

Response to Reeves Review

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My comments on the Reeves Report will be short, oriented to what I see as a couple of main issues aired in its first ten chapters. Given the extent of anthropological response to the Report (and particularly that authored by Peter Sutton), I feel my remarks can be brief. Brevity is also personally convenient, as I am writing from Germany, away from my usual work-place and bibliographic resources. Nevertheless, as one of the persons quoted in the Report, I want to make some comment, however brief. I am cited with apparent approval as advocating flexible understandings of Aboriginal land tenure, but my remarks are made part of an argument which I find incoherent in certain respects, and in aid of conclusions which are quite different from ones I would draw (144-5, 188).

The Report begins by distinguishing two general purposes of the Land Rights Act: (1) the recognition of traditional Aboriginal interests in and relationships to land, and granting of land on those bases; and (2) the provision of effective control and management over that land (p. iv). The first aim is said to have been amply realised, the second not. In order that it be better realised, it is proposed that a system of 18 Regional Land Councils be developed out of presently existing divisions, and all decisions in relation to Aboriginal land be made at that regional level; and that a new central body, with an explicit socio-economic development function, be established to act as the main administrator of monies received under the Land Rights Act. The perceived inadequacy of the present articulation of the two purposes, land grant and control, is explained as follows.

The Report contends that though the Act functions well to identify 'traditional owners', and has proven broad and flexible in variously identifying them in different claims and circumstances, 'traditional owners' under the statute are fundamentally 'religious groups', or groups of people who share common rights (p. 203), rather than groups of people who could adequately represent or fulfill control and management functions, or indeed any 'secular' functions (p. 204). This seems to imply that groupings of people recognized as 'traditional owners' in land claims processes, have a religiously based and definable relationship to land that is quite separable from Aboriginally-recognized relationships to land defined in other terms. In other words, implicitly the Report attributes the purported problem of lack of articulation between the recognition of ownership and the implementation of control to the inherently 'non-managerial' or 'non-administrative' nature of groupings constituted through the operation of the Act as 'traditional owners'.

The Review also has another, and to my mind, slightly different, way of approaching alleged deficiencies in this relationship between ownership and control. It also contends that the principal problem in the realisation of management and control has been that the statutory definition of traditional Aboriginal owners has become paramount, and 'local understandings of Aboriginal tradition have largely been subordinated to this' (p. 118).

This can only make sense in relation to the previous contentions (concerning the essentially religious nature of traditional ownership) if one understands it to mean that the statutory recognition of traditional ownership, in practice, becomes separate from and superordinate to definitions of primary relationship to land as people might understand this at local levels; that 'traditional ownership' as found through the land claims process does not match local understandings (or assertions of the significance of persons, families, or forms of relationship to country) as these may become contextually relevant. But to my mind, the relationship of this form of argument to the first is unclear; and examination of the problematic relationship between them leads, I suggest, to the conclusion that some of the indeterminacies concerning the relationship between 'ownership' and 'control' are inherent in the Aboriginal polity and its normal modes of operation and vitality, and will not be remedied by an attempted strict 'regionalisation' (or perhaps, thorough-going devolution) of control.

As to the relevance of a 'religious' dimension of Aboriginal land ownership, one recognizes, of course, that the demonstration of primary spiritual responsibility and common spiritual affiliation are requirements for a finding of traditional ownership under the Act. There can be little doubt of significant overlap between Aboriginal notions of 'law' and western characterisations of the relationships involved in terms of religion. But the Review seems to me to err in suggesting in places that a religious dimension is neatly separable from other dimensions of traditional Aboriginal relationship to land, and is a property which clearly distinguishes those who may be found to be 'traditional owners' of land from others who might exercise 'control'. It is widely known, and recognized in the Review, that, for example, rights to forage must normally be exercised by those entitled to do so bearing in mind the spiritual significance of sites and land, but that those rights are not sharply limited to any grouping of people who might be regarded by Aborigines, or found under the statute, to have primary spiritual responsibility for those sites and land. This simple and well-known example demonstrates that, in principle, 'secular' and 'religious' dimensions of relationship to land (as these might be externally defined) are not neatly divisible in Aboriginal terms. It also demonstrates the related point, that any grouping of people defined in terms of the statute as meeting its specific (and in considerable part, religiously framed) requirements for traditional ownership will not automatically have absolutely clearly and fully specifiable rights of 'control' over that land, by virtue of the fact that the formulation of institutional domains and related entitlements is not categorical.

Having made clear in places what it takes the fundamental nature of 'traditional ownership' to be (a status more clearly related to the statute's religiously defined rights and duties rather than to pragmatic control), the Review then presents views from (among others) Aboriginal people who express a wide variety of discontents with the present situation of management and (generally) post-land claims issues (see e.g. pp. 114-17). Some complain about the Land Councils and confusion over who is reliant on whom (whether Land Councils on traditional owners, or vice versa); some complain that Land Councils have the 'say' and have taken it away from 'traditional owners'; others complain that only 'traditional owners' get royalties on the say-so of the Land Council ('white man word'), but that really 'everybody [is] involved' (and presumably, should get royalties).

While a litany of complaints is quoted, many of which are expressed as complaints about the role of the existing Land Councils, I do not conclude that what Aboriginal people are saying can be seen as the same problem as that, briefly outlined above, in terms of which the Review casts its arguments. That is, the Aboriginal people cited cannot in general be understood as saying that those who were identified as 'traditional owners' under the statute are not (among) the right people to be consulted, to be paid royalties, to be (among those) making decisions on particular issues. Rather, if anything might be distilled in conclusion from the cited complaints and criticisms by Aboriginal people themselves, it is the more general problem that any institution attempting to act as the point of articulation between lower-level Aboriginal politics and impinging issues (development projects, approvals and permits, royalties disbursements, etc.), will come up against the reality that this is a difficult articulation, and that there is no single or simply definable level of local (or, call it regional) level of Aboriginal organisation which is capable of unproblematically mediating these relationships.

I might insert a word here about the way in which my work is used. I am quoted (p. 145) as saying that there are not, nor ever were, any totally solidary, corporate units which may be unproblematically taken as THE relevant level of land ownership for all purposes. I would stand by this, as an appropriate recognition of the fact that most dimensions of Aboriginal relationship to land are capable of contextual negotiation, and that this shaping of the relevance of (land-owning and other) groupings is fundamental to lived Aboriginal social relationships. But I would object to the tendentious use of this understanding (which might be attributed to places in the Review) were it to be taken as amounting to the suggestion that there is no systematicity, and no system, of Aboriginal land ownership. I would say that there are regular (regionally differentiated) fundamental socio-cultural principles of relationship to land. While these are strongly held (and many Aboriginal persons would fiercely object to the formulation that the notion of 'relation to country through father' is 'flexible'), they nevertheless can be observed to exist, not simply as brute and categorical determinants of Aboriginal life, but also as the understood, relevant grounds for socio-political negotiation. (Which father? Is claim of attachment to country through more than one father, or to other than biological father, for example, entertainable and socially recognized under some circumstances?) Conversely, negotiation would not be intelligible without reference to strongly formulated background assumptions. If the relationship between structure, or principle, and its contextual negotiation, allows for somewhat greater practical fluidity than one stereotypically associates with 'legally-coded' systems of land tenure, this is hardly a new way of formulating the comparison, or of understanding the character of the Aboriginal social formation.

In short, the Report assumes too direct and simple a relationship between alleged problems of (lack of) control and direction of the Land Councils as articulated by Aboriginal people at the community level, and the statutory concept and recognition of 'traditional ownership'. It also proposes 'regionalisation' as a panacea, which it cannot be. Though various persons are cited complaining of lack of control and lack of ability to have a significant influence on issues subsequent to the land claims process in which traditional ownership was defined for a given area, this does not mean that that perceived

lack of control can be analysed as flowing from or as directly caused by that definition of traditional ownership. Rather, it could be suggested that such issues will arise in the intersection between ANY particular definition and a specific issue or context which may not have been foreseen, or foreseeable, at the time of the original definition of traditional ownership. This is so because, in general terms, the Aboriginal socio-political framework is one in which perhaps the chief 'good' to be contested and won in any situation, is a particular outcome and definition of persons regarded as legitimately entitled to be involved, to act, to receive benefits, etc. Again, this does not mean that fundamental socio-cultural dimensions or principles relevant to those definitions do not exist and were not appropriately called upon in the statutory determination of 'traditional ownership'.

The idea that finding a 'regional' level at which relationships of control can be more easily mediated is chimerical. What would constitute a region? Clearly, there are wider systems of relationship, but these, too, like lower-level linkages, are not categorical. However constituted, 'regions' would clearly overlap, for Aboriginal relationships to land are not only negotiable but continuously so with respect to territory. The Report fails to give any concrete examples of particular problematic issues and show how proposed 'regionalisation' would provide a more workable, long-term system of relationships. In the end, 'regions' remain vague and under-specified concepts in the Report, their greater desirability being supported by repeated citation of 'autonomy' as the value which they would foster more strongly than the present system. The Report fails to substantiate this claim with any particulars or examples; nor does it trouble to explain how 'autonomy' is to be understood in different social contexts, and at different levels of socio-political organisation.

This is not to say that one does not need functioning lower-level units, including 'regional' ones. These have already been foreshadowed by the adoption of a regionalisation policy by both CLC and NLC (Report, p. 204). What the Report could have usefully done is evaluate particular issues which have arisen, and closely consider how varying formulations of control and management, at different levels, may have promoted or been related to different resolutions or outcomes. But it seems to me that, in problem cases, this is something Land Councils have had to do in any event. If regionalisation has not been as full or effective as it might be, then there may be ways in which it could be made more effective. It is notable that there are, in a sense, already multiple experiments in regionalisation: Native Title processes (though enabled by federal legislation) have often had to work from smaller localized issues and groupings towards widened arrangements and agreements. The Report might have considered whether there are any lessons at all to be learned by analytically comparing those socio-political processes, some of which have begun from the ground up, with ones experienced under the Northern Territory land rights scheme, which tends to have had a more 'top-down' history.

That there may be different levels of workability of management relationships around bodies of already statutorily defined traditional owners and beneficiaries seems to me a quite likely and acceptable proposition: regionalisation is not a dirty word, but one

possibly very important level of organisation and action, though in need of more careful consideration and definition than is to be found in the present Report. But the Report is one-sided, in my opinion, in suggesting that 'autonomy' will be successfully achieved by eliminating the higher 'large Land Council' level of oversight of issues concerning Aboriginal ownership and relationship to land. The fact that varying lower and regional levels of organisation do emerge in and around events, but are never categorical, militates in favour of retaining an over-arching level of organisation. The combination and availability of structures and forms of organisation at both more localised and broader levels is much more likely to foment and further Aboriginal 'autonomy', the chief social good to which the Report makes continual reference, than is the elimination of one of these.