

The translation of Indigenous agency and innovation into political and cultural power: the case of Indigenous fishing rights in Australia

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Abstract

This paper examines the historical and contemporary conflict over Indigenous fishing rights in Australia to demonstrate that, despite resilient and constraining legal and political obstacles, Indigenous Australians have been able to employ innovative and culturally-relevant strategies to achieve greater control over traditional aquatic resources on terms that are consistent with the dictates of Indigenous traditional laws and customs and that adhere to the needs of Indigenous communities as they define them. These revelations contribute to an undertheorized area of social movement research by demonstrating the power of human agency through the innovative deployment of alternative tactical solutions in order to sustain political challenges and affect change. Further, the findings reveal that Indigenous tactical innovation is a fundamental ingredient in the broader process of decolonizing culturally and economically significant Indigenous resources.

Introduction

Because Indigenous Peoples in many settler societies continue to occupy remote territories or remain marginalized within urban populations, it is easy for non-Indigenous citizens to hang onto antiquated beliefs that native societies are “disappearing cultures.” Despite these beliefs, Indigenous communities have not disappeared, nor have they been fully assimilated into mainstream societies. While Indigenous Peoples continue to confront huge challenges when it comes to disparities in their education, overall health and poverty levels, many are starting to experience positive changes in their abilities to control their own destinies while achieving culturally relevant solutions to the obstacles they face. Much of this positive change is directly linked to the significant political, cultural and economic revitalization that is occurring within Indigenous communities (Nesper 2002). At the heart of revitalization efforts are claims to greater self-determination over traditionally harvested natural resources that remain central to Indigenous Peoples’ cultural identities, their subsistence needs, and their economic aspirations. These claims are contentious, however, due to the fact that many traditionally harvested Indigenous resources are often highly valued by non-Indigenous stakeholders for predominantly economic reasons. This is certainly the case with Indigenous fisheries, which have been systematically dismantled by laws and policies aimed at removing them from

Indigenous Peoples' control and placing them into the hands of non-Indigenous commercial and recreational stakeholders.

Notwithstanding the evidence of Indigenous revitalization and the relevance of Indigenous activism in bringing about broader political transformations, relatively little theoretical work within the social movements literature has explored the dynamics of political contention between states and Indigenous actors (A few notable exceptions include Cornell 1988; Fenelon 1998; Nagel 1996; Petray 2010; SinghaRoy 2012; Stotik, Shriver and Cable 1994). Much of the earlier work that focuses on these types of political interactions tends to highlight the formidable structural factors that influence the rise and fall of Indigenous social movements, while underemphasizing the importance of Indigenous agency in shaping the dynamics of contention (Fenelon 1998; Johnson, Nagel and Champagne 1997; Stotik et al. 1994). While this work has provided valuable insights into the power-laden dynamics of ethnic conflict during early colonial periods and at the inception of modern day Indigenous activism, such a framework may not be well-suited to capture contemporary realities of Indigenous mobilization through which native peoples are achieving greater local autonomy over their lands and resources and increased influence within mainstream decision-making arenas. Recognizing these limitations, a small but growing body of research has begun to focus more explicitly on the tensions between the structural and agential dynamics of contention involving Indigenous political actors and the state (Cornell 1988; Gedicks 1993; Maaka and Fleras 2005; Petray 2010; SinghaRoy 2012). Such research reveals the implications of Indigenous agency for native peoples' continued, and in many cases, increasing autonomy over their own political affairs.

This article synthesizes this small but important body of research on Indigenous agency while contributing new theoretical insights into the dynamics of political contention between Indigenous actors and the state. I specifically examine the historical and contemporary conflict over Indigenous fishing rights in Australia. My findings demonstrate that, despite resilient and constraining legal and political obstacles, Indigenous Peoples have been able to employ innovative, culturally-relevant strategies to achieve greater control over traditional aquatic resources on terms that are consistent with Indigenous traditional laws and customs and that adhere to the needs of Indigenous communities as they define them. These revelations contribute to an undertheorized area of social movement research by demonstrating the power of human agency through the innovative deployment of alternative tactical solutions to sustain political challenges and affect change. The findings reveal that Indigenous tactical innovation is fundamental to the broader process of decolonizing culturally and economically significant Indigenous resources.

In addition to its theoretical contributions, this article seeks to encourage dialogue between academic research and movement practitioners, as well as facilitating greater engagement between Indigenous activists and state actors currently embroiled in struggles for control over vital natural, cultural and economic resources. First, the findings in this study reveal the tactical

approaches that have been most effective for Indigenous fishers in achieving modest yet important transformations of the laws and policies that impact their rights. It is hoped that this information will assist Indigenous parties in becoming more central players in political decision-making processes over matters that are fundamental to their cultural, political and economic well-being.

Second, this study reveals the formidable structural constraints that shape Indigenous-state relations in Australia. In so doing, it reveals the institutional obstacles that hinder negotiation and resolution of resource disputes as well as the sites of structural vulnerability most susceptible to Indigenous claims of rights. By exposing the discriminatory colonial legacies that continue to present obstacles to the inclusion of Indigenous Peoples and their aspirations within contemporary regulatory frameworks, this study highlights these barriers and provides ammunition for those on both sides of the debate who seek to move beyond the past in order to construct more equal and bicultural blueprints for citizenship and governance in Australia.

Why fishing rights?

Struggles over natural resources, whether they involve access to land or competition over fish and game, have long been primary sources of conflict between European settlers and Indigenous Peoples (Fenelon 1998; Wilmer and Alfred 1997). Traditional subsistence hunting and fishing activities are particularly crucial to the cultural continuity and political and economic self-determination of Indigenous communities (Freeman, Bogoslovskaya, Caulfield, Egede, Krupnik, and Stevenson 1998; Nesper 2002; Wilkinson 2000). Oftentimes, however, Indigenous Peoples' long-standing interests in animal and fish species come into direct conflict with the ever-changing, but predominantly economic, interests of mainstream corporate and governmental actors. Not surprisingly, the operation of non-Indigenous recreational and commercial fisheries directly conflicts with the interests of Aboriginal Peoples who have long relied on access to fisheries to satisfy their own subsistence, spiritual and economic needs. In addition to maintaining significant economic and regulatory interests in fisheries, State and Commonwealth (i.e. federal) governments in Australia are increasingly answering to a growing constituency of environmental advocates who demand preservation of the fisheries in light of mounting evidence of resource depletion. Some vocal preservationists, as well as representatives of the fishing industry, contend that Indigenous harvests of marine resources are to blame for declining fish stocks, despite little evidence of this.

Fishing and hunting marine animals is deeply rooted in the traditional identities of Indigenous Peoples, who view these activities as integral to their political, cultural and economic self-determination (Ross and Pickering 2002). While fishing and hunting provide for their subsistence needs and present opportunities for economic self-sufficiency, the actions themselves, and the

bounty that they supply, are fundamentally linked to deeply-held notions of the sacred that continue to shape their worldviews and practices. Through creation stories and oral traditions that root Indigenous Australians¹ to the sea, a body of law is derived that establishes Aboriginal Peoples as stewards of their sea country with enduring and definitive obligations to protect it from destruction (Coombs 1994). Aboriginal traditional laws remain at the heart of Indigenous cultural meaning systems and provide the motivation and moral authority for challenges to non-Indigenous incursions into their sea country. The maintenance of traditional fishing and hunting practices implicates the very survival of Indigenous communities because it ensures that sacred knowledge regarding their sea country will be passed down to future generations. Given the centrality of marine resources to Indigenous Peoples' way of life, it is not surprising that infringements upon their customary fishing and aquatic hunting practices are viewed as unacceptable threats to the preservation of traditional knowledge and their communities' health and welfare.

In light of these conflicting interests, struggles over fishing have developed into intense battles, the outcomes of which have the potential to alter the playing fields upon which the political relationships between Indigenous Peoples and the Australian government are structured. After centuries of colonial domination, however, these playing fields are in no way equal, with the Australian state wielding significant institutional and ideological authority over Indigenous affairs. While on a superficial level state authority in Australia and other settler states appears impermeable, a deeper examination of these types of struggles reveals that Indigenous Peoples around the world are often able to exert meaningful influence over processes of resource allocation in colonial societies and, in many cases, they do so on terms that they define as culturally meaningful (Freidman 1999; Nesper 2002; Maaka and Fleras 2005). This, however, begs the question of how, in the face of such lopsided political power structures, Indigenous Peoples are able to remain relevant players in struggles over natural resources.

Data

Capturing the strategic and interactive dynamics of contention that emerge during struggles over Indigenous fishing and aquatic rights requires multiple levels of data. To capture aspects of the broader political landscape as well as movement level dynamics, I drew primarily from archived legal documents such as treaties, legislation, and court decisions as well as legislative debates, court transcripts and newspaper articles that explicitly deal with the controversy over

¹ Indigenous Australians also refer to themselves as Aboriginal Australians and Traditional Owners, which implies their original and uninterrupted autonomy over traditional lands and natural resources. In addition, many Indigenous Peoples in Australia choose not to refer to themselves as "Australian," preferring instead to identify as Peoples or as a Nation. These terms will be used interchangeably in this article to refer to the indigenous inhabitants of what is presently Australia.

Indigenous fishing. Primary and secondary sources, including anthropological literature and official documentation from Indigenous organizations and representative bodies, including press releases and policy statements, as well as interview data from Indigenous activists and experts on Aboriginal fishing and economic development were also analyzed to reveal the repertoires of contention activated during these political campaigns. These analyses take a particularly expansive view of who comprises the Aboriginal fishing rights movement in Australia, and have incorporated viewpoints from local Traditional Owners with a direct interest in their traditional fisheries, as well as their representatives and advocates. The latter include attorneys who represent Traditional Owners in native title cases, Indigenous Land Council representatives, Indigenous Land Management Facilitators, and experts affiliated with the Northern Australia Land and Sea Management Alliance (NAILSMA) and the Torres Strait Regional Authority, among others, who all have an interest in restoring and advancing native peoples' cultural, political and economic rights to their sea countries.

Archived documents were collected from comprehensive online and library databases managed by the Indigenous Law Centre at the University of New South Wales in Sydney, the Native Title Studies Centre and the Cape York Land Council in Cairns, Queensland, the Australian Institute of Aboriginal and Torres Strait Islander Studies in Canberra, the Queensland Department of Primary Industries in Brisbane, CRC Reef Research Centre Limited and the Great Barrier Reef Marine Park Authority in Townsville, Queensland, the Centre for Aboriginal Economic Policy Research in Canberra, the National Native Title Tribunal in Perth, Western Australia, and NAILSMA in Darwin, Northern Territory. Supplementary interviews were conducted with Indigenous and non-Indigenous stakeholders in the government, public and private sectors, as well as with legal, political and economic experts, during a two month research trip to Australia (January-March 2008).

Analytical approach

In order to capture the structural and agential tensions that persist in Indigenous Australians' political struggles for fishing rights, I focus on the interactions that occur between the political opportunity structure, on the one hand, and the mobilizing strategies activated by Indigenous political actors, on the other. My primary objectives are to reveal: the role of human agency in driving the tactical choices of Indigenous actors despite formidable institutional constraints; how the cultural, economic and political prerogatives of Indigenous challengers inform their tactical solutions; and, how the tactical breakthrough of Indigenous claimants in more receptive settings impacts the sustainability and outcomes of challenges to enduring colonial structures of domination.

To facilitate these objectives, this study utilizes Tilly and Tarrow's (2006) interactional, mechanism-process approach for explaining episodes of contention. This approach was developed as a companion to McAdam, Tarrow

and Tilly's (2001) *Dynamics of Contention*, in order to provide a methodological foundation for exploring and understanding interactions between fundamental, relational mechanisms of contention -- namely, political opportunities, mobilizing structures, and framing processes. During episodes of contentious politics, groups make claims through coordinated efforts on behalf of shared interests or programs that essentially involve interactions with agents of the government. Through analogy or comparison of similar episodes of contention, or through in-depth case immersion, the mechanism-process approach is able to provide a more general account of the broader processes at work during periods of political conflict. In-depth case analysis is facilitated by identifying the central mechanisms that operate during periods of political contention. Mechanisms are interactional events "that alter relations among sets of elements in similar ways over a variety of situations" (Tilly and Tarrow 2006:29). Depending on the political contexts in which they operate (i.e. the political opportunities afforded by particular state regimes), and the social resources available to challengers (such as their mobilizing structures, cultural predispositions, and political and ideological traditions regarding contention), such mechanisms will combine in particular ways to produce divergent forms of contention across sites. As such, this approach is ideally suited to comparative analyses. This paper is part of a larger study that applies this method in a comparative fashion, seeking to explain divergent trajectories of contention across national contexts.²

These analyses were facilitated through the use of the NVivo software package. NVivo provides an interface through which documents and interview data can be easily coded and managed, and through which analytical concepts, rhetorical frames, and historical episodes can be linked in a manner that is theoretically meaningful. Prior to analyzing any of the 250 documents or 28 semi-structured interviews, I created general codes, which were inductively extracted from the broad themes revealed in the social movement literature. Codes pertaining to political opportunities include references to colonial histories, prevailing policies for managing Indigenous fishing rights, institutional structures for making claims, state responses to Indigenous claims-making, and mainstream and political discourses regarding race, ethnicity and indigeneity, as well as dominant beliefs regarding the causes of environmental and species' declines. General codes pertaining to mobilizing structures include references to decisions about where to address Indigenous fishing rights claims, the content of those claims (whether politically, economically, or culturally focused), and any innovations in the ways that Indigenous groups pursued their interests. After reviewing and coding the data and identifying the general themes, I created additional sub-categories to flesh out the general themes and aid in the analyses. These subcategories were coded in accordance with themes revealed in the literatures on Indigenous movements, culture, and racial and ethnic

² The larger project compares episodes of political contention between Indigenous political actors and the state over access to and development of traditional fisheries in Australia, New Zealand and the United States.

identities, and also reflected the political and cultural mechanisms that emerged through data immersion. These codes were then systematically applied to the archival and interview data. Once the coding was completed, an in-depth narrative was constructed that provides a detailed snapshot of the political and legal landscape confronting Indigenous activists and the strategic ways that Indigenous claims-makers innovate in the face of broader constraints in order to maximize their potential to achieve greater authority over traditionally-significant aquatic resources.

Indigenous mobilization

While a growing body of research by Indigenous and non-Indigenous scholars focuses on Indigenous political action both locally and globally (Barker 2005; Bergeron 2010; Gedicks 2001), few empirical studies have grounded Indigenous activism within the framework of social movement theory (notable exceptions include Bobo and Tuan 2006; Cornell 1988; Fenelon 1998; Hall and Fenelon 2008; Johnson, Nagel and Champagne 1997; Merlan 2005; Nagel 1996; Petray 2010; SinghaRoy 2012; Stotik, Shriver and Cable 1994). This is unfortunate, as the topic can reveal important theoretical insights into key cultural dimensions of political contention, particularly as they inform the role of human agency in sustaining political challenges, as well as the social mechanisms that facilitate broad political and cultural change. Indigenous mobilization is a uniquely cultural phenomenon. Instead of seeking inclusion within, or accommodation by, the broader society, Indigenous Peoples often demand rights to political self-determination and cultural autonomy. Research on Indigenous activism can contribute to the broader social movement literature by highlighting the influence of culture on repertoires of contention, including the unique strategies of action and movement objectives of Indigenous activists (see, for example, SinghaRoy's (2012) study of Indigenous environmental activism in New South Wales). It can also provide unique insights into the interactional and, fundamentally, agency-laden mechanisms of contention that make it possible for the alternative logics of Indigenous activists to transform long-accepted and institutionalized discourses regarding citizenship, democracy and multiculturalism (Alvarez, Dagnino and Escobar 1998).

According to Alvarez (1998) and Maaka and Fleras (2005), contemporary Indigenous mobilization is marked by the infusion of democratic politics with discourses of culture and identity. Indigenous Peoples mobilize around deeply alternative views of citizenship and identity, and demand that states recognize their "right to live together differently" with members of the dominant population (Maaka and Fleras 2005:12). While these claims are often rooted in local cultural identities and are based on the continual or original occupation of geographic spaces, they do not relegate native lifestyles to traditional ways of the past. Instead, claims by Indigenous Peoples are simultaneously rooted in the past, where their legal, ethical, and cultural legitimacy is based, and oriented toward the future, in their emphases on economic opportunities, cultural

revitalization, political autonomy and co-governance within broader governmental regimes.

The fact that Indigenous Peoples, especially those in British settler societies, occupy politically, culturally and geographically distinct spaces within larger nations is highly relevant for understanding key mechanisms that drive counter-hegemonic resistance, including the significance of oppositional culture, the construction of alternative political identities, and the activation of culturally consistent tactical solutions. According to Gramsci (1971), hegemony consists of the power to dominate through unseen structures and the uncritical acceptance of dominant ideologies by oppressed groups. To the extent possible, hegemonic power seeks to neutralize dissent and promote political passivity. Resistance, then, requires the ability to see through these systems of domination. This can only happen when a population acquires historical perspective and political consciousness. Indigenous Peoples' unique and separate political and geographic positions in many settler societies have resulted from their historical struggles and, oftentimes, this is written directly into the law. As such, Indigenous Peoples, more than other politically marginalized groups, may already have the historical perspective and political consciousness necessary to engage in active, counter-hegemonic resistance.

Billings (1990), expanding upon Gramsci, asserts that in order to engage in resistance, individuals must experience a "conversion." This is only possible where there are autonomous organizations operating outside of hegemonic control (what Fantasia and Hirsch (1995) and others refer to as "free spaces"), where organic intellectuals are able to activate alternative ideologies, and where existing networks operate to legitimize the plausibility of counter-hegemonic views. In Australia, many Indigenous communities occupy remote territories that remain relatively removed from non-Indigenous interference and within which traditional systems of knowledge are fostered. Semi-autonomous Indigenous communities are agency-laden institutions through which alternative cultural meaning systems are sustained, solidarity is produced and tactical solutions are derived. Moreover, the past thirty years have witnessed the emergence of new Indigenous leaders in Australia who have played an ever more important role in reimagining and reasserting Indigenous Peoples' claims for increased political and cultural autonomy. Within these geographically bounded communities, as well as in the growing urban Indigenous population, are likeminded individuals who reinforce counter-hegemonic claims and mobilize around them.

Mara Loveman (2005) contends that state-making is an inherently cultural and symbolic endeavour. State power consists of the naturalization of state legitimacy in particular bureaucratic realms as well as the imposition of ideological power through the assertion of cultural myths and nationalistic identities. Loveman asserts, however, that state hegemony is not inevitable and it does not occur all at once. Rather, it happens as a result of conflict over state legitimacy in different bureaucratic realms. State victories in a particular realm tilt the playing field in favour of the state such that all future conflicts happen on

its terms. While most settler governments have achieved legitimate authority in the vast majority of bureaucratic realms, state legitimacy over Indigenous affairs remains contested, as the undiminished stream of lawsuits concerning Indigenous rights illustrate. In the Australian case, the unsettled nature of Indigenous policy has been reinforced by the government's shift to a more reconciliatory approach toward Indigenous Peoples, which was influenced by Indigenous activism from below and United Nations pressure from above (SinghaRoy 2012). According to SinghaRoy, "The policies of accommodation and reconciliation that have been introduced in the wake of proliferation of self-conscious indigenous movements since early 1970s have opened up new possibilities and challenges in re-establishing linkages between indigenous culture and environment" (2012:6). These recent trends are meaningful to Indigenous fisheries activists, providing them with new openings from which to dismantle and reframe the cultural discourses and structural hierarchies that have historically oppressed them.

Issues of Indigenous sovereignty, self-determination, and decolonization remain hotly contested by Indigenous activists and scholars who have widely divergent views on not only what these ideas stand for, but whether or not they are advantageous pursuits for Indigenous communities seeking to live their lives on their own terms (Alfred 1999; Barker 2005; Falk and Martin 2007; Ontai 2005). These debates have far-reaching ramifications for Indigenous social movements. They must decide whether to pursue tactics within mainstream legal and political channels, or focus their efforts on more autonomous and non-hegemonic strategies for achieving meaningful cultural, political, and economic autonomy that is not necessarily reliant on the state's formal recognition of Aboriginal rights. Some persuasively argue that the utilization of dominant discourses and institutions by Indigenous activists reinforces hegemonic power and formal structures of racial domination (Alfred 1999; Petray 2010 *citing* Maddison 2008, 2009; Barker 2005 *citing* Morris). While these more accommodating strategies of action may not be best suited for Indigenous aspirations of independent sovereignty, they are in line with a vision of decolonization that foresees more moderate transformations of colonial systems of governance to shared governance regimes "based on overlapping jurisdictions within a joint sovereignty rather than on the absolute and undivided sovereignty of the state" (Maaka and Fleras 2005:59). According to Young,

... few Indigenous peoples seek sovereignty for themselves in the sense of the formation of an independent, internationally recognised state with ultimate authority over all matters within a determinately bounded territory. Most Indigenous peoples seek significantly greater and more secure self-determination within the framework of a wider polity (2000:252).

I contend that Indigenous mobilization strategies that utilize and innovate within dominant political structures for the purpose of asserting culturally relevant alternatives that embrace Indigenous rights and autonomy over

traditional lands and resources are consistent with these broader aspirations. They also provide insights into the agency-generating mechanisms that can sustain political challenges and produce positive outcomes despite a relatively closed political system.

Mainstream structural and cultural barriers to meaningful recognition of Indigenous fishing rights

In general, broad-based Aboriginal mobilization over fishing rights has been relatively rare in Australia. Instead, resistance against unilateral state and industry control of marine and estuary resources has been far more localized and piecemeal. One explanation for this is that the Australian government has favoured the native title system – a single, overarching institutionalized process for adjudicating Indigenous rights to land and sea resources. Because this system is particularly ill-suited to address the cultural and economic facets of Indigenous aquatic rights, Traditional Owners have little choice but to mobilize their efforts elsewhere if they hope to achieve recognition of the full-breadth of their authority.

Contemporary native title law in Australia evolved out of the landmark case of *Mabo and Others v. The State of Queensland*. In the *Mabo* decision, the Australian High Court struck down the longstanding legal fiction of *terra nullius*, which had provided the philosophical foundation upon which the Australian colonial state was built. Specifically, “the High Court held that the Indigenous inhabitants of Australia held customary native title in their traditional lands ... so long as [it has] not been validly extinguished by legislative or executive action, provided that they have not surrendered their title or lost their connection with the land” (Horrigan 2003 citing Mason 1996:3).

Despite its promise, the native title process poses major obstacles to meaningful assertions of Indigenous authority over traditional natural resources. Firstly, native title tribunals deal with the claims of Indigenous Peoples separately, hindering cooperation between Indigenous communities and the pooling of resources in order to achieve shared benefits. Secondly, native title courts have the authority to determine whether Indigenous groups have proven a continuous application of traditional law over a particular resource. This gives primacy to determinations by non-Indigenous judges about the content and the authenticity of “traditional” Aboriginal culture (Brennan 2007). By anointing the courts as the final arbiters of traditional culture, the native title system thereby reduces Indigenous Peoples’ power to define their own cultural prerogatives.

In order to maximize their chances of achieving meaningful authority over valuable marine resources, Traditional Owners often choose to assert their rights through political channels outside the native title system. This presents its own challenges. Generally, the regulatory structure for

managing natural resources in Australia is divided between the states and the Commonwealth (Reilly 2006). Within these regimes, authority is further spilt amongst a number of bureaucratic agencies with conflicting agendas. This has resulted in a hodgepodge of incongruent fishing regulations and rulings that, for the most part, have given short shrift to Indigenous customary rights and have proscribed commercial fishing altogether. Traditional Owners are thereby compelled to negotiate individually with Federal and State governments with no guarantee of a consistent outcome (National Native Title Tribunal 2005). The tendency of administrative agencies to deal with Indigenous interests at the local level only has also inhibited the assertion of rights in a unified fashion. Ross and Pickering (2002) contend that, “by recognizing hundreds of separate individual communities and governments, there has been less structural space for one powerful Indigenous voice to emerge and demand access and input into natural resource agencies” (p. 208).

Another major obstacle facing Indigenous activists is that agencies with authority over Aboriginal affairs are predominantly staffed by non-Indigenous people who fail to advocate effectively for Aboriginal Peoples’ needs. The same can generally be said for native title judges and the experts who testify to the presence or absence of unbroken Indigenous authority over particular resources. In light of these demographics, it is perhaps unsurprising that management regimes and regulatory frameworks tend to favour Western scientific definitions of conservation over more holistic Indigenous notions regarding sustainability.

The privileging of Western scientific paradigms in natural resource management and in the legal frameworks used to determine Aboriginal fishing rights is exhibited in several crucial ways. First, mainstream legal systems separate land and sea rights, applying different standards to each. While the native title system specifically recognizes the potential for exclusive Aboriginal title over land, the same does not hold true for Aboriginal rights to sea territory. “The government has not minced any words in relation to native title in the sea: ‘native title is not recognized in the sea.’ This of course is a presumption of epic proportions that flies in the face of aboriginal assertions now and forever” (Roberts and Tanna 1998:3). The disparate treatment of sea rights is based on the European legal fiction that the sea is part of the commons and cannot be owned or exclusively possessed (Glaskin 2002). Sharp (1998) describes this philosophical tension in Aboriginal and European definitions of sea country as follows:

In Aboriginal terms, northern coastal marine space is a series of common property areas owned by identifiable Indigenous groups with restricted memberships, each with its own geographical locale; and these are handed down as part of land-sea inalienable tenures in regimes based on local law and custom. In Anglo-Australian law state territorial marine space is an area of ‘open access’ based on the public rights of all Australian citizens conceived as isolated individuals” (p.3).

The Yolnu people of the Northern Territory clarify their integrated view of their land and sea countries straightforwardly, stating that “all Yolnu lands are connected to the sea and we make no distinction between sea and land estates when we exercise our customary rights and responsibilities” (Dhimurru Land Management Aboriginal Corporation 2006).

Second, non-Indigenous natural resource managers tend to take a divided approach to ecosystem management that is based on bureaucratic jurisdictions, rather than ecosystems, which is the norm within Aboriginal societies. Where Indigenous Peoples are able to acquire governmental funding for the management of marine resources, they are commonly expected to participate in established co-management protocols that require adherence to Western scientific expectations. Thus, even where Indigenous Peoples take the lead in resource management efforts, they are often unable to exert meaningful substantive control over the process. An Indigenous resource manager echoed this sentiment when he explained that, “the word governance is a tricky one - some might even call it a weasel word. In Natural Resource Management when people talk of Indigenous governance more often than not they use blackfella names to refer to whitefella ways” (NAILSMA 2008:49).

Further inhibiting broad-based mobilization is the fact that Aboriginal activists confront a general population that is, at best, indifferent and, at worst, hostile to their plight. General hostility toward Indigenous claims is emanating with increased vigour from the growing environmental and conservation movements. As conservation of the marine environment becomes a paramount concern for Australians, many are quick to target Aboriginal consumptive practices as in need of reform, rather than considering the far more destructive activities of commercial and recreational fishermen. A primary focus has been on the traditional hunting of dugongs for subsistence and ceremonial purposes. While experts historically recognized dugong population decline as incidental to non-Indigenous recreational boating and commercial fishing endeavours, many have now shifted their stance to suggest that Aboriginal hunting is principally responsible for the decline (National Native Title Tribunal 2004). This is despite findings by the National Recreational and Indigenous Fishing Survey that recreational fishers harvested approximately 136 million aquatic animals during 2000 and 2001, while Indigenous fishers harvested only 3 million aquatic animals (Durette 2007). Notwithstanding the conflicting evidence, Australian policymakers have responded with greater regulation of Indigenous dugong hunting, while placing few meaningful restrictions on incidental kills by commercial and recreational fisherman (National Native Title Tribunal 2004; Ross and Pickering 2002). The baseless accusations of non-Indigenous conservationists and the over-regulation of Indigenous dugong hunting provide glaring examples of latent forms of racism that persist in Australia at the public and institutional levels. Within this context of intolerance, Aboriginal activities alone are constructed as a social problem (Petray 2010).

Finally, Aboriginal activists must contend with non-Indigenous Australians’ static views of Aboriginal culture, which constructs “authentic” Indigenous

culture as attached only to stereotypical Indigenous ways of life that are rooted firmly in the past. While these attitudes are slowly changing, some non-Indigenous policymakers cling to the belief that traditional Indigenous culture essentially stopped at the time of contact with European settlers (Ross and Pickering 2002). According to this logic, commercial fishing is considered an inherently modern economic endeavour that is incompatible with non-Indigenous perceptions of pre-contact Aboriginal ways of life. Although anthropological and historical evidence suggests that as early as the 1700s Aboriginal fishermen from Northern Australia traded fish with Macassan fishermen from the Indonesian archipelago, such evidence has not been accepted by the courts or by policymakers as proof of the existence of “traditional” commercial fishing by Aboriginal Peoples (Durette 2007). Indeed, no native title rights to engage in commercial fishing have been recognized in Australia and, at present, Aboriginal and non-Indigenous commercial fishermen are regulated identically. As a result, Indigenous customary fishing rights have been relegated to a subsistence level only and viable opportunities for economic independence have been closed to Aboriginal Peoples. While these formidable structural obstacles that stand in the way of the state’s recognition of broad-based Aboriginal fishing rights may appear insurmountable, Aboriginal Peoples have not abandoned their claims to these vital traditional resources. Instead, as the following sections reveal, Aboriginal activists have responded by innovating within existing bureaucratic channels and focusing on local initiatives, such as the negotiation of co-management and resource access plans with state and regional agencies, rather than utilizing their limited resources to mobilize for sweeping national-level changes.

Indigenous Australian response and mobilization

In light of, or in spite of, the structural limitations confronting them, Indigenous Peoples in Australia have pursued an array of strategies to secure greater recognition of their traditional fishing rights. This section highlights the goals asserted by Indigenous fishermen, the institutional and extra-institutional arenas through which they assert these goals, and the tactical innovations that Indigenous Peoples employ to maximize their opportunities for achieving their political and economic objectives, while also ensuring that their cultural needs are met. This final point is perhaps the most compelling since the cultural concerns of Indigenous fishermen, including their ability to engage in traditionally significant hunting and fishing of aquatic resources, their management of these resources according to culturally-prescribed, sacred obligations, and the passing of traditional knowledge down to future generations, are of paramount concern and provide the moral framework for the breadth of their claims.

Goals asserted

Indigenous Australians emphasize three primary objectives regarding their traditional sea countries. First, they assert rights to access and take aquatic resources according to traditional laws and customs. These rights include the ability to hunt endangered and threatened species of dugong, sea turtles and, sometimes, saltwater crocodiles. Given the sensitive condition of dugong and turtle populations, and the general belief by non-Indigenous Australians that traditional methods of hunting these creatures are outmoded and barbaric, Indigenous Peoples face ongoing opposition to their basic rights to access and harvest these traditional species. This is the case despite Traditional Owners' customary obligations to protect dugongs and turtles and despite the more devastating threat posed to these species by non-Indigenous recreational and commercial activities. Indigenous claimants also demand access to traditionally harvested finfish, such as barramundi, and shellfish, including abalone and oysters. Access to finfish and shellfish remains important to meeting the subsistence needs of coastal Indigenous Peoples, who comprise approximately half of Australia's Indigenous population, and Torres Strait Islanders, whose seafood consumption is among the highest in the world (Smyth 2001). Opposition to these claims generally comes from members of the commercial fishing sector who view Indigenous fishing without a license as an unfair incursion into their economic interests.

Second, Indigenous fishers demand meaningful participation in the management of fisheries and aquatic resources. While Traditional Owners prefer to be primarily responsible for managing traditional resources, when this is not possible, joint management arrangements with other stakeholders and management agencies are seen as workable, secondary options (Nurse-Bray 2001). At minimum, Indigenous Peoples seek active participation in management regimes where they are able to assert influence within policy-making bodies and engage in management practices that are in line with their traditional laws and customs. The Yolnu people, who reside on their traditional lands in north-eastern Arnhem Land in the Northern Territory, explain why the sustainable management of their sea country is so vital to their cultural continuity:

We continue our care and guardianship as our ancestors have done. We have an intimate knowledge of the environment and ecology in the places for which we have rights and responsibilities. We want our children and grandchildren to receive this knowledge so they can look after sea country. We do not come and go like most non-Indigenous people do. We want to continue to stay here permanently. However it is becoming increasingly difficult to undertake this work because our interests are often ignored or seen as secondary to non-Indigenous issues of open access, economic exploitation and the welfare of the well known and loved marine animals like turtles, dolphins, dugong and whales (Dhimurru Land Management Aboriginal Corporation 2006).

Indigenous Peoples' desire to meaningfully participate in marine resource management is driven by their appreciation of the link that exists between the relative health of their traditional resources and the health of the local communities that rely upon them for their subsistence, economic and spiritual needs. When talking about sea turtles, the Yolnu people of Northern Australia note that, "We believe our wellbeing and turtle (miyapunu) wellbeing are inseparable. To put it another way, we belong to turtles and turtles to us; we sustain them and they us" (Dhimurru Land Management Aboriginal Corporation 2006:25). A Traditional Owner from the Northern Territory expressed similar concerns: "Country needs[s] laughter. If we don't look after country, we'll shrivel up" (North Australia Indigenous Land and Sea Management Alliance 2005:6). A project officer from the North Australia Indigenous Land and Sea Management Alliance went further to emphasize the importance of culture and traditional knowledge in sustaining healthy resources and healthy Indigenous communities: "[F]or many countrymen caring for country includes a whole cultural dimension – ceremony, ritual, hunting, harvest, family, fire, and knowledge – where all things are connected and make an essential contribution to the maintenance of healthy people and healthy country" (North Australia Indigenous Land and Sea Management Alliance 2005:6).

A third goal of Indigenous stakeholders is to make a reasonable living from the traditional aquatic resources that they have harvested for thousands of years. Indigenous Australians do not separate their economic aspirations from their social, cultural, and political interests in sea country. Such divisions are seen as purely artificial categorizations imposed by White Australians according to Western cultural and legal norms that favour the interests of non-Indigenous stakeholders. The economic development of aquatic resources is viewed as natural for Indigenous Peoples, who have historically cultivated, harvested, and managed these resources to provide for their material needs, both through consumption and trade. According to the Yolnu people, the historical cultivation of traditional marine resources should form the foundation of legal recognition of their contemporary economic rights as well: "We argue that our prior ownership should give us an economic stake in the regional industries that rely on our sea country" (Dhimurru Land Management Aboriginal Corporation 2006: 52).

Moreover, commercialization of traditional fisheries offers opportunities for Indigenous Australians to achieve economic independence and reduce their reliance on public assistance. While Indigenous Peoples' dependence on the Australian welfare system remains a source of contempt for many non-Indigenous Australians, few are willing to concede to Indigenous Peoples a meaningful place in the commercial fisheries market, arguing that commercial activities are not "traditional" enough to justify exempting Indigenous fishermen from commercial licensing regulations. This is particularly frustrating for Indigenous Peoples who feel that non-Indigenous Australians are benefitting exclusively from traditional Indigenous resources. Peter Yu, an Indigenous leader from the Yawuru community in Western Australia, contends

that northern Australia is currently experiencing a resources boom and that Indigenous Australians, as major land owners and resource custodians, should benefit from this with “innovative and culturally appropriate planning for commercial development (North Australia Indigenous Land and Sea Management Alliance 2005:5).” According to Yu, “now is the time to build on and move to the next phase of claiming and defending our rights to country, to a time when our people can get relief, enjoyment and benefits out of exercising these rights (North Australia Indigenous Land and Sea Management Alliance 2005:5).”

In light of these general attitudes and the legal barriers that preclude Indigenous commercial fishing based on native title rights, Indigenous economic pursuits often remain secondary to their efforts to achieve greater access and management authority over their aquatic resources. Jon Altman, from the Centre for Aboriginal Economic Policy Research, believes that greater advocacy by Indigenous Australians for commercial opportunities based on customary marine native title rights might bear fruit, and that Indigenous Australians have yet to put their full legal might behind the notion that traditional economic pursuits should have a place in contemporary markets (Altman Interview, Feb. 28, 2008).

Perhaps most striking about these three objectives – the right to access, manage, and economically develop their traditional marine resources -- is that, running through each of them, is an over-arching concern with sustaining and preserving Indigenous cultural and normative systems. This is revealed through the emphasis Indigenous activists place on passing down traditional knowledge regarding ceremony and stewardship to future generations, restoring Indigenous communities through the fortification of Indigenous belief systems, empowering Indigenous youth as future leaders, promoting economic self-sufficiency, and conserving the traditionally-significant resources that comprise their ancestral country. The Yolnu people acknowledge the pre-eminence of their cultural interests in their sea country while highlighting how these are inseparable from their political and economic aspirations:

The interests of most other users are in preserving and conserving bio-diversity, in making an economic return or enjoying the sea and shores for recreation and pleasure. All of these reasons for valuing sea country are important to us, but for Yolnu and other Indigenous salt water people, our cultural survival and wellbeing is at stake. We are not just another stakeholder; we are the first Australians whose identity and essence is created in, through and with the sea and its creatures. We wish to contribute to regional and national economic development, in keeping with our time honoured responsibilities to care for the land and sea (Dhimurru Land Management Aboriginal Corporation 2006: 17).

Settings and strategies for claims-making

Decisions regarding where to assert claims of rights to access, manage and economically develop marine resources are strategic in nature and demonstrate Indigenous challengers' keen understanding of the political opportunities and obstacles that they confront. With their three primary objectives in mind, Indigenous actors choose to assert their claims in a variety of institutional and extra-institutional settings. The choice of where and how to pursue their claims depends on the nature of the institutional processes available to them, the opportunities for negotiated agreements, the likelihood of success for self-directed, independent ventures and, above all, the suitability of each strategy to meet the political, economic and cultural needs of Indigenous communities. The following section highlights the five primary strategies that Indigenous fishers in Australia have pursued: litigation, negotiated settlements and local co-management agreements, local management of federally-funded programs, commercialization of aquatic resources, and civil disobedience.

Litigation

The principal institutional settings available to adjudicate Indigenous Australians' rights to land and sea resources are native title tribunals. While initially established to reconcile claims to lands and resources in a manner that privileged Indigenous knowledge and traditional law, it has become increasingly evident that the native title process favours non-Indigenous economic interests over the competing claims of Traditional Owners (Foley 1997; Horrigan 2002). In light of this major limitation, many Indigenous stakeholders utilize native title tribunals for the narrow purpose of determining only the presence or absence of native title rights. Traditional Owners reserve the work of fleshing out the content of those rights for smaller-scale negotiated settlements where they have more persuasive power, or through bureaucratic channels that can be more easily influenced by Indigenous stakeholders. Because the native title system is relatively new, many non-Indigenous Australians remain somewhat anxious about the potential for native title determinations to usurp broad swaths of conflicting non-Indigenous interests to land and sea resources. While such an outcome is unlikely, Indigenous stakeholders are able to capitalize on this fear of the unknown in order to secure favourable outcomes through negotiation.

Despite the limitations of native title tribunals, Indigenous Australians have remained willing to test the boundaries of native title law's application to traditionally harvested marine mammals and fisheries. Indeed, decisions in several early test cases came down on the side of Traditional Owners, although these rulings were limited in scope to specific animals that could be harvested and the appropriate methods for doing so. Even so, they effectively handed Indigenous activists a legitimate tool by which they could negotiate access to traditionally harvested marine resources (See e.g. *Yanner v. Eaton* (1999); *Stephenson v. Yasso* (2006)). Beyond focusing on individual species, a few

Indigenous Peoples have utilized the native title system to assert more general claims to large areas of their traditional sea country. The foundational case which addressed this matter was *Yarmirr v. Northern Territory* (2001), in which the Australian High Court affirmed the existence of Aboriginal native title over sea country. This apparent victory for Traditional Owners was severely curtailed, however, by the way these rights were interpreted by the courts. Despite the existence of native marine title, common law rights of navigation and fishing could not be interfered with, meaning that Aboriginal marine title is considered *non-exclusive*. While native title rights were held to co-exist with the rights of licensed commercial and recreational fishermen, in the event of a conflict between them, non-Indigenous fishing rights would trump (Smyth 2001; See also *Akiba on behalf of the Torres Strait Islanders of the Regional Sea Claim Group v State of Queensland* (No 2) (2010) FCA 643; *Northern Territory of Australia v Arnhem Land Aboriginal Land Trust* (2008)). The Yolnu people of the Northern Territory recognize the ramifications of this problematic distinction by the courts:

Our cultural rights including the rights to hunt, fish, gather and use resources allowed by and under our customary laws and customs are confirmed and recognised. However the court ruling [in *Yarmirr*] defines our rights as non-exclusive. The court found that our rights sit alongside those of others who currently use our sea country. Yet without exclusive control over our country we are still faced with the problems of unlawful intrusion, overfishing, habitat damage and disruption to our coastal communities. We still have difficulty seeing how the rights to fish - only recently exercised by non-Indigenous people in our sea country - can sit equally with our requirements of cultural survival and wellbeing. There are inconsistencies between our rights and responsibilities under our customary law and those recognised under contemporary Australian law. We are struggling to have our sea rights recognised in the same way as our rights on the land are recognised (Dhimurru Land Management Aboriginal Corporation 2006: 14).

The courts have also been extremely clear that native title rights to marine resources are non-commercial in nature. Although marine native title rights remain subordinate to non-Indigenous commercial and recreational fishing rights, they provide Traditional Owners with the right to access sea country and utilize traditional resources for customary and subsistence purposes. Such rights also generally include the ability to access, manage and protect sacred sites located within traditional marine territories. The positive value of recognized native title through litigation, while limited, was summed up by Jon Altman while explaining the impact of the favourable ruling in *Northern Territory of Australia v Arnhem Land Aboriginal Land Trust* in 2008:

There is no doubt that this is a very positive outcome for those coastal Traditional Owners who have argued for decades that commercial and

recreational fishing in the inter-tidal zone impacts negatively on their social, cultural and economic interests. This decision has fundamentally altered the leverage that these Traditional Owners will be able to exercise in negotiations with either commercial or recreational fishers who want access to Aboriginal-owned waters (Altman Interview, Feb. 27, 2008).

Negotiated settlements and local co-management agreements

Notwithstanding the limitations of the native title system for more sweeping fisheries reform, the recognition of basic marine native title has provided Indigenous Australians with a useful lever with which to negotiate greater access to culturally and economically significant aquatic resources. Negotiation has become a viable option for Indigenous native title holders for several reasons. First, the procedural structure of the native title system itself promotes negotiation over protracted litigation. Determinations of native title are generally quite broad, simply finding that native title either does or does not attach to particular territories or resources. Once determinations are made by the courts, it is then up to the legitimate stakeholders to work out for themselves what those rights entail, with the courts providing a final forum for dispute resolution.

Second, outside the native title system it has become more common for management agencies and other stakeholders to proactively negotiate access and co-management arrangements with Traditional Owners rather than waiting for official determinations by the courts. This is due to both increased pressure from Indigenous groups who have become emboldened by the promise of native title recognition, as well as a general concern by non-Indigenous stakeholders who remain uncertain about the scope of native title law and are hoping to avoid protracted litigation. According to one attorney who specializes in native title law, “No one really expected *Mabo*. And ever since then, I think that native title makes governments a bit nervous, because they aren’t quite sure how it’s going to go, and what it’s going to mean when you put it across the whole country” (Interview, Feb. 14, 2008). So while on paper marine native title rights appear to give very little to Traditional Owners, they have provided opportunities for Indigenous stakeholders to sit at the table where decisions are being made. According to another expert, “because [Australia] is a small country, just being at the table with legitimacy provides an opportunity for good things to happen” (Feb. 13, 2008).

Historically, Indigenous representation within influential agencies, such as State Departments of Primary Industries or the Great Barrier Reef Marine Park Authority, has been inconsistent, lacking any real policy making authority. While formal shared governance arrangements remain elusive, there is some evidence that agencies are increasingly willing to include Indigenous stakeholders on advisory boards and to consider their unique interests when making policies that impact native title rights to the sea. Within the Great Barrier Reef Marine Park, where management is shared between the Commonwealth’s Park Authority and the State of Queensland’s Environmental

Protection Agency, Traditional Use of Marine Resources Agreements (TUMRAs) have been utilized to include Aboriginal interests in the operation of the park. Through TUMRAs, Traditional Owners have secured recognition of their rights to hunt marine turtles and dugongs, engage in traditional fishing, and protect culturally significant sites within the park.

It is far less common for multi-stakeholder agreements involving Indigenous marine rights to be initiated at the Federal level in Australia. Perhaps this is due to the inconsistent jurisdictional patchwork governing marine resources and Indigenous affairs nationally. Or perhaps there is a lack of motivation to resolve these matters in a national forum as most of the stakeholders' interests are more localized. It is also likely that the lack of any clear and consistent statement from the Federal government or the courts regarding the nature and scope of Indigenous marine rights has tempered any sense of urgency among industry stakeholders to concede anything to Traditional Owners that would be codified into national policy. In all likelihood, the absence of a national fisheries settlement or even a working framework for cooperation between Indigenous stakeholders, non-Indigenous recreational and commercial fishers, and marine resource managers, is due to a combination of these factors, as well as a strong states' rights movement in Australia that consistently presents obstacles to broad-scale consensus building.

Local management of federally-funded programs

The willingness to enter into negotiated agreements represents a major shift in thinking by non-Indigenous stakeholders and resource managers about the legitimacy of Indigenous Peoples' rights to utilize marine resources and reflects the Australian government's general change in policy toward accommodation and reconciliation with Indigenous Peoples (SinghaRoy 2012). These agreements provide Traditional Owners with a viable mechanism for ensuring that their basic customary rights to access and manage traditional marine resources are protected. That being said, except in the Northern Territory where Indigenous Peoples hold significant bargaining power due to their exclusive control over inter-tidal fisheries, the negotiated rights of Indigenous parties generally remain inferior to the interests of non-Indigenous stakeholders. Another approach that provides Indigenous challengers with a bit more leverage in defining and meeting their own aspirations for sea country is their participation in federally-funded regulatory programs. By developing their own projects, or simply constructing their own agendas within existing management protocols, Indigenous Peoples have more flexibility in meeting their needs as they define them. Maximizing these opportunities often requires Indigenous stakeholders to innovate within bureaucratic funding structures in ways not envisioned by the governmental agencies who are pulling the purse strings.

Various governmental programs have been useful to Aboriginal communities seeking greater recognition of their rights to fish, hunt and manage culturally-sensitive aquatic resources. A notable example is the National Heritage Trust

(NHT), which was established in 1997 to help restore and conserve Australia's environment and natural resources. The NHT, which later became the “Caring for our Country” program, requires “viable community involvement” in natural resource management and has funded thousands of community-driven initiatives. To facilitate Indigenous Australians’ country-based management agendas the NHT funded sixteen regional Indigenous Land Management Facilitators and various locally-based Aboriginal Land Management Facilitators whose activities focus on building a structure of representation that meaningfully integrates Indigenous Peoples into decision-making regimes over essential natural resources. Facilitators also work with Traditional Owners to ensure that their own, culturally-relevant management aspirations are included in local programs and that these programs continue to receive funding. These important offices are staffed by young, educated Aboriginal activist-leaders motivated to bolster Indigenous authority on a national level by empowering Indigenous Peoples locally. Through their masterful negotiation of bureaucratic processes and funding sources, these young leaders have become integral to the formulation of creative tactical solutions for Indigenous challengers who seek greater autonomy over their traditional resources.

Sea Ranger and Dugong and Turtle Management Programs, in particular, have become valuable avenues for ensuring that Indigenous marine resources are protected on terms that are culturally meaningful to Traditional Owners. These programs were originally established with the acquiescence and funding of the Australian government for the limited purpose of including Traditional Owners in the regulation of Indigenous dugong and turtle hunting in accordance with Western scientific paradigms of environmental protection. Since their inception, however, Indigenous communities have utilized these programs to meet a host of additional cultural prerogatives, including involving youth and elders in the preservation of traditional knowledge, revitalizing community economies by creating jobs for young Indigenous Australians, educating and training a new generation of Indigenous leaders, and protecting spiritually-significant cultural and natural resources, to name a few (NAILSMA 2004; NAILSMA 2007).

Notwithstanding the intent that these programs adhere to Western scientific paradigms, the lack of immediate oversight by funding agencies provides Indigenous managers with a great deal of latitude to implement best management practices, which often include the incorporation of traditional knowledge into resource management protocols. Through these programs, Indigenous groups are able to direct the management of culturally-significant resources in ways that accommodate the revitalization of local communities and the development of pan-Indigenous networks across Australia. One Indigenous Ranger recognized the link between inter-tribal cooperation, cultural revitalization and political power noting,

I'd like to see a start for the ranger business, for myself and other young local fellas...go out and see different communities, different areas to see how they work so we can get ideas off them to help us with our goals and our aims for the

future. We got to come together and share ideas as Aboriginal people. If we come together and share our ideas than we'll be more recognised (NAILSMA 2004:14).

Perhaps the most compelling example of Indigenous innovation within an existing regulatory framework has been the development of Sea Plans modeled after Indigenous Protected Area (IPA) designations. IPAs are tracts of Indigenous lands set aside under Australia's National Reserve System and managed by Traditional Owners for conservation purposes (Australian Department of Environment and Water Resources 2007). These innovative resource management initiatives are philosophically well-suited to Indigenous self-governance and community revitalization efforts. Through the designation of IPAs, the Australian government acknowledges and legitimates Indigenous Peoples' capacity to manage their traditional resources and promotes Indigenous cultural revitalization as a valid policy objective. Indeed, the IPA program operates under the assumptions that: 1) Indigenous Peoples, as the original managers of Australia's fragile ecosystems for tens of thousands of years, are ideally suited to be contemporary resource managers; and 2) the integration of Traditional Owners into contemporary resource management regimes will strengthen systems of traditional Aboriginal knowledge, which in turn will have significant social and economic benefits (Australia Department of Environment, Water, Heritage and the Arts website 2010).

While the original blueprint for IPAs did not apply to sea country, with federal support, a few innovative Aboriginal communities have constructed Sea Country IPAs. The Dhimurru Sea Plan provides a particularly successful example. Dhimurru is an incorporated Aboriginal organization established in 1992 by Yolnu land owners in the Northeast Arnhem Land of the Northern Territory. After registering the Dhimurru IPA over a portion of their lands and successfully demonstrating the existence of native title to culturally significant islands and offshore sacred sites, the Yolnu developed and launched a comprehensive Sea Country Plan in 2006 with funding from the now defunct National Oceans Office (Dhimurru Land Management Aboriginal Corporation 2006). The Plan represents an innovative and community-driven initiative that puts Indigenous marine interests into the hands of Indigenous Peoples. Through the plan, the Yolnu people outlined their cultural and material interests and obligations to their traditional sea country, the historical, social and ceremonial sources of those interests, and ideas for engaging other stakeholders to ensure that the Yolnu people's needs are met while also respecting the interests of non-Indigenous resource users and managers:

We believe Marine Protected Areas (MPAs) may be a way to promote the sustainable and equitable management of our sea country, particularly if they are a formal mechanism to recognise our rights, responsibilities and management efforts in a similar way to the recently declared Indigenous Protected Areas. We look forward to discussing with government a model for

MPAs that is workable for Yolnu people and enhances our position as primary protectors and managers of our marine estates. Such a model should be constructed on a solid scientific basis and our traditional knowledge, skills and understandings. It would need to consider cultural, social and economic factors (Dhimurru Land Management Aboriginal Corporation 2006).

Instead of sitting back and waiting for government and industry representatives to dictate the terms of the Yolnu people's rights, the Yolnu took their clear plan and set of aspirations to the government agencies. For its part, the government recognized the Yolnu's request as consistent with its official stance favouring reconciliation with Indigenous Australians and helped the community identify funding resources and other logistical mechanisms for implementing the plan.

Commercialization of traditional resources

Indigenous Australians participate in the labour force at rates far below that of non-Indigenous citizens (Gray, Hunter and Lohar 2012). While many Australians bemoan Aboriginal Peoples' reliance on government welfare, few are open to meaningful Indigenous participation in the primary industries if that participation might interfere with the economic pursuits of non-Indigenous Australians (National Native Title Tribunal 2004). For their part, Indigenous Australians are legitimately aggrieved that they have been denied any economic benefit from the commercialization of what were once their exclusive resources (Smyth 2001). They maintain an inherent connection between their cultural and economic interests in traditional resources that cannot be artificially separated (Yu 2007). The Australian High Court's limitation of marine native title rights to non-exclusive, customary and subsistence practices has signaled the futility of native title tribunals as prospective settings for pursuing economic independence. That being said, the entire native title process has emboldened Indigenous challengers to utilize existing native title rights to leverage opportunities and to pursue more innovative pathways to economically develop marine resources.

Most Indigenous communities do not have the infrastructure or capital necessary to pursue commercialization of their sea country and they require governmental assistance through funding, licensing or, better still, policies that prioritize and facilitate Indigenous economic development of traditional resources. To help alleviate the devastation of centuries of economic marginalization, many Indigenous Australians believe that the government should assist them on their journey to economic self-sufficiency as an essential step in the process of reconciliation. According to Peter Yu,

Despite the substantial Indigenous land holding interests, we are cash and asset poor and with little opportunity to attract investment. Governments, both State and Commonwealth, have been irresponsibly inept at providing a statutory land

regime that links our common law rights with our potential for economic and social development” (Yu 2007:11-12).

While it would be preferable to Indigenous Australians to have the legal recognition of their commercial rights so that they can assert greater autonomy in their pursuit of economic independence, at the very least, they require substantial and consistent funding and support.

To some extent, government funding of Indigenous commercial activities has been forthcoming. Since native title jurisprudence re-awakened concerns about Indigenous Peoples’ economic, educational and health disparities, Federal and State agencies have started to develop programs to alleviate inequalities. As a strategy for overcoming economic disadvantage, fishing and aquaculture have been identified as natural industries for Indigenous development that can enable them to make a living from traditional resources, and, most importantly, to remain on country and keep their communities intact. These new programs have spawned a handful of Indigenous-owned fishing and aquaculture businesses across Australia (See e.g. National Native Title Tribunal 2006). A few examples include commercial mud-crabbing in King Sound in Western Australia by the Emama Gnuda Aboriginal corporation, lobster fishing by a Cape York community of Lockhart River in far northern Queensland, and more general commercial trochus shell fishing in Western Australia.

Other Indigenous groups are entering into innovative partnerships with the private fishing sector to cultivate commercial industries within their sea countries. A compelling example is an agreement to construct the world’s first sea sponge farm within the Indigenous community on Palm Island. This project represents a unique collaboration between Traditional Owners, a private business group, the Australian Institute of Marine Science, and the State Development and Innovation Centre Townsville. If successful, the project will provide employment and capacity building opportunities for Indigenous Palm Islanders and will be conducted in a way that respects the cultural heritage and values of the Traditional Owners (National Native Title Tribunal 2005b). To Walter Palm Island, one of the senior elders who negotiated the agreement, the opportunities that the project would provide to the Island’s youth are the most important reasons to pursue it: “A lot of young people here have talents and this is a way of nurturing them, giving them self esteem and making them feel important” (National Native Title Tribunal 2005b:3).

Civil disobedience

Given the limitations of formal institutional channels for formidable assertions of Indigenous rights to access, manage and utilize their traditional marine resources, it is somewhat surprising that widespread civil disobedience is not more prevalent. While certainly not an alien tactic to Indigenous activists, as the massive protests during the land rights movement of the 1970s-1980s are

testament, acts of civil disobedience over Indigenous aquatic rights have been relatively lacking. There are, however, a few notable exceptions. The first involves the open defiance of State laws prohibiting the poaching of abalone without a license by Indigenous fishers in New South Wales and Tasmania. Despite arrests, significant fines, and court rulings rejecting their native title rights to the shellfish, Traditional Owners vow to continue to exercise their cultural rights to harvest abalone as they have been doing for generations without obtaining State licenses. Joe Carriage, a Traditional Owner who has been prosecuted for poaching abalone in New South Wales, claims that the sea provides the strongest cultural link to Aboriginal Peoples in southern Australia and he fears that, without political action, this link will be lost to future generations. He contends that, “If us older fellas don't take a stand we're going to lose everything [and] we're going to have no culture, we're going to have nothing” (Murphy 2004).

A second example of direct activism comes from far northern Queensland where Indigenous Torres Strait Islanders have made claims to exclusive ownership of their sea country (Scott and Mulrennan 2010). Notwithstanding the Australian High Court's rejection of exclusive native title rights to the sea, Indigenous Islanders have demanded that commercial operators stay away from their traditional fishing grounds. In one case, approximately seventy Islanders staged a peaceful protest against the presence of non-Indigenous commercial operators in the region, although rumours of armed conflict motivated the State of Queensland to send a boatload of police reinforcements to defuse the situation (National Native Title Tribunal 2005a). While many non-Indigenous commercial fishermen “vowed to stand and fight for their rights” against the Indigenous “pirates,” others stated that they would rather leave the region than continue to clash with the Torres Strait Islanders (National Native Title Tribunal 2005a).

It is noteworthy that both these instances of protest are local in nature and that they focus on immediate threats to Indigenous Peoples' culturally-derived rights to access, harvest and consume marine resources without undue interference from non-Indigenous actors. These examples, along with the numerous local and regional agreements discussed above, suggest that for Indigenous Australians the customary practices of fishing and harvesting marine resources are inherently local matters. Accordingly, their first choice is to resolve disputes between stakeholders at the scale where such practices occur. The relative absence of pan-Indigenous protest also reflects the broader political and institutional structures in Australia, which hinder pan-Indigenous mobilization by treating Indigenous claims-makers individually and failing to provide any meaningful national forums for adjudicating Indigenous sea country claims.

Indigenous innovation and agency

The findings discussed in the previous section reveal that Indigenous Australian advocates of fishing and aquatic rights use a variety of innovative, adaptive strategies to meet their material and cultural objectives. These findings are pertinent not only for demonstrating the constraining influence of political structures on mobilization tactics, but also for highlighting the agency and innovation of Indigenous actors in deploying strategies of action that allow them to assert themselves upon dominant political processes in culturally and materially meaningful ways. This is the case despite formidable political barriers that remain as a result of the long and destructive history of colonization, the marginalized status of Indigenous Peoples, and the persistence of prejudicial attitudes and discriminatory policies in Australia.

Despite these barriers, Indigenous fishers utilize multi-level approaches to claims-making, which span local, regional and national initiatives. Aboriginal stakeholders continue to assert their native title rights to sea country through litigation and through established bureaucratic channels. But, because the courts, the States and the Commonwealth remain relatively closed to broad-based assertions of Aboriginal marine rights, Indigenous fishers must deploy other innovative strategies to make their claims. A primary strategy involves wielding potential native title rights as leverage in negotiations with local stakeholders. Another involves the strategic manipulation of small-scale government programs in order to more relevantly meet their cultural, political and economic aspirations. These programs, which include Sea Ranger and Indigenous Protected Areas initiatives, were originally established to provide necessary services to Indigenous Peoples and to involve Indigenous communities in co-management of natural resources. However, the operation of such programs is often removed enough from bureaucratic oversight to enable Indigenous Peoples to direct their implementation.

The utilization of a variety of institutional, extra-institutional and innovative strategies for pursuing traditional aquatic rights reflects Indigenous political actors' nuanced understanding of existing political opportunities as well as the benefits and drawbacks of pursuing certain tactics over others. The unique combination of strategies employed in each site is designed to maximize the immediate material objectives of Indigenous stakeholders while ensuring that their long-term cultural and political aspirations are foregrounded. Taken together, Indigenous mobilization strategies demonstrate persistence and "tactical innovation" in the face of daunting political obstacles. According to McAdam (1983), the key challenge facing excluded groups "is to devise some way to overcome the basic powerlessness that has confined them to a position of institutionalized political impotence" (p.340). They initially do this by using non-institutional tactics to force their opponents to deal with them. Once they succeed at this stage, they must either "parlay [their] initial successes into institutionalized power ... or continue to experiment with noninstitutional forms of protest" (p.340). In Australia, Aboriginal activists have thus far been unable to achieve widespread institutionalized authority over aquatic resources through

the courts or legislative processes. Rather than succumbing to “widely shared feelings of pessimism and impotence that are likely to prevail (p. 341)” where excluded groups confront a political establishment that is largely opposed to its interests, Indigenous Australians have shifted their strategic focus to more innovative tactics, operating both inside and outside formal institutional settings. The deployment of alternative tactical solutions by Indigenous challengers reflects the significance of human agency in sustaining challenges against the state despite the presence of constraining political structures.

Even though recent legal decisions show little movement on the issue of Aboriginal aquatic rights, there is evidence that the attitudes of non-Indigenous policy-makers regarding the legitimacy of Indigenous Peoples’ claims are starting to change. In particular, there has been increasing recognition of the importance of traditional knowledge and the potential for Aboriginal Australians to take on leadership roles in marine management initiatives, especially with regard to the management of threatened dugong and sea turtle species. Australia’s former Minister of Environment Protection, Heritage and the Arts, Peter Garrett, echoed this at an awards ceremony honouring leaders of the North Australia Land and Sea Management Alliance when he described Indigenous Peoples as “...the ‘front-line’ managers of the north Australian coast where dugong and turtle remain abundant” (NAILSMA 2008). My findings also reveal that natural resource managers have been more open to incorporating Indigenous access and management aspirations into aquatic regulatory schemas along the Australian coast.

Given the lack of any legal mandate requiring such accommodation, these changes imply a meaningful shift in thinking about the legitimacy of Indigenous marine title in Australia that is consistent with the arguments that Indigenous activists have been making for years. They also confirm the vulnerability of the Australian government’s legitimate authority to regulate Indigenous Peoples and their resources and expose important ideological openings for more focused Indigenous mobilization. More significantly, these transformations, even while modest in scope, demonstrate the influence of Indigenous tactical innovations within bureaucratic arenas formerly monopolized by the state. Finally, the achievement of greater autonomy over highly contested natural resources demonstrates modest but clear movement toward the decolonization of national regulatory regimes in Australia and reveals that Indigenous Peoples are the primary agents of such change. To secure greater recognition of their culturally-derived fishing rights, Indigenous actors in Australia have been able to navigate a relatively closed political system by fashioning workable strategies that maximize their potential for greater autonomy over their marine resources.

Conclusion

In-depth analysis of the Australian case reveals that during episodes of political contention, Indigenous stakeholders are particularly masterful at deploying tactical solutions both inside and outside mainstream political structures. The result is a multi-level approach to political claims-making that simultaneously favours litigation, negotiation, civil disobedience, strategic partnerships and independent approaches, depending on which tactic, or combination of tactics, best achieves their material goals while maximizing their cultural objectives. Given the enduring colonial legacies that continue to dominate the lives of Indigenous Australians and marginalize them from meaningful participation in political processes, one might expect assertions of Indigenous fishing rights to be particularly impotent. While, in many ways political structures still constrain the content and impact of their claims, Indigenous actors are capable of strategically innovating in ways that are, ultimately, effective in bringing about modest legal and institutional changes. While Australian Traditional Owners have yet to achieve widespread structural transformations, by infusing the democratic process with political and cultural demands, they have succeeded in altering the discourses within which the relationship between Indigenous Peoples and the Australian state are constructed. In the wise words of Native American scholar, Vine Deloria, Indigenous Australians, like many Indigenous Peoples around the world, are becoming increasingly adept at “dismantling the master’s house” (Morris 2003:9).

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