conditions of liquid modernity, the state’s field of governmentality of Indigenous affairs has been marked by an accelerated trajectory towards uncertainty. This is evident in the increased multi-directionality of its policy formulation; mercurial swings in program administration; frequent changes in funding guidelines and reporting requirements; an accelerated complex restructuring of its institutional architecture; adoption of the mantra of user-pays and outsourced service delivery. The very apparent consequence is a decline in its ability to implement strategies and policies.

Under these conditions, the bureaucratic wielders of state power have themselves become increasingly mobile in their employment positions, effectively becoming the new nomads, wandering from department to department, project to project, and community to community. Indeed, some bureaucratic employment based in Indigenous communities can only be held for short periods of time. In this manner, government bureaucrats are disconnected from their individual responsibilities for specific
outcomes, and the state finds it harder to sustain its own governmental expertise and self-governance in Indigenous affairs.

The consequence of these conditions is that the state now routinely confronts an ‘unbearable degree of uncontrollability’ in Indigenous affairs (Nowotny 2005), and the limits of its power to effect and sustain improvements. The pace of this self-initiated change and uncertainty is partly managed by a selective amnesia on the part of government bureaucrats, Ministers and departments. In this way, the state is able to avoid addressing its own institutional failures and weakened self-governance, and instead outsource ‘the problem’ of slow or no progress, onto a pathologised Indigenous culture and its field of governance.

At the same time, the state’s self-representation is nevertheless to convince Indigenous Australians and the public that its governmentality is cohesive and purposeful, informed by evidence, open to review and negotiation, and intent on pursuing ‘participation’ and ‘partnerships’. The gap between this self-representation and the reality on the ground is such that the agency of the state in Indigenous affairs has steadily become mired in an intractable position.

For example, as its policy implementation becomes exhausted, and outcomes uncertain and contested, the state resorts to bolstering its power by reasserting the internal boundaries of secrecy and exclusion; creating what Ulf Hannerz refers to as ‘unfree cultural flow’ within the state framework (1992: 109). This sees the state seeking to arbitrate entire domains of practice and discourse about the conduct of Indigenous governance; as it recently did in its interventions into NT communities. However, the state’s assertion of unilateral control is increasingly undermined by its growing reliance on a multiplicity of third-party actors from the wider governance environment, to whom state-like responsibilities of service delivery, administration, management and control are outsourced.

The thesis accordingly suggests that a theoretical understanding of the state must be directed not only to its modes of dominant power and agency, but also to what it does not and cannot do: to its instances of apathy, indifference, inaction and impasse. From this perspective, an integral part of the state’s governmentality can be conceptualised as one of entropy.

The term “entropy” refers to the measure of disorganisation in a complex system (Bailey 1990: 49-87). Entropy generates an acute experience of randomness, ennui and uncertainty, and loss of meaning, while at the same time the system moves from
differentiation to sameness (Schweller 2006). Entropy is liable to increase under conditions of liquid modernity that thrive on perpetuating homogeneity. The thesis analyses highlight the progressive uncertainty and ennui settling into the governmentality of the Australian state in Indigenous affairs. This acts to seriously reduce and diffuse its agency.

However not everything can or should be dealt with by the state in Indigenous affairs. Not all things are susceptible to intervention, direction or management. Doing something can make matters worse — and there is a long history of failed good intentions in Indigenous communities. But history also highlights critical areas of entrenched Indigenous disadvantage, where the state has been noticeable by periods of extended absence; e.g. in matters of domestic violence, deaths in custody, essential services and infrastructure, education and health. And interestingly, even when the state is in an interventionist mode, it has remained noticeably reluctant to engage directly with nodal-networked governance (see also Smith 2008).

A related and similarly under-theorised aspect of state entropy is its periodic institutional paralysis in respect to its own self-governance. Countless inquiries and reviews have documented this internal abrogation, which recently has been criticised as constituting a fundamental ‘failure in the governance of governments’ (Dillon and Westbury 2007: 208-09). A factor exacerbating the state’s entropy is that under current conditions of liquid modernity, the governmentality of Indigenous affairs has become so complex and dispersed that it is now difficult for the state to adequately govern its own conduct in the arena, let alone that of others.

This conundrum is especially evident in the growing disparity between the Australian state’s policy intention and its implementation ability. The problem with interventions, as Jan Kooiman (2003: 221–3) has pointed out more generally, is that they are not simply top-down and one-sided. They are multi-sided interactions binding both the governed and the state. One intervention thus tends to be followed by another in order to combat side effects and unintended consequences. When ‘seen from the point of view of specific subjects, these compounding interventions become so intertwined that the whole of them becomes over-complex, counterproductive and their effectiveness put in doubt’. Decisiveness gives way to administrative anxiety and policy hyperventilation. The many arms of the state engage in different modes of articulation concurrently, often wittingly and unwittingly exclusive of each other, and demonstrating highly erratic capacity.
Yet this insight into the ‘state of the state’ in Indigenous affairs is still only partial. An important contribution of the thesis is to present a nuanced understanding of state power and agency; overcoming a tendency amongst anthropologists and other researchers to essentialise the state and its governmentality in pejorative terms, or as a homogenous field. The thesis analysis documents events where various agents and entities of the state, individually and collectively, engage with Indigenous people in ways that can be enabling, capable and committed to finding common ground.

Furthermore, this insight must also encompass the agency of Indigenous functionaries operating within the state’s governmentality, as well as the growing bureaucracy (Indigenous and non-Indigenous) employed within Indigenous organisations. There are close (if not always constructive) networks of relationship between these two bureaucratic fields. This additionally highlights the theoretical injunction to recognise the influential agency and impact of powerful individuals (again Indigenous and non-Indigenous) within these networks of Indigenous affairs.

Without this balancing perspective we are liable to fall into the Pythonesque dilemma so humorously explored in the film *The Life of Brian* — that of analytically railing against the demon state, whilst refusing to reflect on a more complex reality where the state also contributes to the lives of its citizens, including its marginalised minorities.39

For Indigenous people, the state is not imagined and remote, but a real effect of everyday institutional practices, discourses, and its multiple agents and modes of dispersed power and agency (Sharma & Gupta 2006: 165). The state’s field of governmentality is experienced by Indigenous people close to the skin, and their own field of governance is influentially shaped through intercultural articulation with the state. At the same time, the state’s governmentality has been extensively infiltrated by Indigenous people (as bureaucrats, advisors, Ministers and politicians) and their articulatory politics. Importantly, the model of mesh network is used by Indigenous people as a mechanism by which to bridge intercultural scale, and develop strategic, personalised connections into the Australian state itself. The limits of this infiltration are to be found at those points where the state’s power is most protected; for example, in the formulation of policy and making of high-level political decisions behind the closed doors of departments and cabinets.

The current developmental phase of the Australian state under liquid modernity constitutes a precarious governance environment for Indigenous Australians who are
hard pressed to keep abreast of changes in state governmentality. The state’s outsourcing of decision-making powers over the most mundane aspects of Indigenous life means that leaders and organisations are left with ‘strings attached’ to their authority and severely hampered governing agency. And despite the state’s current interventionist engagement in many communities, it has in fact become increasingly harder for Indigenous people to locate the state in respect to its downwards accountability.

While the state and its field of governmentality becomes more elusive and opaque to Indigenous Australians, it nevertheless seeks the opposite from them, demanding greater accountability, stability, amenability and transparency than it does of itself and its agents. Counterproductive feedback loops and ongoing contestation are created under such conditions; they serve to diminish mutual understanding and exacerbate unintended consequences.

The Radical Specificity of Indigenous Governance

The ethnographic evidence of the thesis papers indicates that a theoretical framework must address the constraining and enabling dimensions of the patterned relationships among social actors within a system (Emirbayer & Goodwin 1994: 1418). It must also speak to the fact that governance is itself an encultured field operating across multiple dimensions, not simply a particular kind of structural mechanism performing a discrete function.

A contribution of the thesis lies in its ethnographic documentation and research analysis of the radical specificity of Indigenous governance whose patterned logic as a field can be theoretically abstracted as a jural circuitry of influence-saturated nodes positioned within self-organising and self-referential meshed networks operating across multiple scales and with more and less longevity. Nodal governance carries the heaviest load of responsibilities for the organisation of order that helps to hold mesh networks together, connect them to others, and get things done.

The idea of a self-referential system is more commonly used in science to account for both the persistence of patterns and the capacity of systems to have effects that take off on several different trajectories. Complex self-organisation implies emergent properties in which patterned change is created, even in cases where the change is dramatic, unintended or temporally and spatially complex (Corning 2002; Goldstein 1999). This understanding offers an ethnographically and analytically robust way of theorising Indigenous governance, enabling some of the research gaps and assumptions
in approaches to date to be addressed. For this purpose, some of the concepts of social network analysis more generally are critically extended.

**The limits of social network analysis**

Social network theory and analysis has potential relevance for the subject matter of this thesis, but suffers from several biasing restrictions. These are briefly summarised below and then addressed in the course of modelling Indigenous networks and their governance.

The term network has its own anthropological traditions back to Emile Durkheim and Georg Simmel, and includes more recent research (see Borgatti 1992–94; Castells 2000a & 2000b, 2004; Dousset 2005; Latour 1993, 1987; Mische 2003; Riles 2000). Marilyn Strathern (1995: 13–14) has also noted the fixation of anthropologists with understanding the networked patterning of kinship relationality in Indigenous societies. However, apart from the recent work of the ICG Project, there have been no anthropological analyses of networked governance in Indigenous Australian contexts. Partly this is due to the recent emergence of ‘governance’ as a research issue in Australia. It is also due to the overly mechanical and statistical nature of much social network analysis, and its illusory sense of rigidity and structure (Wellman & Marin 2009).

At its statistical extreme, social network analysis has reduced itself to a form of anti-humanism, turning persons into dependent variables of a form of structural determinism. Its usefulness has been undermined by over-privileging either the linking pathways or the intersecting nodes, leading to an analytic blind spot concerning the holes or empty spaces in between.

The heavily functionalist orientation of much network analysis also tends to ignore more dialectical subtleties and forms of (anti-)sociality. A related problem here is the unwarranted assumption that people always act rationally. In the context of governance research, a more fundamental weakness of social network theory has been its difficulty in explaining power, change and continuity.

**Theorising Indigenous Networks**

Indigenous collective identities are multidimensional, overlapping and interconnected. The thesis papers provide numerous examples of such collective identities, including extended families, linked households, clans, moieties, outstation and pastoral communities and incorporated organisations. These can all be theorised as
dispersed relational polities with enduring associations between people, place, time and space that are both affects, and affective of, mesh nodal networks.

Indigenous mesh networks are constituted by pathways of close connectivity which capture and captivate people in thick ‘strings of filiation’ and common purpose (Austen-Broos 2009: 141). Here the thesis refills the lost empty spaces of networks, conceptualising them as providing the ontological foundations upon which people’s visible world and ways of governing proceed; effectively consolidating networks through time (see Figure 1).

Importantly, the thesis papers demonstrate that Indigenous mesh networks display a systemic facility that gives rise to a distinctive epistemic condition; namely, one where creativity and openness are couched in an ontological framework ‘that disguises change under a consciousness of permanence and the veneer of conservatism’ (Paper 4: 7). While this condition has been widely discussed in recent Australian anthropological research (see, for example, papers in Hinkson & Smith 2005; Merlan 1997, 1998; Smith & Finlayson 1997), there has been less elucidation of the actual mechanisms involved, or analyses of their implications for Indigenous governance.

This part of the Conclusion lays out a theoretical modelling of how Indigenous network mechanisms operate and their implications for governance. In this regard, the thesis contributes to answering the question posed over a decade ago by Marilyn Strathern who, when noting the headache created for anthropology by the issue of scale, raised the issue of the relationship between the systemic effects of scale change on the one hand and, on the other, the capacity of systems to retain their features across different orders of scale (1995: 15, 1996-7: 3).

It is argued here that the mesh nodal network is an Indigenous template that enables the systemic potential for scale change whilst retaining valued features. Specifically, it enables continuous reconnection and reconfiguration around broken, blocked or contested pathways. The template also facilitates the strategic activation of social boundedness and flexibility — because nodes can jump linkages, activate, reinforce or renunciate others, until a preferred social destination or repositioning is reached. This epistemic facility helps explain the perseverance and advocacy of local self-interests even at larger scales. Its breakdown and epistemic limits also helps explain the rise of uncontrolled autonomy and the exercise of unrestrained power by some governing nodes and groups, and those occasions when relatedness succumbs to debilitating feuding and factionalism.
On the basis of the thesis’ ethnographic analysis, the Indigenous systemic potential for ‘change as continuity’ and the ‘relational self’ is theorised as being achieved through the dialectic mechanisms of bonding and bridging relationality, and homomorphism. These have significant implications for how Indigenous governance is conducted and sustained, and are more fully laid out below.

**Mesh nodal networks: Bonding relationality**

The close thick lines of relationality creating a mesh network enable people (nodes) to live and work closely together in a certain style or way, with a higher expectation of being able to coordinate activity, maintain order, and have their mutual needs and obligations met. In such ways, mesh networks generate an internal bank of close bonding relationality and governance capital. This tight connectivity between people, place and collective identity continues to be of high value in rural, remote and urban Indigenous locations.

Of particular relevance here, the thesis papers demonstrate that while Indigenous mobility has been well documented (see in particular F. Morphy 2007; Taylor 1998, 2009), insufficient ethnographic and theoretical attention has been given to the stable social cores of mesh networks (see for example [Paper 8](#) and Smith 2001b, 2007, 2008).

There are closely-coupled cores operating in Indigenous mesh networks. They tend to be older people and couples who are comparatively less mobile, more reliable in carrying out their ‘net-work’, and who are thickly connected to other senior nodes and to the dense ontological spaces of their networks. These closely-coupled cores sustain and contribute to a strong sense of internal grouphood over time and space; they are more ‘in place’, as Stephan Fuchs would say (2001: 156).

Not all Indigenous meshed network formations are the same however; and neither is the extent of their bonding relationality. Some networks have thick nodal development and connections, and dense ontological spaces, which serve to create deep bonding relationality and extensive governance capital. For example, some extended families, linked households, clans and ‘communities of identity’ are characterised by demographic success, high-influence nodes and strong attachments to country on which they continue to reside. They benefit from thick bonding relationality. Others such networks are quite small, with low-influence nodes, thin bonding relationality and precarious governance capital.
However, bonding relationality is also dynamic over time. It is susceptible to the consequences of demographic change, loss of core nodes, diminution of valued shared knowledge, external stress and changing socioeconomic conditions — and with it the political, land ownership and economic fortunes of particular networks. There is also a dark side to bonding relationality where the characteristic biasing endogeneity of a mesh network serves to intensify internal conflict. This can be seen at work in the feuds and factionalism that quickly arise and then sometimes endure within families, households, clans and communities of identity, especially in circumstances where their relatedness, rights and responsibilities are called into questioned; for example, when identifying the causes of an ‘unnatural’ death, or under statutory-based externalities such as native title and land rights claims, court cases, mining negotiations, royalty distribution processes and the like.

Mesh nodal networks: Bridging relationality

A dubious argument of social network theory is that strong individual connectivity in a network undermines (or even lacks) the capacity to become generalised to larger or other networks. The collective analyses of the thesis papers demonstrate that this is not the case with Indigenous mesh networks.

While they display thick, closely-coupled relationality at their core, Indigenous mesh networks also demonstrate two other systemic characteristics that are critical to enabling them to extend their boundaries and to jump scales. One is the facility for what Granovetter (1973) called ‘loose coupling’ (see also Castells 2000b; Emirbayer & Goodwin 1994). The other is a facility for what I define as ‘strong’ coupling. The first relies on weak ties; the second relies on influential ties and is critical for governance (see Figure 2). Both facilitate forms of bridging relationality beyond a mesh network.

A mesh network comprises tightly coupled cores and extends outwards to more loosely coupled, open-ended linkages at its relational periphery. The thesis papers demonstrate that Indigenous mesh networks are able to facilitate the strength of weak ties. For example, loosely coupled nodes at the periphery of a mesh network may be positionally a weak tie, but they can nevertheless serve as a relational pathway (a strength) between segments of a network or to entirely different networks (including to non-Indigenous networks) (see Figure 2).
In this manner, a weakly coupled node can act as a mechanism for bridging relationality, overcoming the systemic inclination of a mesh network towards boundedness. For example, an adult man or woman who was adopted or ‘grown up from’ a young child, by a clan or family (or whose father was) may be considered by other members of his adoptive clan/family to have weak internal rights and thin connections within that network, but may nevertheless afford them an opportunistic link, when needed, to other places and groups from his original ‘own family’.

Not surprisingly, the legitimacy of asserting these loosely coupled, open-ended linkages within a mesh network can become the subject of intense debate and contestation when valued rights and resources are in question. In which cases, bonding and bridging relationality can sometimes activate a contradictory, push-pull strain within a mesh network. For example, I examined such strains and their underlying conditions and consequences in an co-edited volume entitled *Fighting Over Country: Anthropological Perspectives* (Smith & Finlayson 1997) for which I also authored a paper on the Indigenous politics of representation and negotiation under the *Native Title Act 1993* (Smith 1997). There I noted the:

context-related character of group identity, [where] it is often in the very process of publicly articulating the complex parameters constituting Aboriginal land ownership that the constituency of a native title claimant group will arise… and that [even then] the right constituency for negotiations may change over time according to the range of native title interests called into play; [all of which] are subject to ongoing interpretation and construction (Smith 1997: 101-02; and see also examples in Paper 6).
Bridging relationality can also be seen at work through influential nodes who are strongly-coupled (see Figure 3). These may be senior leaders or powerful organisations which can serve as a relational bridge to other influential nodes; whether that be to segments of a network or across to entirely separate networks. In this case, the bridge may serve as a conduit of especially high-value restricted knowledge, for the broader sharing of resources and specialist information; for creating a powerful lobby group, for organising a larger regional meeting or ceremony; for developing informal federations or ‘companies’ of networks.

Bridging relationality enables networkedness to ooze out, creating networks of networks across expanding social scales and cultural geographies. This facility is particularly relevant to Indigenous governance and is further elaborated below.

**Figure 3: The strength of strong coupling, facilitated by ties (blue dash-line) between thickly positioned, influential nodes (blue circles).**

Source: D. Smith.

Bridging relationality is also dynamic over time. Weak ties may become strong with changing circumstances; and *vice versa*. For example, the thesis papers document the relational core of some networks becoming larger and smaller. A set of weak nodes and ties on the periphery can be restructured or rotated into the core for a period, or a strong node and tie rotated out (in the latter case, especially if a strongly coupled node’s legitimacy and effectiveness has been called into question and found wanting by other members of their network).

The critical role of bonding and bridging relationality are documented throughout the thesis papers. It can be seen at work in the conduct of large ceremonies; the negotiation the resolution of internal conflicts; the identification of collective or individual responsibility for payment of compensation; within the domestic economies and childcare arrangements of families and linked households; in the formation and operation of incorporated organisations within communities and across regions; the
identification of group membership for the purposes of land rights and native title claims; in negotiations about resource agreements; and the distribution of royalty and welfare payments.

The thesis papers also reveal that relationality is a conduit for potential disunity and conflict. For example, **Paper 4** describes the internal mechanisms of Indigenous compensation, demonstrating how the same facility of bonding and bridging relationality for reinforcing and creating networks are mobilised by governing nodes and groups in order to assess the social effects of, and blame for, particular kinds of harmful or unlawful actions and events:

An act or event which provokes a compensatory process can most easily be construed as a central point of energy from which radiate a series of repercussions; rather as a stone which, on falling into water, creates concentric waves whose energy is progressively depleted at the outer margins. In the same way, an act or event will produce a radiating social ‘field of perpetrators’ and a social ‘field of impact’ … Such effects are not easily quarantined. Rather they are seen to be contagious, easily spreading … and they may have multiplier effects that potentially escalate conflict in the process (ibid: 10-11).

This insight enables us to understand that the systemic mechanisms involved in reproducing mesh networks can also facilitate the spread of conflict and disharmony, not just unity and reciprocity.

**Theorising scale and epistemic condition**

Bonding and bridging relationality demonstrate the capacity of mesh networks to deal with scale by turning inwards or outwards. The boundedness of a network is relational and context specific. At any particular point in time or place, people can choose to maximise flexibility and strategically extend their individual and collective social boundaries by reorienting themselves along certain pathways, and not others. They can also retract their orbit of potential connectivity back to the cluster of their close core ties. **Paper 4** documents such processes of boundary negotiation involved in identifying group membership for the purposes of determining the liability for, and beneficiaries of, compensation payments.

The theoretical insight here is that the facility of Indigenous mesh networks for bridging relationality is what gives effect to the oft-mentioned ‘epistemic openness’ of
Indigenous social boundaries and scale — from core to periphery, closed to open-ended, and vice versa.

On the other hand, unrestricted flexibility and openness within a mesh network is rarely tolerated at the expense of the viability of its heartland and dense ontological space. Here, a mesh network’s facility for bonding relationality around a core of relationality and deep institutional values is what enables the reaffirmation of closed ranks and boundaries that reproduce the enduring sense of grouphood and the organisation of social order at small-scales.

These twin relational trajectories generate the characteristic push-pull dynamic of mesh networks. How is it then, in the context of such epistemic trajectories that the collective identities and ontological heartlands of networks endures and dissipates across dispersed scales?

**Mesh nodal networks: A system-preserving map**

The answer proposed here is that the model of the mesh nodal network operates in Indigenous society as a ‘cognitive generator’ similar to that identified by Gianfranco Minati in his investigation of tightly knit communities in *Italian Systems Society* (2008; see also Minati & Pessa 2006), and similar to the self-organising systems discussed by Niklaus Luhman (1995) in his account of *Social Systems*. In other words, the mesh nodal network stands as an epistemological device through which people construct and interpret the world outside themselves. In this way, the mesh network in Indigenous society operates as an epistemic homomorphism; what Pierre Bourdieu would call a ‘structuring structure’ (1999: 67).

A homomorphism models phenomena in such a way as to produce instances of itself.45 A mesh nodal network provides Indigenous people with a system-preserving map, a cognitive framework for organising reality and interpreting the world.46 It follows then that transformations in the scale of a network will be seen as homomorphic when they preserve the underlying cultural logic and design principles that generate the mesh of the network; i.e., when iterations of ‘grouphood’ and ‘personhood’ feel familiar and credible to people’s mental maps (see Papers 4 & 8).

The thesis evidence supports a further theoretical insight; namely, that Indigenous mesh networks produce homomorphic mapping through recursion. The Macquarie Dictionary of Australia defines recursion as a process of repeating objects indefinitely. For instance, the effect of recursion is visually apparent in paintings which depict the
The *droste effect* of an image within an image. Indigenous cross-hatching and dot paintings are examples of the *droste effect* of recursive patterning, and as Dundiwuy 2 points out, this is for good ontological reasons. Homomorphic recursion is the networked patterning mechanism not only of Indigenous art, but also of Indigenous kinship and marriage systems, ceremonial and song cycles, and of Indigenous Law and governance.

The effect of recursion is to inject a self-referential form of endogeneity into network bonding and bridging relationality. The effect is each segment or extension of the network points to similar segments and extensions, in an endless series of alignments and replications. This mechanism is depicted below in Figure 4, which uses the backdrop of an Indigenous painting to visually locate the recursion.

**Figure 4: The recursive mechanism of Indigenous mesh nodal networks.**

![Indigenous mesh nodal networks diagram](image)

Source: The backdrop graphic for this diagram is from part of a painting by Debra Wurridj, entitled *Lorrkon Hollow Log*, from Maningrida, Arnhem Land, Northern Territory.

Indigenous networks are cultural formations whose pattern of ‘node-pathway-interstitial space’ carries the encoded knowledge, values, behaviours, dispositions and meaning upon which a networked way of life is founded. Recursion promotes the replication of this pattern across different orders and scales. This does not mean that Indigenous mesh networks are static or rigidly bound to a cultural ‘blueprint’ — as early anthropologists were prone to think — or that they are devoid of internal innovation or immune to externally imposed change. Nor does it mean that one particular level or formation is the primary unit or source of governance. Rather, that when such changes occur, they are assessed and responded to, within the cognitive parameters of a
networked way of life. The sophistication of homomorphic recursion is that it facilitates the very epistemic condition of ‘stability with flexibility’, ‘autonomy with relatedness’ and ‘change as continuity’ that centrally underlies Indigenous cultures and their governance.

Recursion activates along the twin trajectories of a network’s bonding and bridging relationality. In bonding relationality, recursion is evident in the network pattern curling or enfolding in on itself. Several thesis papers document examples of this at work; e.g. in the reproduction of the valued capacity for relational autonomy within mesh networks, in the durability of domestic roles and responsibilities within extended families and their linked households, and in the preservation of a sense of grouphood amongst residentially dispersed ‘communities of identities’.

It is also evident in the long-term cohesion of some organisations’ core membership; and in the formation and recognition of ‘new but familiar’ sub-groups within a network (such as the emergence of gangs and factions within a network). It can also be seen at work in the agreed succession of a group or leader assuming stewardship for another’s country or ceremonial knowledge; and in the process of interpreting a newly found Dreaming song or site as being legitimate and condoned.

Recursion along bridging relationality is where the network pattern radiates and replicates outwards to a foreign or unknown world to create externalised replications of its own form which can then be credited as legible and congruent. Several examples of bridging recursion are documented in the thesis papers; e.g. in the extension of kin categories to totally unrelated strangers in order to reframe them as familiar and so bind them in relationality (those outsiders may be Indigenous or non-Indigenous); and in the transference of ‘one family’ metaphors to new committees or advisory boards created by governments in order to colonise them with the Indigenous obligations of reciprocity and support associated with such close networks.

Bonding and bridging relationality, together with homomorphic recursion, are deep cultural mechanisms that enable the reproduction of various collective identities associated with mesh networks. This theoretical understanding helps to explain how small-scale local groups can jump scale and link horizontally across to other similarly-scaled groups, or aggregate vertically to form larger-scale collectivities and cultural geographies. It helps explain the oft-noted plurality of ‘selves’ and polities involved in order-organisation, and the layered subsidiarity of decision-making roles and responsibility. It also provides insights into the range of relational and recursive
strategies which people draw upon to interpret, incorporate or reject change and to transcend or reinforce scale as needed. Most importantly, it demonstrates how the homomorphism entailed in these processes contributes fundamentally to the capacity of networked systems to retain their encultured features across different orders of scale.

**Theorising Indigenous governance**

These same systemic networked logic and mechanisms lie at the very heart of generating and maintaining a distinctive field of Indigenous governance across Australia; one that is different to those produced by other societal and political models of governance and government.

Governing agency within a mesh networked systems comes, first and foremost, through people and their relationality. Indigenous mesh networks do have enduring cores and there are pivotal nodes who are more equal than others in their relational power and agency. They form the governing backbone or circuitry of networks and are especially influential in activating bonding and bridging relationality across scales and orders of organisation.

In this regard, the ethnographic evidence of the thesis publications presents a different picture to that proposed by social network researchers such as Manuel Castells (2000b: 15-16) who argues in his seminal work, *The Rise of the Networked Society*, that, by definition a network has no centre. … If a node in a network ceases to perform a useful function it is phased out from the network, and the network rearranges itself.

This is not the case with Indigenous mesh networks. Certain nodes are positionally prominent, having multiple connections to other nodes, thicker webs of bonding and bridging relationships including to other prominent nodes, and a deeper repertoire of governing capital (see Figure 5). They occupy a recognised position of *primus inter pares* — first among equals — within their own mesh network. Effectively, they constitute an institution of order-organisation within networks.
Figure 5: Governing nodes (orange) have thick, closely coupled ties, forming a superstructural governing circuitry within and beyond a mesh network.

The systemic and relational conditions of mesh networks generate a dispersed subsidiarity of governing roles and responsibilities amongst particular nodes, and enable some of them to effectively jump scale and activate links to influential nodes in other networks. As a result, governing nodes can cluster to form superstructural circuitries across several network formations at different scales; a meta-governing network. We can therefore talk about ‘deep governance’ in Indigenous society, in the same way that Arjun Appadurai (2002) talks about ‘deep democracy’.

**Theorising Indigenous governing agency and power**

As a consequence of this positionality, governing nodes are able to draw upon several dimensions of power identified in the thesis papers and summarised early in this Conclusion. Some governing nodes also extend their networked connections in order to access sources of power from the wider governance environment, including from within the state’s own field of governmentality; for example, via statutory, legal, policy, resource and funding avenues. This highlights an interesting symbiosis where the...
Indigenous field of governance and its leaders not only contest the power of the Australian state, but also draw upon that power for their own internal purposes.

The concept of governance as affect and affective of mesh nodal networks does not flatten or collapse the richness of creativity attached to governing nodes, or reduce their agency to mere functional determinism. Nor does it imply that the agency of a governing node or circuitry is constrained by, and limited to, a single scale of network. Governing agency can be purposefully activated to instigate innovative practices, identify new knowledge and meaning, or create solutions that can have multiplier effects across network pathways. It can be initiated out of personal self-interest as much as altruism or collective end purposes. Some individuals and organisations are adept at operating vertically and horizontally across the dispersed scales of their relationality. Others prefer to restrict their governing agency to the core of a particular network where they have their strongest authorising environment. Not all governing nodes are themselves of equal influence and power. And there are struggles within the circuitry of governing nodes, whereby power and agency are challenged, constrained or activated by their negotiation and manipulation of systemic mechanisms of hierarchy, reciprocity, relationality and subsidiarity.

Governing agency may be short-lived and event-specific as the systemic pull of relatedness reinstates a node within the bonding demands of their mesh network, and so constrains their sphere of action. Unrestrained governing autonomy may be judged by other people as being illegitimate and selfish, leading to their withdrawal of recognition and support. A node’s legitimacy and authorisation to act is therefore susceptible to factional net-politics, their relative power and reputation, and their flair in negotiating the principles of subsidiarity and hierarchy relating to representation and decision making.

In such ways the systemic pull towards nodo-centrism, self-interest and individual autonomy in Indigenous networks is tempered by the pull towards the bridging relatedness of nodes, and vice versa. Accordingly, governing nodes are neither totally constrained, nor totally free in respect to their agency. But in all cases, their governing agency will be condoned as being legitimate, or not, by the immediate authorising environment that is their mesh network.
The contemporary condition of Indigenous nodal networked governance

Earlier, Zygmunt Bauman’s insights into the ‘liquid modernity’ of global society were applied to understanding the contemporary condition of the Australian state. That metaphor raises a similarly interesting insight in respect to the condition of Indigenous networked governance under current national and global circumstances. The thesis analysis indicates, however, that the Indigenous condition is not so much one of ‘liquid’ modernity as one of ‘viscous’ modernity.

Viscosity is a measure of a substance's susceptibility to flow and to stabilise. It describes the internal friction mechanics of a moving substance that tends to resist forces, causing it to flow. For example, viscous materials such as glues, gels, polymers, starch, lava, paint, protoplasm have a resilient condition at a fundamental molecular level that induces structural order (Karlsson & Carlsson 2007). On the other hand they also have a molecular condition that allows shape-shifting, and a certain elastic quality that enables reversion and adherence to an original form. In other words, viscous materials have potential for both solidity and fluidity of form.

The metaphor of viscosity arguably has resonance with Indigenous networked culture and its contemporary field of governance. It highlights the symbiotic condition of its epistemic openness alongside its resilient conversion of the new and the strange into the familiar. As a consequence, the Indigenous culture of governance can be theorised as a system midway between durable and fluid states.

The metaphor of viscosity also draws attention to the turning points of internal vulnerability which potentially lead to breakdown and loss within mesh networks and their nodal governance. For example, when the degree or speed of change surpasses the capacity of a network to enact homomorphic recursion, then its governing arrangements may break down very quickly. For example, a mesh network is vulnerable to the breakdown of too many close relational pathways, the systemic failure of bonding and bridging relationality; and the increased involution of small groups into debilitating and oppositional factionalised sub-networks. Networked Indigenous governance is also vulnerable to the collapse of the dense spaces of cosmological Law, the loss of several governing nodes, the dissipation of their accumulated governing capital, the disruption of the circuitry of governance to the extent that scale-jumping cannot be activated, and the unrestrained dominance of one scale, node or polity over others.

Such tipping points of vulnerability and loss can be activated and exacerbated through intercultural articulation with the Australian state and other agents in the wider...
governance environment. Once the solid ground of Indigenous networked governance is set into turbulent motion, governing nodes can become dis-embedded from their foundations of relatedness, and the only thing that then remains constant is change. The thesis papers demonstrate that in fraught intercultural contexts, intra-Indigenous contestation can increase to such an extent that it becomes difficult to enforce internal social order. When the relationality of nodal governance and its circuitry is itself under significant stress, Indigenous people find themselves at a distinct disadvantage in their dealings with the Australian state. Again the very networked quality of the Indigenous field of governance means that negative impacts and changes occurring at one scale can have significant multiplier effects across dispersed network formations at other scales.

There is an Indigenous discourse of cultural loss that specifically focuses on such breakdowns and vulnerabilities, and encompasses the absence of senior leadership, their perceived loss of authority, and the disregard of younger generations for ‘The Law’. This discourse is borne of actual experience of cultural loss and damage. It should be given considered weight in anthropological analyses where, more often, the postmodern inclination is either to see Indigenous culture as undergoing naturalised change, and so skirting the problem of loss (Kirsch 2001), or to see culture as irredeemably out of step and so needing to be urgently modernised (Sutton 2009).

**Theorising the Intercultural Space**

The fifth element in the grounded theoretical framework proposed in this Conclusion addresses the intercultural space. Here, the viscosity of Indigenous nodal networked governance articulates with the liquid modernity of the Australian state and its governmentality.

While ‘place’ and ‘location’ indicate stability, ‘space’ is mobile. Raymatja Marika’s conceptual frame of the intercultural as *gama*, resonates with Bauman’s metaphor and Ulf Hannerz’s (1992: 4) concept of ‘cultural flow’:

> When you see a river from afar, it may look like a blue … line across a landscape; something of awesome permanence. But at the same time, ‘you cannot step into the same river twice’, for it is always moving, and only in this way does it achieve its durability. The same way with culture — even as you perceive structure, it is entirely dependent on ongoing process.

The intercultural flow appears similarly enduring. But it is an interactive, turbulent space where different velocities and frictions meet, and lines of foam circulate across
the surface, swelling and retreating, giving rise to convergence and opposing currents. It therefore has properties and patterns that differ from those of the specific fields involved; and its properties and patterns change over time and place. This theoretical understanding entails a corresponding set of insights.

**Emergent and unpredictable articulation**

Above all the intercultural is an emergent space. The flow of articulation itself cannot be predicted; we cannot know the outcome of forces and events beforehand. But during the encounter, the habitus of Indigenous governance and statist governmentality become hyperactive and vulnerable; open to question. The phenomenon of emergence in the intercultural space is one characterised by chaos and entropy, movement and congestion. Influential nodes within both fields seek to promote their preferred governance values, practice and modes of order-organisation.

The intercultural is not an openly receptive, homogenous contact zone. The governance environment forms a critical part of the intercultural space. It draws a multiplicity of wider fields of governance into the orbit of Indigenous governance, not just the state’s governmentality. There is no uniform or linear direction of articulation because there are a plurality of actors. Some nodes are more powerful than others and differently motivated in their disposition to action. Some try to incorporate or advocate on behalf of ‘the Indigenous Other’, others to repulse it.

Following Mary Pratt’s (1987, 1992, 1987) insight into the linguistics of contact, the intercultural can be theorised as a ‘contact zone’; a complex adaptive space of unfolding interaction and emerging relationships of power where possibilities and turning points open up as the fields of Indigenous governance and statist governmentality engage and disengage with each other. The intercultural thus entertains possibilities of both change and continuity, contestation and accommodation. It is a contact zone of ambiguity where different people and things ‘rub up against one another and change [or not] in the process’ (Fay 1996: 243). The distinctiveness and autonomy of any field is thus subject to the changing power differentials and representations that are activated at the time.

This means that the intercultural space is both stochastic and nonlinear. It involves chance, where unpredictable things happen that cannot be exactly resolved, and where the cognitive trajectories and practical consequences permeate outwards in multiple directions. The intercultural is not a simple unpredictable process, because the
distribution of possible future trajectories depends on past as well as present conditions. It is shaped, for example, by people’s personal memories and past experiences, the different governance histories of organisations, communities and government departments, and by past policy genealogies and political cycles. And in Indigenous affairs, the past weighs heavily on people’s present-day expectations and assessments as to what any future intercultural encounter will deliver.

**Articulating boundaries and value**

In a further elaboration of Bauman’s metaphor, the thesis papers demonstrate that the viscous field of Indigenous governance has its own stabilising points of resilience and boundary stickiness. The principles of relational autonomy, interconnected dispersed polities, gendered hierarchies of knowledge, subsidiarity of authority and decision making, networked nodal governance and Law-given order, are the cultural equivalents of molecular resilience. They operate as sticky designators of collective identity and social order, and tend either to resist or promote fluidity in accordance with people’s assessments of the homomorphic resonance and legitimacy of particular events, processes or actions.

Powerful designators such as these are particularly sticky attractors at times of great social stress and external pressure. Then, essentialisms of culture, governance and governmentality can all be defensively promoted by people in order to protect the status quo and reject change. This reveals the intercultural to be a space of heightened internalisation, leading to contested agency over the control of meaning and value.

Not surprisingly, as fields of governance and governmentality articulate, such deep designators are deliberately quarantined and protected from usurpation by ‘the Other’. For example, the thesis papers document how the state resolutely protects its control over the allocation of funding and resources, regulation of corporate accountability, jurisdictional pre-eminence, and its statutory and policy modes of control within Indigenous affairs. On the other hand, Indigenous people resolutely protect their control over valued realms of gendered and restricted knowledge, ceremonial practice and powerful places.

There is then a reality to the experience of there being a distinctive Indigenous cultural and governance domain, and a carefully patrolled boundary maintained by the state that restricts Indigenous access to its field of power. Indeed, several thesis papers describe how the very perception of bounded domains has itself become the source of
yet another set of mutual representations to be tactically deployed by both Indigenous Australians and the state in their encounters.

However, this does not mean that the fields of Indigenous governance and state governmentality are radically contradictory or mutually impregnable. There are elements of each field that are heavily instantiated in the practice of the other. For example: there are ‘government business officers’ living and working in communities; auditors and administrators are put into ‘failed’ organisations to manage them on behalf of the state; organisations have mandatory government program and financial requirements to fulfil; Indigenous boards have legally enshrined functions based on democratic procedures.

Similarly, certain aspects of Indigenous networked culture are heavily embedded in the Australian state’s governmentality at all levels. For example: Indigenous cultural diversity is enshrined in government policy and service delivery; traditional land ownership is enshrined in legislation; and there is statutory recognition of Indigenous modes of decision-making for native title purposes. And a particularly significant trend in Indigenous people’s articulatory politics with the state has been their insinuation of the bridging relationality of their own networked way of life into the state’s own governmentality. Today Indigenous nodal networks permeate government departments, agencies and bureaucracies, political parties and Ministerial offices.

**Agency — contested and condoned**

The intercultural may be a space of turbulence and emergent consequences, but that does not mean those conditions are unauthored. The thesis papers highlight a range of purposeful action initiated by Indigenous people within their field of governance, in the course of their intercultural articulation with the governmentality of the state. Rather than characterising this agency as an affect (or affective) of resistance, hegemony or hybridism, the thesis papers point to a more nuanced theoretical account.

Intercultural turbulence and emergence can lead to essentialised resistances by people, and their sedimentation of meaning and positionality. It can lead to greater dispersed intensity of dominance and intervention by the state, and localised contestation by Indigenous people over the state’s power and agency. And on occasions, when the state’s turbulent liquidity surpasses the viscous resilience of Indigenous nodal networks or the ability of governing nodes to generate transformative accommodation,
then people’s perception and experience of cultural vulnerability and loss of control can become dominant and real.

However, an important theoretical contribution of the combined thesis of papers is to demonstrate that there are points of articulation where turbulence and emergence lead not to contestation or resistance, but to negotiated common ground and condoned innovation. The papers also indicate that certain individuals (within both fields) play a particularly influential role in steering intercultural events and processes towards common ground.

Today, powerful Indigenous governing nodes, especially pre-eminent leaders and organisations, form superstructural networks and operate as a particularly powerful discursive field of interpretation and authorisation in intercultural encounters with the state. On occasions, they engineer realignments and interpretations of Indigenous governance that are reproductive of prevailing patterns and practices. At other times, they initiate significant experimentation and innovation in governance arrangements.

If such cases of Indigenous agency evoke an Indigenous perception of cultural continuity — if they have homomorphic resonance — then they will be condoned as being culturally legitimate. The thesis papers document several such consequential forms of governing agency. Furthermore, they indicate that the state’s agency is subject to the same Indigenous perceptions and assessments. For example, when the state externally imposes change without Indigenous consent, it is invariably contested and can undermine Indigenous governance capital. However, if transformational agency occurring in the intercultural space resonates with deep-seated Indigenous principles of networked governance — if it has homomorphic resonance — then it may elicit Indigenous assessments of legitimacy. In this case it may generate what could be called transcultural common ground.

The concept of the ‘transcultural’ has received little attention in Australia and so is under-developed in the context of Indigenous society. It arises out of Fernando Ortiz’s (1995) early influential consideration of inter- and trans-cultural conditions in Cuba. Following Ortiz, I take transcultural to refer specifically to the post-emergent points of common ground that develop across statist and Indigenous cultures of governance and governmentality. These are points of articulation where shared meaning, understandings, agreement emerge. I take the transcultural to also include points of common ground that have emerged historically and continue to repeat.
The transcultural concept does not imply some form of assimilationist unity or naïve commensurability. Nor is the concept employed to suggest a form of mongrelised cultural hybridity.\textsuperscript{50} Transcultural common ground is itself inherently dynamic, and this is especially the case under contemporary conditions of the Australian state’s liquid modernity. Shared meaning or a negotiated common practice can break down, and sometimes does so easily in Indigenous affairs.

**Theorising legitimacy**

The thesis papers mark the author’s own conceptual journey from ‘cultural appropriateness’ to ‘cultural match’ and, in turn, to suggesting that the concept of ‘cultural legitimacy’ has greater analytic usefulness and ethnographic fit. Within Indigenous networks, people’s perceptions and judgements of legitimacy are critically important to the sustainability of governance initiatives and the achievement of common ground with the state.

The thesis papers point to a complex reading of legitimacy within the field of Indigenous governance and intercultural space. It enables legitimacy to be theorised as an interactive condition of communicative, collective consensus about homomorphic fit which enables people to assess credibility and worthiness of belief and support. To do this, legitimacy draws upon and requires:

1. *attitudinal* approval, involving normative mechanisms and responses (e.g. that resonate with peoples’ internalised norms of trust, allegiance, relationality, reciprocity);
2. *behavioural* allegiance, involving instrumental and institutional mechanisms (e.g. that resonate with people’s internalised rules, customary practices of ‘looking after’/‘working for’, and achievement of desired outcomes);
3. *cognitive* resonance, involving orientation and interpretive mechanisms (e.g. people’s collective recognition, judgements and assessments of the way things should be).
4. *governance* capital, involving accumulation, exchange and distributive mechanisms (e.g. that resonate with processes and standards for acquisition and use of governing power, knowledge, resources, abilities);
5. *systemic* homomorphism, involving replication of, or fit with underlying network mechanisms and principles (e.g. relational autonomy, subsidiarity, dispersed polities, nodal agency and power); and

6. *cosmological* authority, involving agency and order-organisation mechanisms (e.g.; that draw on the authorising power, knowledge and creativity of the Dreaming and The Law).

These elements constitute an authorising environment that is activated by people and, thereby, are open to bargaining and negotiation. Indigenous people are quick to judge some innovations and realignments as acceptable, and others as lacking cultural legitimacy and therefore unacceptable. Arguably, innovation within the Indigenous field of governance is deemed to be credible and worthy of support when the Indigenous authorising environment supports and helps sustain the ‘new’ arrangement as being a form of continuity.

Importantly, this theoretical understanding suggests that for governance innovation to be considered *trans*-culturally legitimate and sustainable over time, it requires both Indigenous and statist cultures to achieve a common ground in their assessment and support of its credibility. Secondly, when an innovative alignment has been reached, its properties are not a simple hybridised compounding of all the parts added together. Some parts may be inherently different — transformed into something that is neither fully Indigenous, nor statist. In this respect, the intercultural is a space where the ‘system effects are different from its parts’ (Urry 2006: 113). This is the affect of emergence in a turbulent space. Furthermore, the emergent properties of governance innovation and common ground are not epiphenomenal; they have their own causal flow-on effects which in turn generate other conditions and constraints which are then subject to people’s judgements.

**The asymmetrical interdependence of power**

This leads to an understanding of the pattern of articulation between the fields of Indigenous governance and state governmentality as one of ‘asymmetrical interdependence’\(^{51}\) (Galtung 1971) in the context of an unequal power relationship.

Power in the Indigenous context is a condition of an assertively equalitarian society where some people are decidedly more equal than others, and recognised as such. There is an enduring hierarchy of knowledge, reputation and hence of status; there are leaders, bosses and meaning makers. Governing leadership, prestige and capital can be
accumulated according to enshrined institutional and organisational pathways. The power to act is occasioned, reinforced and maintained through public performance and credibility.

However, the contemporary exercise of Indigenous governance is inseparable from the contestation, negotiation and construction of power relationships shaped through intercultural encounter with the state. The articulation of fields of governance and governmentality is also about the politics and representation of cultural identities, and a pathologising of Indigenous governance by the state. This highlights moments when the state’s patronage and tolerance of Indigenous governance stops. The state reasserts its relative power precisely at the moments when Indigenous people demand to have their own field of governance recognised, or when they tread too close to the state’s protected realms of power. In these situations, the state’s default mode is to reinforce the power dependence of Indigenous people.

However, the understanding promoted here emphasises that the balance of asymmetry does not always favour the state. For example, the thesis papers demonstrate that the legitimacy and capacity to get things done does not alone rest on the power of the state to command. As a site of radical cultural specificity, Indigenous governance poses a substantial challenge to the state’s power and its ability to facilitate common ground or impose governance solutions onto Indigenous people. In the face of the state’s unilateral intervention, Indigenous people can assert their ungovernability; they become absent and invisible. They can also undermine governance innovation and transcultural common ground if it erodes their own niche power base within Indigenous networks, or is fundamentally at odds with valued cultural principles.

**Conclusion**

The contribution of this thesis lies in its accounting for the Indigenous culture of nodal networked governance which, in this conclusion, has been more abstractly modelled as a self-organising system of relationality through which individuals and groups engage with, organise and understand their world in respect to both its internalities and its externalities. Such a systemic logic generates and is in turn reproduced by mechanisms of: bonding and bridging relationality; homomorphic recursion; and subsidiarity of social organisation that overcome the limits of scale.

Because nodal networks are built around mechanisms of relationality, under some circumstances they may act as conduits of conflict and factionalism as much as reciprocity, and generate individual autonomy as well as collective identity. In other
words, they generate interlocking formations that can be purposefully activated by people and entities, according to the particular need and order of governance issue at hand. Importantly, the model of a mesh network both enables and constrains the agency of a circuitry of influential governing nodes. And it provides people with a system-preserving map by which to interpret the governing actions and initiatives of nodes, to judge their legitimacy, and act accordingly.

These conditions and logic are both a source of strength and vulnerability for Indigenous mesh networks and nodal governance in their intercultural articulation with the Australian state. Indigenous people deploy this model of the world and social order, to engage with, understand and attempt to control the effects of the governmentality of the state.

While the fields of Indigenous governance, state governmentality and their intercultural articulation can be separated for analytic purposes, they are in fact parts of a systemic whole of power relations and order-organisation. The current conditions of liquid modernity acting upon such a complex whole, severely challenge the Australian state’s capacity for self-governance and sustained intervention. They similarly challenge Indigenous people’s ability to engage with the state while maintaining the relationality, systemic coherence and agency of their own networked form of nodal governance.

The intercultural space is now arguably an intensive site of vulnerability and contestation for both Indigenous Australians and the Australian state. The limits of the state are starkly revealed in Indigenous affairs. There, it labours to secure sustained policy goals in the context of the global demise of the long-term, certainty and stability. As relational systems, Indigenous mesh networks and nodal governance are particularly vulnerable to the current hyper-fluidity of change being experienced and imposed upon them by the Australian state.

Arguably, there is now a fundamentally different phase in the relationship between Indigenous Australians and the state. This includes the potential for greater contestation and less common ground, as Indigenous people reject the state’s pressure to change their cultures of governance along preferred democratic lines; and as the state attempts to reassert its unilateral sovereign powers and regulate Indigenous cultures of governance. But the penetration of both fields into each other also suggests there is no easy retreat back into boundary exclusivity.

The Indigenous culture of networked nodal governance has a recognisable pattern, underlying principles and mechanisms, institutional standards, recognised modes of
power and authorised agency. Until the Australian state understands and directly engages with these features of deep Indigenous governance, its own governmentality of Indigenous affairs will continue to fail.
Appendix A: Curriculum Vitae, Diane Smith

* — An asterisk is used below to highlight the books, published papers and other reports authored by the author (and co-authored with others) which have a direct focus on the issues of Indigenous cultures of governance and the Australian state’s governmentality of Indigenous affairs.

### Current Professional Status

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<tr>
<th>Professional Status</th>
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<tr>
<td>Visiting Fellow</td>
<td>Centre for Aboriginal Economic Policy Research</td>
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<td>The Australian National University</td>
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<td>Canberra, ACT</td>
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### Qualifications

**1987 — Associate Diploma, Visual Arts**

Canberra Institute of the Arts,

The Australian National University, ACT.

**1981 — Masters Degree (Anthropology)**

Department of Archaeology and Anthropology,

The Australian National University, ACT.

Masters Thesis Title: *Rights in nurturing: the social relations of child bearing and rearing amongst the Kugu-Nganychara, western Cape York Peninsula.*

**1975 — Bachelor of Arts (Honours Anthropology and Sociology)**

Anthropology and Sociology Department, University of Qld.

* Hons Thesis Title: *Past masters now: a study of the relationship between anthropology and in Australian Aboriginal societies*, (specifically focusing on Indigenous governance and leadership).

### Professional Employment and Services

2010-09 — Governance Research Consultant to:

- Anindilyakwa Land Council, NT
- Groote Eylandt and Bickerton Island Enterprises, NT
- Australian Coordinator-General, Prime Minsters Department,
Remote Service Delivery Program, ACT
• Reconciliation Australia, Indigenous Governance Toolkit, ACT
• MacDonnell Shire Local Government, NT

2007-03 — Chief Investigator, CAEPR,
Indigenous Community Governance Research Project,
Centre For Aboriginal Economic Policy Research (CAEPR),
The Australian National University
Instrigator and primary coordinator of the ARC Industry partnership between CAEPR at the Australian National University and Reconciliation Australian; with co-funding by NT, WA and Australian Governments. Coordination of a team of researchers working with 12 Indigenous communities and regional organisations on governance, leadership, best-practice, governance capacity development. Numerous publications, workshops, practical capacity development, presentations, meetings and workshops were facilitated over the course of the project. For comprehensive list of outcomes, outputs, reports, workshops and practical contribution of the project see www.anu.edu.au/caepr/ICGP

2007-1999 — Fellow, continuing appointment, CAEPR,
Faculty of Arts, The Australian National University,
Canberra, ACT.

2008-05 — Indigenous Governance Toolkit,
Reconciliation Australia,
Canberra ACT
Provision and coordination of the written content and all tools/templates etc for the development of a national electronic website of governance resources including: best-practice information, concepts, definitions, practical tools and templates, ideas that work, case studies, visual aids, video about national and international best-practice and problem signs in Indigenous governance, leadership, management and staffing, corporate and community governance. Now accessible at:
1999–91 — Research Fellow, CAEPR
Faculty of Arts, The Australian National University, Canberra, ACT.
Research carried out on CDEP, Indigenous economic development, organisational governance, welfare, households and family, land claims, agreement making, resource development, community development, governance, management and financial status of Indigenous organisations.

2007–04 — Governance Research and Advice
To West Central Arnhem Regional Authority (WCARA) Transitional Committee and subsequently the West Arnhem Shire (WAS) Transitional Committee, Northern Territory.
Included the conduct of governance research and the provision of practical training and strategic advice on governance best-practice, negotiation and mediation skills with governments and stakeholders, policy formulation, performance review of management, hiring of CEOs, separation of powers, conflict of interest, strategic planning, cultural match of governance in West Arnhem, NT.

Advice and reports provided on local government policy, regionalisation, governance best-practice in community councils, program evaluation, regional development, governance training to DLG management and Indigenous community councillors.

A partnership between the Department of Local Government, the NT Government, the NT Land Councils, and Reconciliation Australia.

2000–1999 — Presidential Mediation Consultant
National Native Title Tribunal, Perth, WA.

1998–96 — Member
National Native Title Tribunal, Perth, WA.

Mediation, negotiation and arbitration of native title claims

1993–90 — Research Officer, CAEPR
The Australian National University, Canberra.

1990–88 — Consultant Research Anthropologist
Major project research includes:
- Central Land Council: ‘Mereenie Oil and Palm Valley Gas Royalty Impact Study’.
- The Sacred Sites Authority: ‘Mt Borradaile Sacred Site and Traditional Ownership Documentation, West Arnhem Land’.

1990–1988 — Research Coordinator,
Aboriginal Biographical Project,
Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra ACT.

1984 — Senior Researcher and Executive Officer,
Aboriginals Benefit Trust Account Review,
Australian Government, Canberra ACT.

1983 — Executive Officer to Dr H.C. Coombs,
CRESS, The ANU, Canberra ACT.

For the conduct of the Review of the National Aboriginal Congress, Commissioned by Australian Government.

1982–81 — Anthropologist and Head of Land Tenure
Northern Land Council, Darwin, NT.

1980 — Tutor (Anthropology)
Department of Archaeology and Anthropology, ANU

1973-74 — Review Team Member and Researcher

The Henderson Poverty Inquiry
Brisbane Case Study,
Australian Government Commission of Inquiry into Poverty
Department of Social Work, University of Queensland, Brisbane.

Published Books and Monographs

2008* Contested Governance: Culture, power and institutions in Indigenous Australia, co-edited by Janet Hunt, Diane Smith, Stephanie Garling and Will Sanders from CAEPR, and published by ANU E Press.


1995* Smith, D.E. and Altman, J.C. Review of Native Title Representative Bodies, 1995, Report to the Aboriginal and Torres Strait Islander Commission Board of Commissioners, ATSIC,
Canberra, 122pp.


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**Refereed Journal Articles & Chapters in Edited Books**


1998 Smith, D.E. ‘Native title claim mediation and the right to negotiate: some thoughts on the worst and best-practice role of
lawyers’ in L. Strelein (ed.) Alternatives to the Adversarial Method: The Role of Legal Practitioners in the Native Title Arena, Native Titles Research Unit, Aboriginal Studies Press, Canberra.


*Numerous Case study papers, Annual Reports, Power Points and Occasional Papers written for the Indigenous Community Governance Project. See www.anu.edu/caepr/ICGP


National Native Title Tribunal


1996* Seaman, P. Smith, DE. and McDaniel, M. Western Australia v. Evan and Sons of Gwalia (& Mt Edon Gold Mines, and Cottee and Townsend, Re Koara People, 1996132 FLA 73; (Koara Stage 1), Native Title Future Act Arbitral Determination, National Native Title Tribunal, Perth, 41pp.

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Strait Islander Corporation’, for Yarnteen Corp, Newcastle, NSW.


Appendix B: A Regional ‘Governance Environment’ in Central Australia

A region in central Australia demonstrates the complexities of the governance environment for Indigenous Australians. The region is remote, serviced largely by a network of dirt roads, a weekly air service delivering post, and road delivery of food, building, and other goods. There are four major communities with a number of well-established surrounding outstations. There are three different forms of local government incorporation across the communities: two have community councils incorporated under the Northern Territory Associations Incorporation Act 1978; another community government council operates under the Northern Territory Local Government Act; and another council Aboriginal corporation is under the ACA Act. As a result, the community councils have different statutory regulations and guidelines applied to their constitutions, functions, and membership.

Each community council has a non-Indigenous town clerk whose task is to deliver local government services under the direction of a council board and executive of Indigenous people. However, as with municipal councils, the four remote councils and their town clerks undertake a much wider range of service functions.

The councils and their management routinely act as funding channels for a multitude of government grants and programs for local organizations, which in turn deliver program activities to the same communities and surrounding outstations. On each community there exist a number of other incorporated bodies which take on service delivery and decision-making roles, but which lie outside the orbit of the council’s own statutory jurisdiction. For example, one community with 280 residents has three other incorporated organisations under the ACA Act (store, aged-care centre and art organisation) apart from their community council, as well as a primary school and health service centre provided by Northern Territory government departments.

Another community with a population of 450 people has six incorporated organisations under the ACA Act apart from their community council, including two health-based corporations, a store, art centre, women’s centre, and outstation resource agency. A primary school operates under the Northern Territory Department of Employment Education and Training with an Aboriginal Student Support Parent Awareness Committee providing a forum for Indigenous parents’ voice in community education. In 2004, Yirarra College (based at Alice Springs) delivered secondary services at the school, providing an educational capacity that is not government based.
The two other discrete communities in the region each have one incorporated body (the store). One also provides a major primary school and health service in the region (under Northern Territory government departmental oversight). This is a comparatively modest rate of organisational representation at the discrete community level.

Each community and its surrounding outstations is associated with a number of ‘named’, extended family groups. Larger families and their senior leaders are also closely associated with the historical establishment and running of particular incorporated associations. In some instances, certain families are seen to ‘specialise’ in the governance of specific service-delivery functions (e.g. one family will be involved with health services and organisations, another with education, another with arts and crafts).

These families have genealogical and other linkages to other families in the surrounding region, and certain members are highly mobile along regional networks. In other words, the governance of each community is internally dispersed across several organisations and families of polity, and further dispersed across the region via webs of relationships and organisations.

An added factor which impinges on the effectiveness of Indigenous governance in these communities is the role of non-Indigenous people in key management and staffing positions, and their own relationships in a community. For example, some non-Indigenous managers have family members who also occupy key positions in other organisations in the same community. There are good reasons why this happens—communities lack access to professional staff and accept ‘couples’ as a way of getting two employees, and there is a lack of adequate housing for single staff members. But these arrangements also tend to create webs of non-Indigenous power and politicking within a community. This politicking is often focused on community organisations and key resources, and there are also influential relationships of patronage—both positive and negative—between non-Indigenous staff and specific community leaders. These Indigenous/non-Indigenous relationships can have profoundly negative impacts on the governance of a community when they solidify factionalism and competition, or begin to interfere with the daily management and decision-making of representative organisations.

This complex set of community ‘governance environments’ in one area of central Australia is located within an equally complex regional governance and leadership environment. The four communities used to lie within an ATSIC Regional Council
zone. The elected members of that defunct ATSIC Council have been moving onto the
governing committees, boards and leadership positions of other regional organisations,
creating new power niches and often organisational change.

Indigenous leaders within each of the four communities often simultaneously
undertake senior positions in different Indigenous and government agencies at regional,
Territory and Australian government levels. For example, a previous ATSIC Regional
Council member from one community is also a member of a community council, as
well as being the chair of another community centre, and on the governing board of
several other regional organisations. A senior member of another community council is
also a member of the Central Land Council’s Full Council and a board member of a
large regional royalty association. A number of council members from the four
communities are traditional owners whose statutory rights and interests are represented
by the Central Land Council. There are several leaders across the region with
considerable organisational, political and policy-making experience. Overall, however,
the leadership is fractured and operates under considerable pressure and heavy
workload.

Some regional organisations are based around specific constituencies having legal
rights and interests in respect to land and resource development (such as traditional
owners, royalty recipients). Other organisations target their services generally to
Indigenous residents of the region (e.g. health, aged care, youth, child-care, women’s
services). Since the demise of ATSIC, some organisations are vying with each other for
the status of the governing organisation for the region, amidst a history of efforts to
create an Indigenous representative government for an even bigger geographic region.

This ‘re-positioning’ of governance goals is being carried out in a context of the
complex regional dispersal of Indigenous decision-making and authority across a
multitude of traditional-owner groups and representative organisations. The main town
for the region, Alice Springs, acts as the major service-delivery ‘hub’ for a wider
regional population of approximately 15,000 Indigenous residents at some 260
communities. The town population (excluding the town camp population of over 973) is
currently estimated at 3,494. Current ORAC data (2004–05) records approximately 216
incorporated bodies in the town. This means there is approximately one incorporated
Indigenous organisation for every 16 Indigenous residents of the town. By any measure,
this rate of ‘organisational representation’ raises concerns about its impact in
exacerbating overlapping service delivery and organisational competition in a region
which experiences significant shortages in professional personnel, management and administrative skills, low levels of human capital and infrastructure.

This governance complexity at the community and regional level is mirrored by a different kind of complexity at the Territory and national levels. Communities and their organisations within the region are subject to the policy, regulatory, legal and funding regimes of the Northern Territory and Australian governments. There are several major government agencies and regional government offices operating in Alice Springs, and delivering services and funding to the region, including a new ICC office. Many of these departments deliver their services according to their own system of administrative ‘regions’. Some of these align; many do not. In other words, there are several kinds of ‘regions’ (cultural, government, administrative, service, political, geographic). To date, NGOs have played only a small role in the region.

All communities in the region are substantially reliant on the welfare economy and short-term program funding from public-sector grants that have stringent accountability requirements. The changing national and Territory policy environment has led to new program and funding initiatives across the region, including the negotiation of several Shared Responsibility Agreements (by the Australian government) and a failed process of negotiation towards a regionalised form of local government (by the Northern Territory government). There are key individuals (both Indigenous and non-Indigenous) operating within the wider Territory and Australian governments who are locally influential in respect to policy implementation and program funding. Communities in the region are visited by a changing array of government ministers and departmental officers. As with the community and regional layers of this governance environment, the ‘government’ layers are characterised by their own internal tensions, alliances, silos, and competing objectives.

This regional example illustrates the challenges involved in achieving good Indigenous community governance in any particular context. Whilst the detailed social, institutional and political dynamics, and histories vary from place to place, the layers of complexity are present everywhere.
Appendix C: Regional Governance Models

Fig. 5: A regional model with representation based on language groups, clans or family groups.

Features:

1. The region has a cultural geography and is divided according to Indigenous social, ceremonial kin or language groupings.

2. Each grouping selects an equal number of members according to traditional decision-making processes and criteria. They may select a different number of members if desired according to size/influence of the groupings.

Example:

The Thamarrurr Regional Council Structure and logo (above) with 20 clans having two representatives, each selected at separate clan meetings, NT
Fig. 6: Regional representation via wards based on a combination of communities, organisations, and traditional ownership rights.

Features:

1. The region is defined by functional and traditional criteria. It is divided into Wards based on discrete communities and on organisational representation of a major sub-region.

2. Residents of each community constitute a Ward. They nominate and vote for one representative from their own Ward, and select a traditional-owner representative through traditional decision-making processes.

3. Residents serviced by a sub-regional organisation may constitute a Ward. They nominate and vote for one representative from their own Ward, and select a traditional-owner representative through traditional decision-making processes.

4. Representation for organisations and communities may be equal or unequal.

Example:

West Central Arnhem Land Regional Authority (proposed), NT.
Fig. 7: Regional model based on homelands ‘hub and spokes’ representation and service delivery.

Features:

1. The region is comprised of homelands and resident members living on their traditional country. They are represented and provided with services from a centralised hub organisation that is located in a large community.

2. The model is both functional and culturally-based.

3. Certain homelands are more closely affiliated with each others through kin marriage ties, forming connubia. These may begin to form additional tiers of outlier ‘hub and spoke’ relationships.

4. Residents of each homeland nominate one representative from their own country, selected through traditional processes.

5. Representation for homeland communities may be equal or unequal.

6. A smaller core of nominated representatives forms an executive for the centralised hub organisation.

Examples:

Laynhapuy, Bawinanga, Demed and Jibulwanagu Outstation Associations, NT.
Fig. 8: Regional model based on umbrella ‘family’ of organisations with family board representation.

Features:

1. The region is constituted as a functional one comprising clients and families serviced by a set of service organisations. The clients may be overlapping; they may be distinct according to service’s focus.

2. The organisations have been incubated out of a ‘mother’ organisation which provides an umbrella for financial, administrative and management advice, and leadership mentoring.

3. The ‘mother’ organisation may keep its business arm, enterprise companies and trusts in an exclusive legally-based relationship with itself.

4. The members of the Board of the ‘mother’ organisation are based on extended family culturally-based ties.

5. Those Board members may or may not also sit on the board of the service organisations; some or all of the members of the board of the mother organisation will probably comprise the board of the enterprise arm.

Examples:

Yarnteen Corporation, NSW and Bunuba Corporation, WA.
Fig. 9: Regional model based on peak body and confederation of community bodies.

**Features:**

1. A peak Indigenous body acts as the representative of all constituent organisations and their members.

2. The region covers the combined areas of the constituent community organisations which may be formally gazetted via culturally-based rights and interests, or by functional service areas.

3. The constituent organisations and their communities nominate or elect representative members, some (or all) of whom act as the executive group for the peak body. There may be more detailed tiers of election of representation between the community and regional peak body level.

4. Community representatives may be elected by vote or by traditional processes.

5. Constituent community organisations may be dissolved or retained; but there will be some mechanism of community endorsement for peak body representation.

**Examples:**

Nyirrungulong Regional Authority, NT; Ngaantajarra Regional Agreement Structure, WA; and possible variation being discussed for Noongar Regional Peak Body, WA.
Fig. 10: Federated bi-cameral model.

**Features:**

1. The region is comprised of gazetted or determined Indigenous land, and/or other areas associated with Indigenous communities of land ownership, identity and interest.

2. Constituent groups of land owners nominate elders or traditional owners to a First Chamber.

3. The First Chamber nominates or preselects the executive for the Second Chamber.

4. The Second Chamber acts as the functional and administrative governance arm of the First Chamber and delivers services to the same members/clients.

5. The First Chamber continues to represent the cultural and land-ownership rights and interests of the communities.

**Example:**

The Miwatj Provisional Government.
Notes

Introduction

1. The Aboriginal Cultural Foundation was established in 1970 and based in Darwin, Northern Territory. Under its constitution, the Foundation operated with a board of Aboriginal leaders from across northern Australia to support the Aboriginal performing arts and promote recognition of:

   the existence of individual Aboriginal groups with rights of exclusive or joint ownership of, and control over their own cultural forms [and with]

   … patterns of legitimate authority within each group (Aboriginal Cultural Foundation 1963-69: 2, 4).

   The Foundation partly achieved these goals by convening Aboriginal-only ‘dance festivals’ or *bungall*. The dance festival at Kununurra fell into this category. Over 70 Aboriginal dancers participated from Port Keats (Northern Territory), Halls Creek, and Wyndham and Kalumburu (Western Australia) communities.

2. In 1963, the Western Australian Native Welfare Department gave approval for an area of ten acres on the outskirts of Kununurra to be turned into an Aboriginal ‘camping reserve’ which became known as the Mirima Reserve. The majority of its Aboriginal residents were refugees from surrounding pastoral stations following the equal wages decision by the National Conciliation and Arbitration Commission in 1966. That decision had significant unintended consequences for many Indigenous pastoral workers. The short-term disturbance saw them detached from their niche position within the pastoral labour force, resulting in waves of Aboriginal migration into Kimberley towns. The medium-term disturbance saw the lives of Mirriwung-Gajerrong people controlled and fragmented in another way, via their consignment to the spatial margins of town camps such as the Mirima Reserve (see von Sturmer (nee Smith) 1976: 163).

3. Field-based staff from the West Australian Government were then referred to as welfare officers and subsequently, as employees of the Department of Aboriginal Affairs, were variously called community advisors, project officers, and community development officers.

4. In 1976, I advocated that a methodological approach should be based on:
• ‘close and systematic observation of actual behaviour and the minutiae of social life’ including ‘the composition of Aboriginal groups, and principles of group affiliation’, the ‘relationship between spatial arrangements and the content of inter-personal relations’, ‘internal resolution of disputes’, ‘work and task allocation’, ‘historical factors underlying shifts or modifications in residential patterns’, ‘patterns of decision-making within groups’, and ‘locating the bosses (i.e. leaders)’;

• focussing ‘on the continuities and shifts that can be detected in those domains’;

• avoiding ‘attempts to reduce complex levels of social reality to a single reductionist explanatory’;

• taking ‘Aboriginal models and explanations into account not simply as a counterbalance to western ethnocentric impositions, but as a pathway to understanding how Indigenous people perceive their own leadership and decision-making processes’; and

• analytic models being ‘retested and re-presented back to Aboriginal people for further critical reflection and investigation’ (von Sturmer (nee Smith) 1976: 210–11).

5. In nineteenth century Australian accounts of Indigenous society, E.B. Tylors’ (1893: 150) colourful assertions On Tasmanians as Representatives of Palaeolithic Man were the norm, rather than the exception:

Perhaps no people ever had more rudimentary rules of law and government than those savages, with no property in land, but waging war to the death against the trespasser in pursuit of game, with hardly any government over the wandering clan, except the undefined authority of the ‘bully’ of the tribe.

The pseudo-scientific framework of social evolutionism has not lost its resonance in Australian politics and public debate. One need only consider recent comments from a senior Australian Government Minister who, to justify a proposed government policy of enforced labour mobility, described Indigenous people resident on remote outstations in the Northern Territory (NT) as living in ‘cultural museums’ (Vanstone 2005). Or the newspaper opinion piece from senior academic commentator John Hirst who, in public support of the Australian Government’s
recent unilateral intervention into NT Aboriginal communities, argued in Tyloresque vein that,

in many Aboriginal communities, social organisation has completely broken down. The people have shown they are incapable of governing themselves. There is no point in consulting them about the creation of authority; authority has to be created for them. Their lives will then better match our own (Hirst 2007 Canberra Times, cited in Paper 3).

Still more recently in 2009, the prominent Australian anthropologist Peter Sutton mounted a public case for a radical ‘cultural redevelopment’ of Aboriginal societies, criticising both his colleagues and government policy for having been captured by

an willingness to publicly ignore the profound incompatibility between modernisation and [Aboriginal] cultural traditionalism in a situation where tradition was, originally at least, as far from modernism as it was possible to be. …Traditional culture, as something to be preserved even at high cost, has been overrated (Sutton 2009: 59, 65).

6. Interestingly, my own professional turning point occurred in the context of a turbulent, collective turning point for Indigenous Australians: that of the ‘equal pay decision’ and its consequences for Aboriginal workers in the pastoral industry. Another turning point was occurring around the same time for the state’s own governmentality; namely, the establishment in 1973 by the Australian Government of the first national Department of Aboriginal Affairs.

7. For example, in 1973, I joined two other researchers (economist Jill Brown and sociologist Rosin Hirschfeld) from the University of Queensland to conduct the first interview-based survey of urban Aboriginal poverty amongst residents in the suburbs and camps of metropolitan Brisbane (Brown, Hirschfeld & Smith 1974). The research was undertaken as part of the national Henderson Commission of Inquiry into Poverty which had been instigated by the Australian Government to assess the national extent of poverty in Australia.

After completing that project, I commenced a Masters Degree in anthropology at the Australian National University. For that thesis, I undertook an eight-month period of intensive field research in 1978. Accompanied by my two-year old son Peret, we lived with Kugu-Nganychara people at an isolated outstation, 130
kilometres south of Aurukun, Cape York (see von Sturmer, nee Smith 1979, 1980). At that time, the Queensland State Government had initiated a legal ‘de-gazetting’ of the Aboriginal reserve of Aurukun, against the wishes of its residents and traditional landowners, in order to make the land accessible for mining development. I documented that process as one of the many interventions by the Australian state which I subsequently investigated across Australia (see Appendix A for a list of relevant publications on these research investigations).

8. All the thesis papers have been published in edited books, disciplinary journals, professional conference proceedings, and the Centre for Aboriginal Economic Policy Research publication series at The Australian National University. All papers have been professionally and independently refereed.

9. Over 1987-89, I took time out to study furniture design and making at the Institute for the Arts at the Australian National University. My teacher, George Ingham, introduced me to the aesthetics of design as an exploration into the permutation of creative form and function. In many ways, I have taken the same iterative approach to my research investigations of Indigenous cultures of governance and the Australian state.

10. I use the term ‘position’ here to capture a double meaning. Firstly, that of position as the self-selected ground or point of view which any person or group of people might take in a discussion, encounter or controversy. It alludes to underlying (sometimes unconscious) principles laid down as the basis for particular ways of reasoning and perceiving one's position, and draws close to Pierre Bourdieu's (1990) concept of habitus. The second meaning is that of the condition of being steered or emplaced by others, as a ground that is imposed upon a person or group by external agents.

11. The term ‘Aboriginal affairs’ (and later ‘Indigenous affairs’) came into use in Australia after the 1967 Referendum when Prime Minister Holt established the Council for Aboriginal Affairs as,

   an appropriate administrative agency … a machinery of government … concerned with all the functions which might need to be performed for a section of the community only (Coombs 1981: 268-9; see also Dexter 2008).
With the incoming Whitlam Labor Government of 1972, radical changes were made by the Australian state to its expanding governance of Aboriginal affairs. A fully-fledged Federal Government Department of Aboriginal Affairs was established in 1973 that combined the Council, the larger Aboriginal Welfare Branch of the Northern Territory, and the Council of Commonwealth and State Ministers for Aboriginal Affairs.

In the second half of the 1970s, separate Departments of Aboriginal Affairs (including Islanders in Queensland) were established in various states, and the first National Aboriginal Consultative Council (and then the National Aboriginal Congress, 1977) was established by the Australian Government. This was in turn followed by the Aboriginal and Torres Strait Islander Commission in 1980 (see Altman & Sanders 1991).

Linked to these developments was the burgeoning of a specialist field of Aboriginal affairs bureaucracy — including both non-Indigenous and Indigenous officers — who developed specialist expertise and knowledge. Progressively, from the 1980s onwards, Aboriginal (and then Indigenous) affairs came to be associated (often in a pejorative way) with what is called ‘the Aboriginal industry’. It is seen to be comprised of consultants, researchers and advisors working for Indigenous groups and organisations, and for governments and private sector interests (see Battye 2005; Rowse 1992).


14. Between the 1970s-90s, the term ‘domain’ was introduced by anthropological researchers into academic and government language, in response to a growing recognition of the cultural heterogeneity within Indigenous Australian societies. This understanding had significant impact on the state’s governmentality of Indigenous affairs, influencing its perception and political representation of Indigenous culture and collective identity. The concept of cultural diversity was progressively translated into government policy rationales, program funding and service delivery frameworks.
15. It is arguable, for example, that in Australian society today Indigenous people’s very indigeneity is commodified to such an extent that it is partly apprehended as a ‘public good’. One consequence is that the Australian state cannot easily afford to totally ignore (or be seen to ignore) the visible markers of Indigenous peoples’ socioeconomic disadvantage; especially given those conditions are regularly measured and reported upon by government itself as well as international agencies.

16. The word ‘descent’ aptly captures the fall into interpretative confusion that often characterises the first fieldwork experience of many early-career anthropologists. But the phrase can also be understood to play on the presumed apical, removed location of the nation-state and the habit of everyday Indigenous life erupting through to test both the representations of the state, and anthropologists’ neat models.

**Theme 1: Researching Governance and Governmentality**

17. The ICG Project was initiated as an Australia Research Council Industry Partnership between CAEPR at The Australian National University and Reconciliation Australia, and undertaken over a five-year period (2003–2008). The project brought together a multi-disciplinary team of researchers largely from CAEPR, as well as from the National Centre for Indigenous Studies at The Australian National University, and from collaborating institutions including Charles Darwin University, the Centre for Anthropological Research at the University of Western Australia, and the Centre for Indigenous Governance and Development at Massey University, New Zealand. The Project was supported by an international Research Advisory Committee. Financial support was provided via research grants from the Australian Research Council, the Northern Territory, West Australian and Australian Governments.


19. Useful overviews of the wider literature are to be found in Kooiman 1993, 2003; Mossberger 2007; and Pierre & Peters 2000. Much of the available research
literature on Indigenous governance is to be found referenced on the following websites:

- the ICG Project at: http://www.anu.edu.au/caepr/projects/governance.php);
- the Reconciliation Australia governance project site at: www.reconciliation.org.au/home/projects/indigenous-governance-research-project;
- the Harvard Project on Native American Economic Development at: http://hpaied.org/;
- the Canadian Institute of Governance at www.iog.ca; and the National Centre for First Nations Governance at: www.fngovernance.org

20. I documented an early example of this in 1979 on the Kendall River, Cape York where Indigenous outstation residents regarded the Europeans they came into contact with as all being part of a government bloc and therefore able to ‘exert a great deal of unwelcome pressure and interference, having the ‘rightness’ of the Australian government behind them’ (von Sturmer (nee Smith) 1979: 50).

21. For example, anthropologists and other researchers have examined the corporate governance of Indigenous organisations, community financial and resource management, the role and responsibilities of governing boards, Indigenous political representation and accountability, the nature of so-called ‘traditional’ Indigenous law and ceremonial leadership, as well as government policy and funding frameworks, service delivery and so on. More often than not, however, these have been treated as discrete sometimes disconnected topics, or as unique location-specific conditions. The papers in this thesis assert they are interrelated aspects of a bigger governance picture.

22. Some recent exceptions have included comparative approaches in various research projects undertaken by CAEPR; including:

- the ICG Project (see Paper 1 and papers at http://www.anu.edu.au/caepr/projects/governance.php);
- the Indigenous Australians and Mining Project (Altman & Martin 2009);
- the Indigenous Population Project (see research papers at http://www.anu.edu.au/caepr/projects/mcatsia.php);
• the comparative Indigenous Population Project at http://caepr.anu.edu.au/population/index.php; and

• comparative case studies of Indigenous families and welfare (Smith 2001a, 2001b).

23. The Governance Field Manual was primarily co-authored by myself and Dr Janet Hunt (Research Manager of the ICG Project), with periodic input from the research team. Each year, project researchers wrote detailed research reports addressing issues raised in the Field Manual. The reports were then analysed each year by myself and Dr Janet Hunt (with assistance from Dr Will Sanders and Stephanie Garling), in order to develop an overarching comparative analysis.

The Field Manual directed each project researcher to document and analyse the same comprehensive set of data (in addition to pursuing their unique locational issues and research concerns). This included:

• local issues in research practice;
• the conditions and dimensions of community governance;
• the dimensions and impacts of the wider governance environment;
• the dimensions and histories of organisational governance;
• concepts, representations, discourses and perspectives of governance in the community;
• the scope and structure of organisational control and power;
• leadership, representation and succession;
• who is the ‘self’ in local, community and regional self-governance;
• issues relevant to governance legitimacy;
• participation and voice of members;
• institutional modes of governance;
• corporate governance and decision-making processes;
• sources of conflict and dispute resolution;
• governance of organisational resources and socioeconomic development;
• overall effectiveness and evaluation of governance;
Overview

- governance capacity and development;
- the nature and local impact of the ‘governance of government’, including its institutions, policy, funding role and impact on Indigenous governance;
- the bureaucratic and departmental environment and its impact;
- transferable lessons, principles and best-practice; and
- implications for government policy, funding and service delivery.

The Field Manual continued to be refined over the course of the Project, as research hypotheses and conclusions were tested.

24. There remains an aversion to the quantitative in much Australian anthropology that continues to limit research analyses and insights. A strength of my methodological approach has been to include and problematise quantitative techniques, as a valuable adjunct to standard anthropological tools (see for example; Smith 1991, 1994(b), Smith 2001(a) & (b); Hunter & Smith 2000; and also the work of Morphy (2007)).

25. For example, art and painted body patterns are common Indigenous educational and socialisation tools. Young children are taught by adult relatives about their spiritual and land-ownership heritage while being ‘painted up’ for dance and ceremonial performances. In Aurukun, West Cape York, Indigenous leaders carved and painted sculptural representations of their law-based ceremony in 1958 as a way of educating the visiting Governor of Queensland, Colonel Sir Henry Abel Smith when they performed for him (Sutton 2000). In Yirrkala, East Arnhem Land, in 1962, Yolngu leaders painted the elaborate Yirrkala Church Panels as a proactive educational statement to the local missionaries, as a political statement to the wider outside world (from which the Bark Petition can be said to have germinated), and also as a statement to Yolngu about the possibilities of a regional Yolngu polity (see Morphy 1991 & 2005).

Theme 2: The State of the Australian State in Indigenous Affairs

26. This is not only a feature of the Australian state’s governmentality of Indigenous affairs, but is also apparent in the state’s wider functional responsibilities; for example in the Australian social security system, health, education, economic development, and the labour market.
27. Interestingly, Andrew Haldane (2009), Executive Director of Financial Stability at the Bank of England gave a speech in the context of the global financial crisis which focussed on the idea of the global financial system as a complex adaptive system.

28. Little wonder then that Indigenous people, who see their own Law and ways of governing as immutable and rock-like, compare that to ‘whitefella Law’ which is denigrated as being like the sand, always shifting, never the same.

29. The Liberal Coalition Australian Government of the time announced that: ‘We believe very strongly that the experiment with separate representation, elected representatives, for indigenous people has been a failure’. Federal Government plans to abolish ATSIC, ABC Radio PM - Thursday, 15 April, 2004 18:10:00, Reporter: Catherine McGrath at www.abc.net.au/pm/content/2004/s1088224.htm

**Theme 3: Seeing Indigenous Cultures of Governance**

30. The Yarnteen ‘family of organisations’ in Newcastle, and regionalised communities in the West Arnhem Shire in the Northern Territory are both organisational examples of such a superstructural governing node. See other examples in Appendix C.

**Theme 4: A Society of Organisations?**


33. I first commenced my research work with Yarnteen in 1995 when it had already established a reputation for running a highly successful Community Development Employment Project, and as an innovative training organisation (see Smith 1996). My field research with Yarnteen, its Indigenous Executive Director and Board members became the bases for an ongoing case study of urban organisational governance under the ICG Project (see Paper 8 and Smith 2006).

Theme 5: Governance and Governmentality in the Intercultural Space

35. See Bryant 2007; Gleick 1988, and also
URL:http://www.edge.org/documents/ThirdCulture/zd-Ch.20.html

Conclusion: Towards a Conceptual and Theoretical Framework

36. These dimensions draw upon my diverse field ethnography, and elaborate upon Eric Wolf’s (1999, 2001) insightful analyses of power; Kingfisher & Maskovsky’s (2008) broader consideration of the term ‘power’ in the context of neoliberalism; the implications of Bourdieu’s ‘field’ of power (1991, 1993: 60); and Didier Fassin’s (2009) more recent sympathetic consideration of Foucault.

37. For example, “government business managers” are employed by the Australian Government to work in identified communities in the Northern Territory, to facilitate programs being implemented under the government’s intervention. They are only allowed to remain in the same community for a period of 12-18 months, supposedly to ensure that they do not become influenced by local politics, or become too attached to local priorities and views.

38. To the extent that the state does engage with nodal networked governance, it is by way of focussing attention on the asserted deficits; for example, the asserted lack of Indigenous governing capacity, representative competence, accountability, leadership integrity, transparency, and so on.

39. A scene from the film sets out this quandary. The ‘Revolutionary People’s Front of Judea’ meets in secret to discuss its plans for overthrowing the Romans. The dialogue goes as follows:

Reg: We're giving Pilate two days to dismantle the entire apparatus of the Roman imperialist state ... Show them we're not to be trifled with ... what have they ever given us?

Rebel 2: The aquaduct?

Reg: What?

Rebel 2: The aquaduct.

Reg: Oh yeah, yeah. They did give us that. That's true, yeah.

Rebel 3: And sanitation.

Loretta: Oh yeah, the sanitation, Reg. Remember what the city used to be like.

Reg: Yeah, all right, I'll grant you the aquaduct, the sanitation are two things the Romans have done.

Mathias: And the roads.
Well, yeah. Obviously the roads, I mean the roads go without saying, don't they? But apart from the sanitation, the aquaduct, and the roads...

Rebel 4: Irrigation.
Rebel 2: Medicine.
Rebel 5: Education.
Reg: Yeah, yeah, all right. Fair enough ... All right. But apart from the sanitation, the medicine, education, wine, public order, irrigation, roads, the fresh water system, and public health... What have the Romans ever done for us?

40. Excellent critiques of the research insights and weaknesses of social network approaches are provided by Castells 2000a, 2000b; Emirbayer & Goodwin 1994; Freeman et. al. 1992; Jessop 2004; Kadushin 2004; and Kooiman 1993, 2003.

41. In Australia, Peter Lucich (1996), Michael Houseman (1997) and Laurent Dousset (2005) have carried out innovative research into the networked pattern of Indigenous kinship, marriage and subsection systems.

42. The reports of the ICG Project may well be the only anthropological study where researchers have specifically focussed on elucidating the form and implications of Indigenous networks in the context of governance (see especially papers Ivory 2008; Morphy 2008; Smith 2008).

43. As for example, Stephen Fuchs (2001: 64) who asserts that persons and actors are simply ‘constructs that some social structures produce to do certain kinds of cultural work’, or Pauline Rosenau’s (1992: 42) post-modernist assertion that ‘person’, ‘individual’ and ‘actor’ are somehow ‘unreal’ or ‘dead’.

44. The exception to this is Francesca Merlan’s (1998) influential exposition of Aboriginal place and politics in Katherine, NT, which directly addresses the issue.

45. The word homomorph comes from the Greek word homos, meaning same or alike, and morphe meaning to form or to shape; i.e. the creation of similar in form (see http://mathworld.wolfram.com; and Web Dictionary of Cybernetics and Systems at http//pespmc1.vub.ac.be/ASC/indexASC.html.)

46. Marilyn Strathern’s (1995: 17–18) conceptualisation of the ‘relation’ as holographic — and so not affected by constraints of scale — speaks to the homomorphic quality of mesh networks (although she was focussing on kinship systems). So too does the work of Laurent Doussett (2005), Michael Houseman (1997) and Peter Lucich (1996) on Australian Indigenous kinship and marriage systems.
47. For example, a *droste effect* occurs in a painting when there is an image that depicts a smaller version of the entire image, in a place where a similar picture of that image would realistically be expected to appear. This smaller version, in turn depicts an even smaller version of itself in the same place, and so on. A process may also be recursive; e.g. when a process is commenced and one of the steps of the process involves rerunning the process itself.

48. Complex liquid-solids such as polymers, paints and gels have tipping points; they react to external stress and velocity in unique ways. The sudden application of force — such as stabbing its surface with an object, or rapidly inverting the container holding it — leads to the substance behaving like a solid rather than a liquid. More gentle treatment - such as slowly inserting an object — will leave it in its liquid state. Trying to jerk the object back out again, however, will trigger the return of the temporary solid state (see Karlsson, M. and Carlsson, U. 2007).

49. The terms ‘intercultural’ and ‘transcultural’ were developed largely as synonyms by Fernando Ortiz (1995: 98; see also Gupta & Ferguson 1997) when writing about his own country Cuba. He employed them to replace the term ‘acculturation’ with ‘transcultural’, and to capture the ‘counterpoint’ through which change occurred, not simply in a culture, but *between* and *across* interconnected cultures.

50. The term hybridity (as a mixture or fusion of various cultural elements) has been employed in post-colonial studies to challenge essentialisms of purity. However, the ethnographic evidence of the thesis papers suggests the term has limited value for understanding the specificities of governance continuity and change in Indigenous Australia, or for understanding its intercultural articulation with the governmentality of the Australian state. Jonathan Friedman (1997, 1999), one of the most outspoken critics of hybridity theory, calls attention to the fact that speaking of ‘mixture presupposes the existence of something that can be mixed. Cultures were never pure, the argument goes, and the concept of hybridity tells us nothing, since all of us are and always were cultural hybrids’ (Friedman 1997, 1999: 236, 241). The notion of hybridity lacks compelling analytic force for this thesis as it ignores issues of relative power, the plurality of sources of agency, ongoing contestation over meaning, and the resilience and articulation of certain cultural elements, but not others.
51. Johann Galtung’s (1971) original concept of ‘asymmetrical interdependence’ was developed in respect to cultural imperialism and peace mediation between countries, and was later reinterpreted by Straubhaar (1991: 38) as relevant to global media relations. It draws attention to the variety of possible relationships in which countries find themselves unequal, but nevertheless able to draw upon variable degrees of internal power, socioeconomic and cultural institutions.
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