7. A winnin’ battle

Pilbara Aboriginal people have had painful experiences of culture loss and, with that, stark challenges to their moral source, to their understanding of a good life, and to their grounding of a sense of a good life in the cultural practices previously constitutive for them of a good society. It took two decades for the beginnings of recovery from the shattering impact of the iron-ore boom of the 1960s. The basis of that recovery was twofold: a reassertion and reframing of the critical importance of country as a cultural and moral source; and the development of some legislative rights. In Western Australia, these came in the form of the *Aboriginal Heritage Act* in 1972. When these rights proved inadequate to stop the building of the Harding Dam, Aboriginal people turned to the Commonwealth’s *Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984*. Although the dam and the Marandoo mine went ahead, the fight for country was the catalyst for political action.

The fight for country also brought Pilbara Aboriginal people into the wider discourse of land rights and, over time, of Indigenous rights. An event that changed the character of those rights in Australia and transformed the relationship between Indigenous and other Australians was the High Court’s *Mabo* decision¹ and the subsequent Commonwealth *Native Title Act 1993*. Central to this transformation were both legal recognition of the traditional past as at least partly consistent with modernity, and a practical application to Indigenous Australians of the universal principles of human rights. Native title has not shielded Pilbara Aboriginal people from the ongoing impacts of resource development. Nor has it avoided internal conflicts. But it has made a major contribution to what Sahlins terms ‘the indigenisation of modernity’². And part of that process has been an ongoing process of redefining by Pilbara Aboriginal people themselves of what is meant by a good life in the intercultural context of modern Australia.

Culture and the social imaginary

The experience of Roebourne and other Pilbara Aboriginal people in the first two decades of the second colonisation confronted them very directly with the question of culture loss. Displaced from their country, with much of that country legally alienated and, particularly once large-scale mining began, destroyed, it was simply impossible for people to carry out the full range of traditional

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¹ *Mabo v Queensland* (No. 2) (1992) 175 CLR 1.
practices that had constituted their culture and moral and social universe. In his discussion of nuclear testing in the Marshall Islands by the United States, Kirsch makes the point that:

The severing of connections between people and place always entails loss...The alienation of land is of general concern for indigenous peoples...the loss of otherwise inalienable homelands can jeopardize not only the material conditions of survival, including subsistence practices, but also the requirements of social reproduction as embedded in kinship relations. Local knowledge and relations to place may be affected as well.

At the same time, a living culture does not exist outside the people who practise it. It is embodied in concrete domains, such as country, and expressed and reproduced in social and ritual practices. It also exists as a social imaginary, carried by individuals but shared with the others who make up their social world. Taylor links this to a sense of legitimacy:

By social imaginary, I mean...the ways people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations...
The social imaginary is that common understanding that makes possible common practices and a widely shared sense of legitimacy.

Taylor’s social imaginary echoes key aspects of what would be called culture in anthropological terms but it is not synonymous. Culture, like the social imaginary, exists as ideas, but not solely as ideas. Inherent in the concept of culture is the recognition of the essential dimension of practice: of practical mastery and practical knowledge. Culture is also tangible, in objects, clothing, art, adornment, organisation of space. We do culture perhaps even more than we think it, and we do it in real time. The possibility is always there of doing it differently as the environment in which we act changes through real time. It is in this sense that Sahlins can draw on West African writers and quote their view that ‘culture is not only a heritage, it is a project’; Bauman can speak of culture as ‘a permanent revolution of sorts’ in a human world that is ‘not-yet-accomplished’; Kirsch can suggest that loss ‘may be integral...in that it permits

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5 Bourdieu (1979: 4).
innovation and improvisation’;\(^8\) Peterson can observe that ‘being able to buy kangaroo meat in the local store is likely to be one reason why desert people no longer hold kangaroo increase ceremonies’.\(^9\)

For Pilbara Aboriginal people, their social and cultural universe was not a closed one even before the advent of major development in the region in the 1960s. Their old people had been dealing with difference since at least the advent of the first settlers in 1866. Their practical worlds had changed, and they had changed them, accordingly. Their response to the modernisation that came with development was as people with their own history, and ‘with their own cultural consciousness of themselves’.\(^10\) Nevertheless, the extent and rapidity of change over those first two decades of the 1960s and 1970s shook that ‘cultural consciousness of themselves’, especially for the young people, and, with it, the authority of senior people in providing for the transmission of cultural knowledge and practice to the next generation. Modernisation destabilised the legitimacy of traditional values and practices and of their moral source. It offered tantalising alternative notions of the good, and of what constitutes a good life, including access to regular and substantial wages, without providing any effective means of realising them. Nor did it remove the racial division that meant that, even for those who did attempt to engage with the new system of work, there was little reward in the workplace. Early attempts by people like Ian Williams from Hamersley Iron and Carol Lockyer from Ieramugadu to provide employment foundered on the reluctance of others in the workforce, as one of the Hamersley supervisors explained:

> We had people actually working for us and living in the single quarters. Two or three at different stages. But they found it very hard to assimilate and I don’t think they were really accepted by the workforce. I think the work situation wasn’t so bad. It was the living afterwards. They were living in single quarters and the white men as I understand it didn’t accept them into their cliques.\(^11\)

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9 Peterson (2010: 251).
10 Sahlins (2005: 52).
11 In 1992, Hamersley Iron set up its Aboriginal Training and Liaison (ATAL) Unit in Dampier. Its first manager was Jeremy van de Bund. After a start that was cautious on both sides, ATAL gradually became a point of reference for local Aboriginal people in terms of Rio Tinto’s engagement with them. In 1998 it won a Reconciliation Award.
Practical transformations: Cultural concerns and political action

People did not find new meaning through the world of work. In the 1980s they began to do so by reasserting and reframing the central importance of country in the context of development, as development pushed them to political action. The catalyst was formal approval by the State Liberal government in August 1982 to build a dam on the Harding River.

The establishment of the new towns put increasing pressure on the scarce water supplies of the area. This was not helped by the nature of the towns. There was no attempt to adapt to the semi-arid environment; instead, they tried to reproduce the greener suburban environments of the south, with lavishly watered lawns and gardens. The initial source of water was the Millstream aquifer. Woodley King’s anxiety about the depletion of this source and the dying back of the shallow-rooted paperbarks along its banks expressed the concerns of both Yindjibarndi and Ngarluma people generally. These concerns were more than environmental. The deep, permanent pools of Millstream were created by the great water snake, *Barrimirndi*. 12 David Daniels, a Ngarluma leader, talked about this at a workshop in 1985: 13

> What Yilbie [Warrie] meant was the Millstream is special. We are the special people and you know we believe in the spirits, spirit of the land of ours. What Millstream means to us is not just the word of people… It’s our tribal land, it’s our home land, it’s where our tribal laws started. And we are still carrying out our tribal laws till this day. That’s how Millstream is very important to us.

There were additional worries extending to the whole of the Fortescue River. In 1975, the Public Works Department had produced a report outlining initial plans to build a dam on the Fortescue River, with preferred sites at Gregory Gorge or Dogger Gorge. These plans were discussed with alarm at the Pilbara Bush Meeting in July of the same year, making clear the importance of the whole of the Fortescue River area, not only to Yindjibarndi and Ngarluma, but also, with respect to the area around Gregory Gorge, to Kuruma people. As well as the strong opposition voiced at the Bush Meeting, the newly established Aboriginal Sites Department of the WA Museum was brought in to assess the archaeological and anthropological status of the area. Their report on archaeological and other sites of significance, together with a combination of technical, economic and environmental issues, resulted in the Public Works

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12 Juluwarlu Aboriginal Corporation (2004: 1).  
13 Daniels (1985: 36).
Department moving the dam proposal in 1981 to a stretch of the Harding River on Cooya Pooya Station. This was Ngarluma country, but responsibility for the site chosen was shared by Yindjibarndi people as part of a network of sites all along the Harding River valley interconnected with the Law and ceremonial life. An important rainmaking site (*thalu*) was situated right where the dam wall was planned. Its boss was an Yindjibarndi man, the rainmaker Long Mack. *Thalu* is an Yindjibarndi word. It refers to seasonal renewal or increase sites. Reynolds describes them: 14 ‘*Talu* are recognisable places where Aboriginal elders focus ritual action, activating or “taming and driving” spiritual forces. Usually associated with fertility and regeneration, *talu* may also be visited to bring drought, pestilence and discomfort to other people.’

The dam would flood the whole area and would destroy the rainmaking *thalu*—*bunggaliyarra*—and *nganirrina* (the tree in the moon) 15 in the earthworks necessary for its construction. There was also the further issue of the land around the dam that would be set aside under a special purpose lease as a catchment area, removing yet more land from access by Roebourne people.

These plans posed a painful dilemma for Aboriginal people in Roebourne and in the West Pilbara more generally. The need for an adequate water supply for the rapidly expanding population of the region made the building of a dam seem inevitable. Consequently, the destruction of sites was inevitable, regardless of which proposal was accepted. This forced people into the impossible position of being asked to make an assessment of the relative importance of differing sites, all of which formed part of an integral whole. At the Pilbara Bush Meeting, participants reluctantly agreed that it was the Fortescue that was of greater significance for Aboriginal groups in the region. When the Public Works Department made the recommendation to go ahead at Cooya Pooya, and Cabinet endorsed the recommendation in August 1982, it was left to Roebourne people to oppose it. This was a daunting task for people who had never previously mobilised to take concerted political action. But by this time they were able to draw on a number of new resources that provided them with a new basis for acting. One of these was the possible protection offered, after 1972, by the WA *Aboriginal Heritage Act*. The vehicle for this protection was the WA Museum’s Aboriginal Sites Department, which, under a new Registrar, Michael Robinson, undertook serious research in consultation with local people. This was despite heavy commitments to carry out surveys in the Burrup Peninsula in the face of the establishment of yet another major resource development company, Woodside Petroleum Limited.

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14 Reynolds (1989: 8).
Perhaps more importantly in the long run, people began to engage, tentatively at first, with the discourse of land rights that had emerged from the 1971 Gove case in the Northern Territory, when Yolgnu people had opposed the development of a bauxite mine by Nabalco. The case had been lost, but it had led in the longer term to the passing by the Federal Government of the *Aboriginal Land Rights (Northern Territory) Act 1976*. By 1982, Aboriginal land rights were firmly on the national scene, even though they continued to be strongly contested by many other interests. Indigenous people across Australia were also making links with indigenous groups in other parts of the world, drawing on international law and the language of rights, especially as set out in the UN human rights regime.

In Roebourne, removed as it was from the centres of national political action, the process began slowly. In August 1982, the month of the Cabinet decision for the dam to go ahead on the Harding, Long Mack and Woodley King were in Perth. They took their concerns about the proposed dam to Michael Robinson at the Sites Department. They also went to visit Sisters Bernadine and Bernadette, then back in Perth, to explain the problem and enlist their support. In September, after further urgent investigation, the anthropologists presented their report on the importance of the area to the Aboriginal Cultural Material Committee of the WA Museum. In the end, however, the Museum Trustees—the people responsible under the Act—decided not to act on the recommendations made in the Sites Department’s report. Work on the dam began. The only gesture to Roebourne people’s concerns was the establishment by the Government of a working group to look at some form of compensation.

Early the following year, in April 1983, people held a large demonstration at the dam site with the support of the WA Aboriginal Legal Service. This was just two months after the Australian Labor Party under Brian Burke won government in Western Australia and a month after it won federal government under Bob Hawke. One of the first acts of the Hawke government was a proposal by the Minister for Aboriginal Affairs, Clyde Holding, to develop a national Aboriginal land rights policy. In the same month, March, the WA Government commissioned the Aboriginal Land Inquiry, to be carried out by Paul Seaman. He began his work in September 1983, the month of John Pat’s death. It was also in 1983, however, that Long Mack died. Roebourne people associate his death directly with the destruction of country caused by the dam: ‘He died of grief’. Sister Bernadine made the same connection:

> The building of the dam was terrible. It was a shocking thing to do...I had a photo here, showing how Long Mack had come to Perth a couple

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16 *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141.
17 Rijavec and Solomon (2005).
of years before, asking them not to touch that dam. Not to touch that particular place…When Long Mack got very ill, he came down to Perth, and he saw Bernadette and myself, and told us who to go to now in our dealings.

None of this slowed work on the dam. In July 1984, the Seaman Inquiry came to Roebourne. When the hearing began, in the middle of the dry season, ‘the skies opened’, as one of the witnesses described it, referring also to the unseasonal and eerie quality of the downpour. The general response of the Roebourne people present was that it was related to the damage done to the rainmaking site: ‘See, Long Mack was right. He said this would happen.’

In his report, released in September of that year, Seaman included a number of statements by the witnesses who spoke to him. There were strong statements about the dam:

Yindjibarndi and Ngarluma meet there. It is at Thalu place…the old rainmakers came and the old people made rain. You have got to have a boomerang and throw it when you come out of the pool. We like our culture. When they break it they break everyone’s feelings and we feel we have nothing. And how are we going to teach our young people. The old man said we have nothing and we want to teach our young people the Aboriginal way.

They were not to know, like Seaman himself and those who worked closely with him over an intensive year of listening to Aboriginal people all over the State, that the Government’s proposed legislation would be defeated in the State’s opposition-dominated upper house, the Legislative Assembly, in April 1985. This was after a concerted anti–land rights campaign over two periods in 1984 by the WA Chamber of Mines, supported by the then national mining industry umbrella organisation, the Australian Mining Industry Council. Burke’s assessment that the Labor Party would lose a large number of seats in Western Australia at the next federal election if the Federal Government pursued its national land rights policy was also a key factor in the abandonment of that policy.

Nevertheless, during the course of this shifting debate, the Commonwealth passed its own Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act in June 1984, a month before the Seaman Inquiry came to Roebourne. In the same month as the Inquiry hearings, July, Roebourne people lodged an application under the new Act to stop the dam. They did this after discussion with the Aboriginal Legal Service and others. Their application was the second one to be made under the new legislation. Roebourne moved again to the national
scene, this time not as a place of alcohol-fuelled violence and dysfunction, but as a place where people acted in defence of their culture. With 70 per cent of the dam construction completed, their application failed. The dam was opened in June 1985, ‘with a silent protest from Aborigines’, as reported in the *North West Telegraph* newspaper.19

At one level, then, the building of the dam represented yet another loss for Roebourne people and another instance of destruction. But David Daniels—himself a rainmaker looking after sites remaining on Cooya Pooya, Millstream and Sherlock stations—also saw it as a turning point:

> That dam really put the fight back into the people, even though they lost it. I told them there were sites that have to be protected. Before the dam, the people were just floating, didn’t care about anything. But the dam made them realise the land was important. It gives us food. We have to make the sites work. Increase sites have to be made to work. Young people do go out; I’m teaching them. I always take five or six with me.

The State’s compensation package provided some small gains: a 21-year lease for the land at Ngurrawaana, another small area of land near Millstream, and part salaries for two local people to be employed in site-related work. Both positions were taken up by Ngarluma men: David Daniels and David Walker. David Daniels made the further comment: ‘Now we got some land. Before the Seventies we had nothing. Now we got something.’

In a crucial sense, the struggle over the Harding Dam can be seen as the first active collective engagement by Roebourne people with modernity. Their political action can be seen as a shift into the land rights discourse that, as for Indigenous peoples elsewhere, constitutes for them not a rejection of or a capitulation to, but a dialogue with, modernity. Modernisation was thrust upon them but, by becoming political actors, Roebourne people invoked the legal and political processes available to them as citizens of a democratic, secular society. The trial of the police officers for the manslaughter of John Pat could have suggested the possibility of protection for individuals under the rule of law. In the end it failed, although it did make clear that not even officers of the law are above the law. The struggle over the dam, as well as ‘putting the fight back into people’, gave some indication of the further possibilities for protection of country and sites that might be available, or could at least be sought, through other modern political and institutional processes.

In undertaking action to protect sites against destruction by the dam, for the first time Roebourne people consistently used the resources of the colonising, secular society in order to defend the sacred as the foundation and source

of what they see as good and of what constitutes a good life for them. In the process, they reasserted the legitimacy of their moral evaluation of the good life and of the social practices necessary to express and promote a good life. In having to explain to the outside world the meaning of places such as Gregory’s Gorge, Millstream, the Harding River, and the coherence of the belief system that underlies that meaning, they were very publicly expressing the value that they continued to place on their culture.

They were also setting out terms—their own alternative terms—by which country was to be valued, different from the economic terms that drive the industrial development of the region. They were affirming their own social imaginary and seeking a place for it in the modern world. They were initiating a local version of a project that Sahlins describes as ‘the indigenisation of modernity’:20 ‘What the self-consciousness of “culture” does signify, is the demand of different peoples for their own space within the world cultural order.’

In Roebourne, opposition to the construction of the dam gave notice of how people wanted to define their own space, even while pursuing programs for income generation, education, training and employment in the broader society.

The Harding Dam was not the only battle fought by Pilbara Aboriginal people over this decade. The dispute over Hamersley Iron’s Marandoo mine in the Central Pilbara was also a key politicising event. The issue of destruction of sites by the mine was compounded by the siting of Hamersley Iron’s mining lease in a national park. Karijini National Park includes traditional country of three main groups: Bunjima, Kuruma and Innawonga.21 In 1989, these groups became involved in discussions with the then Department of Conservation and Land Management (CALM) about the possibility of joint management. As recounted by Slim Parker,22 one of the key players then and later:

In the course of this process the three groups established an umbrella organisation to monitor the park in an organised way and meet with CALM to work out the process of joint management…The organisation formed was the Karijini Aboriginal Corporation…The name Karijini is our Aboriginal word for a part of the Hamersley Ranges where our traditional land is situated.

The park area was also subject to a plethora of exploration and mining tenements mostly predating the proclamation of the park, most with Government Agreement

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21 A national park, under different names, had existed in the area since 1969 though the name was not formally changed to Karijini National Park until 1991.
Acts and all relating to iron ore. Karijini Aboriginal Corporation, formed to deal with environmental issues, was in the front line to challenge the development of the Marandoo mine and the destruction of identified cultural sites when Hamersley Iron released the company’s Environmental Review and Management Plan in 1992. Once again, Western Australia’s Aboriginal Heritage Act proved inadequate in providing protection; the company was granted consent under Section 18 of the Act and the Government then finalised legislation that excised the area from the park under the Aboriginal Heritage (Marandoo) Act 1992. The mine, like the Harding Dam, went ahead. Nevertheless, the recognition of native title by the High Court in the same year, 1992, was about to bring about dramatic change in the place of Indigenous people in Australia and to provide a new place of encounter between tradition and modernity.

**Practical transformations: Cultural concerns and legal action**

In response to a bid by a different group—the Meriam people in the Torres Strait—to define indigenous space within the modern Australian legal and political system, the High Court of Australia gave its decision in *Mabo v Queensland [No. 2]* on 3 July 1992. Their judgement held that the common law of Australia recognised native title, that is, that Aboriginal and Torres Strait Islander ownership of land and waters that predated colonisation could continue to exist and, where it did so, the common law could recognise those ongoing traditional rights and interests. The case itself was a claim by Eddie Mabo and others on behalf of the Meriam people to the island of Mer in the Torres Strait. The claim was based on Meriam ownership of the land and waters according to their traditional law and custom.

The judgement overturned the most basic tenet of landownership and title in Australia, that is, that the Crown gained ownership of all the land and waters at colonisation. This principle underlay not only the whole land-tenure system. It was also the basis on which Aboriginal land rights, in South Australia, the Northern Territory, New South Wales, Victoria and Queensland, had been granted by legislation; that is, that governments could choose to give certain lands and waters to Aboriginal people and the terms on which they would do so. The *Mabo* decision, for the first time, recognised that the Meriam people and, by extension, Torres Strait Islander and Aboriginal people generally had

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23 Department of Conservation and Land Management (1999). Blue asbestos had been mined earlier, including by Lang Hancock before he moved to nearby Wittenoom Gorge in 1937.
owned country according to their own traditional laws and customs prior to colonisation, and that this ownership could have survived, as it did on the island of Mer.

The court also established some of the key limits of common-law recognition of native title: that the Crown had acquired sovereignty through colonisation; that it had to have been demonstrated that the Meriam people continued to practise their traditional laws and customs in relation to their land and waters and had done so without interruption; and that native title had not been ‘extinguished’ by subsequent valid grants of title, such as freehold title, to others.

For all its faults and limitations, the Mabo decision fundamentally changed the place of Indigenous people in Australia, in principle if not altogether in practice. It was not the first time that legal and land-tenure systems had provided for Aboriginal ownership of land to be based on the ongoing practice of traditional laws and customs; this was the tenet underlying the Northern Territory Aboriginal Land Rights Act and other land rights legislation in some States. But Mabo was the first time that the common law recognised that an Indigenous group was entitled, as against the whole of the world, to the possession, occupation, use, and enjoyment of its land and waters, not by grant of the Crown, but on the basis and under the conditions of its own traditional laws and customs. As a later High Court judgement observed:26 ‘Native title is neither an institution of the common law nor a form of common law tenure but it is recognised by the common law. There is, therefore, an intersection of traditional laws and customs with the common law.’

The Mabo decision constitutes acknowledgment by a rational, secular legal system of alternative systems of meaning. In so doing, the judges dared also both to draw explicitly on international law and to invoke moral values. Rationality embraced morality and brought Indigenous rights into line with human rights:27

If it were permissible in past centuries to keep the common law in step with international law, it is imperative in today’s world that the common law should neither be nor be seen to be frozen in an age of racial discrimination. The fiction by which the rights and interests of indigenous inhabitants in land were treated as non-existent was justified by a policy which has no place in the contemporary law of this country.

The judgement went on to say:28 ‘Aborigines were dispossessed of their land parcel by parcel, to make way for expanding colonial settlement. Their dispossession underwrote the development of the nation.’

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28 ibid., para. 82.
Mabo, like the common law itself, challenges the view that a definitive break with the past is essential to modernity, and that tradition stands separate from it and in stark contrast with it. It throws a different light on Habermas’s recapitulation of ‘the break brought about with the past’ as a ‘continuous renewal’, demonstrating that continuous renewal does not require a discounting of the past; rather, it must take account of the past in order to offer a solid base for the future. But it can also reinterpret the past, re-creating meaning and a moral vision grounded in the past—in this case, radically—offering alternative meanings as well as a new legitimacy. Central to this transformation was a practical application to Indigenous Australians of the universal principles of human rights.

The potentially radical implications of the recognition of native title were greeted with euphoria by Indigenous people and with dismay by governments, who saw the possibility of the land-tenure system collapsing in chaos. In the event, and over the following years, neither reaction proved to be justified. But the Federal Government moved to enact legislation to clarify the extent and limits of native title, to validate previous titles where possible, and to put in place a system to manage native title processes. After months of debate, fearmongering, discussion and consultation, including serious consultation with Indigenous people, the Native Title Act was passed a few days before Christmas in 1993. Its substantive provisions came into effect on 1 January 1994.

In addition to the recognition and protection of native title, and the validation of past grants, the Act provides for a future act regime by which determinations could be made as to whether future grants could be made or acts done over native title land and waters. In recognition that it would take time—though the drafters of the legislation had little idea how much time it would take—to come to a final determination, the Act provided for an interim registration process that gives registered native title applicants a limited but precious right to negotiate with the people who want to do anything on or to their land.

In a mineral-rich area like the Pilbara, this provided altogether new possibilities, and a fundamental shift in the relationship between Aboriginal and non-Aboriginal people, to the alarm of many of the latter. It did not take Pilbara Aboriginal people and their advisers long to realise the importance and the possibilities of gaining recognition of their native title rights, thereby defining their own terms of participation more directly by moving from the periphery into the centre of future negotiations over proposed developments.

At the same time, the rush to application and registration of claims, and the need to define precise traditional group identities and boundaries, gave rise to

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29 Habermas (2002: 7).
30 Native Title Act 1993, Division 3: Future Acts and Native Title.
a twofold response. One was to bring groups together in order to pursue joint objectives. The other was to precipitate the emergence of competing groups, in dispute over both boundaries and identities. At one level, such disputes reflect recurrent processes in traditional Aboriginal social life and the tension between what Sutton refers to as atomism and collectivism.\textsuperscript{31} Peterson, Keen and Sansom also suggest that fission (the splitting of groups into smaller units) is a recurrent and therefore normalised process of Aboriginal life, reflecting in part the ‘wide variety of links—through descent, adoption, marriage, conception, and so on—with other groups and country’.\textsuperscript{32} Seasonal and demographic changes, as well as trading and ceremonial cycles, also played a part. However, another critical element now is the presence of modern resource development and Aboriginal people’s desire both to protect country better and to ensure a maximum share of the benefits, both symbolic and material, for their group, their families, and themselves. On this basis, group and boundary definitions are fiercely, and strategically, disputed.

**Native title and collectivism**

Both these processes, of collectivism and of atomism, were evident from the time of the passing of the Native Title Act at the end of 1993. The first Pilbara claim to be lodged was a joint one: the Ngarluma/Yindjibarndi application. The application was lodged by David Daniel,\textsuperscript{33} James Solomon, Tim Kerr and Daisy Moses on behalf of Ngarluma people and by Bruce Monadee, Karrie Monadee, Woodley King, Yilbie Warrie and Kenny Jerrold on behalf of Yindjibarndi (then spelt Injibandi) people. John Pat’s mother, Mavis Pat, was one of the Yindjibarndi claimant group and later gave oral evidence about how she had grown up on Mount Florence Station.\textsuperscript{34}

The lodging of the application was just the first step in what was to prove a complex, difficult, often painful, and contested process that would be litigated and would last for more than 10 years. A number of the old people and other important claimants would pass away before a decision was finally reached on 2 May 2005.\textsuperscript{35}

\textsuperscript{31} Sutton (2003: 85 ff.).
\textsuperscript{32} Edmunds (1995: 4); Peterson et al. (1977).
\textsuperscript{33} David Daniel and David Daniels are the same person.
\textsuperscript{34} Daniel v State of Western Australia [2003] FCA 666, paras 1246, 1259.
\textsuperscript{35} National Native Title Tribunal, Native title determination summary, Daniel v State of Western Australia [2005] FCA. The decision was of a single judge of the Federal Court. It was appealed on a number of grounds to the full Federal Court, which effectively upheld the decision of the single judge apart from his ruling of total extinguishment of native title on a number of pastoral leases; they found partial extinguishment instead. This finding supports the Wik principle of coexistence on pastoral leases (Moses v State of Western Australia [2007] FCAFC 78, and Dale v Moses [2007] FCAFC 82).
Many other Central and West Pilbara claims followed the Ngarluma/Yindjibarndi claim in those early, hopeful years—some 35 in 1995 and 1996\textsuperscript{36}—many hastily, though not thoughtlessly, prepared and lodged. Only three of these in addition to Ngarluma/Yindjibarndi—Eastern Guruma, Ngarla and Thalanyji—have since been partly or wholly determined. Like Ngarluma/Yindjibarndi, all have taken more than 10 years. Unlike Ngarluma/Yindjibarndi, the determinations were finally achieved by the consent of all the parties rather than by litigation. A number of the other claims have since been modified, combined, or withdrawn, especially after the stringent amendments to the \textit{Native Title Act} and in particular to the future act regime in 1998.

For groups wanting in particular to activate the right to negotiate processes in the shorter term, the rewards were to be more immediate. Initially, a significant number of claims were lodged as what were informally referred to as polygon claims. These were often small, irregularly shaped claims covering various mining tenements rather than the whole of a group’s traditional country. Their aim was to protect that part of country subject to anticipated development. A very large polygon claim was the combined Bunjima, Niapali, Innowonga claim, lodged in mid 1996, to ensure access to the right to negotiate for all three groups over the proposed development of Hamersley Iron’s Yandicoogina mine. The effectiveness of this combined approach made clear that the \textit{Native Title Act}’s future act regime, with its right for registered claimants to negotiate with parties about developments on their land, had changed irrevocably the relationships between Pilbara Aboriginal groups and resource developers. On the one hand, responding to proposals for further development made constant demands on the native title claimants and their Native Title Representative Bodies in terms of time and energy. On the other, for the first time it gave Aboriginal people, in the Pilbara and elsewhere, a place at the negotiating table, and a place that was theirs not by courtesy but by right.

The Act also achieved a major change in the approach to Aboriginal people by the major resource companies. The leader in bringing about this change was CRA Limited, now Rio Tinto, of which Hamersley Iron was a part.\textsuperscript{37}

\textsuperscript{36} I deal here only with some of the native title groups in the Central and West Pilbara, not with those such as the Martu and Nyangumarta, of the East Pilbara, both of which have also been determined after lengthy negotiations.

\textsuperscript{37} This view is supported by Fred Chaney (Rio Tinto Iron Ore 2006: 83): ‘While being alive to the fact that nobody is perfect including Hamersley Iron or Rio, I think it’s fair to say that they have been instrumental in achieving widespread cultural change in the mining industry.’
Mining and modernisation

If the Harding Dam can be seen as the turning point for Roebourne people in their engagement with modernity, and Marandoo for Bunjima, Kuruma and Innawonga groups, then the same can be said for the Native Title Act in relation to mining companies to the extent that they finally accepted that Indigenous people remain part of the modern world and, more significantly, continue to have rights and interests in the land to which mining companies want access. Indigenous people can no longer be regarded as part of the past for mining and other resource companies; they are pivotal to their future.

This was wholly new in Australia. It was not that companies like Hamersley Iron had taken no account of Roebourne people previously. Once they were established in the region, they worked with Ieramugadu to put limited employment programs in place and gave some support to education programs. Robe River took on a small number of Aboriginal apprentices, one of whom, Brendan Cook, was their apprentice of the year in 1987. But these were very small gains for people who had been swept aside in the march of progress through the 1960s and 1970s. Moreover, the mining industry had played a very active role in opposing, first, the proposed Aboriginal land rights legislation in Western Australia in 1984. One of the most infamous of the Chamber of Mines' campaign advertisements was of a black hand building a wall of bricks across the whole northern half of the State, with a large sign attached to the wall: ‘KEEP OUT. This land is under Aboriginal claim.’ Then in the debate over the Commonwealth Native Title Bill in 1993, the industry had lobbied hard and extensively to limit the impact of native title in terms of retaining all their rights of access for exploration and mining, and argued that any mining or exploration grants should extinguish native title. They failed in the latter attempt. Their chagrin was apparent at midnight on 21 December 1993, when the Senate gave final agreement to the provisions of the Bill and the packed public galleries erupted in enthusiastic applause while, on the floor of the Senate, all but the opposition Senators stood and applauded in return. Many in the mining industry continued to sulk over the next year.

Then in March 1995, some nine months after he became the Managing Director of CRA Limited, Leon Davis made national headlines when he stated in a speech to the Securities Institute in Melbourne and Sydney that CRA welcomed the Mabo decision and accepted the central tenet of the Native Title Act. He made himself very clear:

Let me say this bluntly. CRA is satisfied with the central tenet of the Native Title Act. In CRA we believe that there are major opportunities

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for growth in outback Australia which will only be realised with the full co-operation of all interested parties. This Government initiative has laid the basis for better exploration access and thus increased the probability that the next decade will see a series of CRA operations developed in active partnership with Aboriginal people.

Davis had been in Bougainville in Papua New Guinea in 1989 when the CRA Panguna copper and gold mine had been closed down in the face of a secessionist movement that turned into a long-running civil war. He had learnt the lesson of what can happen when companies ignore or give an inadequate response to the rights and concerns of traditional landowners.

Past positions lingered, and CRA remained a party to the Ngarluma/Yindjibarndi native title litigation. Nevertheless, Davis moved swiftly to change things. As part of implementing the change, he established a new position of Vice-President, Aboriginal Relations, based in the company’s head office in Melbourne, and appointed Paul Wand to the position.\(^{39}\)

The CRA initiatives were echoed in the Australian Mining Industry Council. Their new President, Jerry Ellis, of BHP Petroleum, was quoted as confirming that the council ‘handled its participation in the Mabo debate poorly’\(^{40}\) ‘We did get a bit out of control, I think, in the debate over land title issues and certainly we became ineffective. So we have decided to go back to some core values.’

In the Pilbara, the effects of this turnaround were first felt in the Yandicoogina negotiations; in March 1997, Hamersley and the Bunjima, Niapiali and Innawonga claimants signed the Yandicoogina Agreement (the Yandi Land Use Agreement). This was the first regional land-use agreement to be reached with a major resource company after the passing of the Native Title Act. Its lessons flowed on to Rio Tinto’s dealings with Aboriginal people throughout the Pilbara.

Other companies also took heed. In 1999, for example, Woodside negotiated an agreement with Ngarluma and Yindjibarndi people to set up the Ngarluma and Yindjibarndi Foundation to create and operate ‘initiatives for the social, cultural, economic, business and educational development’ and ‘the health and wellbeing of the Beneficiaries’.\(^{41}\) Also in 1999, Robe River entered into an agreement with the Gobawarrah Minduarra Yinhawanga group over part of the West Angelas mine and the surrounding related infrastructure.\(^{42}\)

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41 Ngarluma and Yindjibarndi Foundation Constitution 2000.
42 This agreement was transferred to Rio Tinto in 2000, together with other Robe River agreements, when Rio Tinto took over North Limited, which had previously taken over Robe River.
BHP Billiton entered into negotiations for its proposed Area C mine with the same claimant groups that had constituted the Bunjima, Niaparli and Innawonga claim for Hamersley Iron’s Yandicoogina agreement. By then, however, the groups had split and the Area C mining agreement is therefore made up of three separate agreements: Martu Idja Bunyijima native title claimants in December 2000; Innawonga Bunjima Niapaili native title claimants in June 2001; and Nyiyaparli claimants in relation to the powerline corridor to the mine. The split exemplifies two processes: one was the partial rationalisation of the initial polygon claim, with the Nyiyaparli group adjusting its boundaries and lodging its own country claim; the other was the process of atomisation.

**Native title and atomism**

As already indicated, the impetus for the combining and splitting of groups arises within the traditional Aboriginal domain. From one point of view, disputes arise out of the removal of people from traditional country, the fragmentation of traditional networks of relations among neighbouring groups, and the deaths of old people who held the knowledge and the Law. This is one of the dimensions covered by the concept of culture loss. For Indigenous people, the issue of culture loss is as much about losing people as it is about losing access to traditional country.

From another perspective, the different combinations and separations represent the ongoing connection of people to their traditional country, even when they may no longer live there, and their deep concerns for country as their source of the good. Just as importantly, the lodging of separate claims can be seen as a vehicle for asserting legitimacy in the newly defined arena where traditional indigenous life engages with modernity and demands access to some of the goods from which they had been previously excluded. Overlapping claims also suggest that, for different individuals and groups, access to modern institutions offers an opportunity for personal and group gain, even at the expense of others.

The principles on which dissent developed among Pilbara Aboriginal groups are similar to those experienced by other native title claimant groups:41

[They] are also the principles on which traditional relations operate, for example, questions of descent, of who has the right to speak, of who holds what knowledge and how that knowledge may be used. Particular disputes may be long-standing and deeply embedded, but often signal

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the importance of the matters at stake and the buoyancy of Aboriginal interests. Conflict, that is, is an indication of the continuing vigour of Aboriginal society, not of its breakdown.

In ways unanticipated by the framers of the Native Title Act, native title itself has become one more factor that has been added to the resources of Aboriginal political life\(^\text{44}\) and part of the project of the indigenisation of modernity.\(^\text{45}\) In the case of Pilbara claims, different accounts of descent also reflect a general characteristic of oral tradition: that is, that ‘historical memory beyond two or three generations is blurred or forgotten’.\(^\text{46}\) The different claims to the group affiliation of individuals from three or four generations back may not, of itself, indicate cultural loss but rather cultural memory.

At the same time, as Sutton suggests:\(^\text{47}\) ‘Where small landed groups belong to larger congeries, and also may overlap considerably in memberships and geographical scope, subgroups may pursue their interests rather atomically unless convinced that their interests are better served by some form of coalition.’

The coalition formed to negotiate the Yandicoogina agreement served the interests of the Nyiyaparli people well but it was always acknowledged that, once the agreement was reached, they would separate from the combined claim and lodge their own extended country claim east and southwards. They finalised this in 2005.

For the Bunjima and Innawonga groups in the combined claim, subgroup interests quickly emerged after the Gumala organisation, with its associated investment arm and trusts, was set up to manage the benefits from the Yandicoogina agreement. This management process, and the distribution of benefits, quickly became highly politicised. Disputes developed along family and subgroup lines. Without withdrawing from either the agreement or from Gumala, the Gobawarrah Minduarra Yinhawanga families split from the main Innawonga group and lodged a separate claim in mid 1997. This was to the south of the combined claim and covered part of the West Angelas proposed mine site and associated infrastructure corridors. A little more than a year later, the rest of the Innawonga group lodged their own separate claim, overlapping some, though not all, of the Gobawarrah Minduarra Yinhawanga claim and not including any of the West Angelas areas.

Bunjima also split into two subgroups: Bunjima and Martu Idja Bunjima. The split was along geographic as well as family lines, with the subgroups informally

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\(^{44}\) ibid., p. 2.
\(^{45}\) Sahlins (2005: 48).
\(^{47}\) Sutton (2003: 85).
identified as Top End Bunjima, associated with the tablelands of the Hamersley Range, or Bottom End Bunjima, associated with the Fortescue River. When the Fortescue Bunjima—the Martu Idja Bunjima—lodged their separate claim in 1998, it overlapped the Bunjima part of the remaining Innawonga Bunjima claim. The overlap included the highly prospective Hope Downs 1 mining lease.

Both these disputes, as well as reflecting family and subgroup identities, also crystallised around particular forceful individuals. Some, like Slim Parker, were veterans of the Marandoo battle and already canny in the ways of government and resource companies, as well as of Aboriginal politics. Others had gained their experience in the workplace, like Alice Smith’s son Charles, who emerged from working for BHP Billiton for nine years to lead the Yandicoogina and Area C negotiations and to be the first chair for Gumala.

The Ngarluma group experienced a similar splitting. In mid 1997, five other claims overlapped parts of the Ngarluma/Yindjibarndi claim. Most of these were finally settled or withdrawn. One overlapping claim, however, was lodged in August 1996 by the Yaburara and Mardudhunera group. In the Federal Court hearings for the Ngarluma/Yindjibarndi claim, the court had to deal with the relationship between the Ngarluma and the Yaburara. The question was asked about whether any of the claimant families could identify as Yaburara, whether Yaburara were northern Ngarluma, or whether they existed as a group at all. The question was very relevant to the issue of traditional ownership of the Burrup Peninsula and whether the Peninsula was ‘orphan country’ to which Ngarluma claimed succession under traditional law, or whether it had always been Ngarluma country. This was a matter of concern to David Daniels even in 1987:

The Burrup, there used to be Yaburara people. But [country is] always handed on. It’s now being taken over by Ngarluma people. We were always related with Yaburara people. They were known by the old people as Yaburara Ngarluma. It’s wrong that the Burrup belongs to nobody. We’ve had three dances there already.

In the end, the judge’s findings were that those of the second [Yaburara and Mardudhunera] applicants who claim to be Yaburara have not established that to be the case. The evidence

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48 Martu Idja Bunjima.
49 Bunjima.
50 In 2011, what had been the separate and overlapping Martu Idja Bunjima and Bunjima claims were combined into a single Banjima People claim.
supports the view that the second applicants having a claim in the claim area claim as Mardudhunera. It should be noted, however, that they have by younger generation intermarriage strong links to the Yindjibarndi.

The existence of Mardudhunera people as a distinct group was not challenged. Throughout all the proceedings, the Ngarluma and Yindjibarndi claimants made clear that they regarded the families involved in the Yaburara and Mardudhunera claim as part of their own claimant group and that they were willing to accept them into the claim.

The same was true for the three families who lodged the Wong-Goo-TT-OO application in July 1998. Up to that time, they had been an acknowledged, and acknowledged themselves as, part of the Ngarluma group.\(^{52}\) It was also accepted that the name Wong-Goo-TT-OO was not the name of any tribe or traditional landowning group but had been adopted for the purpose of submitting a separate application.\(^{53}\) In the trial, Wilfred Hicks made the position of the Wong-Goo-TT-OO as a Ngarluma subgroup clear:\(^{54}\)

Wilfred Hicks claimed he had full rights in the core country of his claim area because he carried the law for that area. He had been ‘overrun’ by others such as the Yindjibarndi and had therefore not asserted his rights earlier. He claimed rights in the Ngurin [Harding] area through his grandfather. He said he was ‘claiming as a Wong-Goo-TT-OO group of a Ngarluma person’.

The court’s finding, upheld on appeal,\(^{55}\) was that the Wong-Goo-TT-OO are not native title holders unless they are accepted as Ngarluma or Yindjibarndi.

At around 320 pages, Justice Nicholson’s reasons, given in 2003, for the Ngarluma/Yindjibarndi judgement are lengthy and detailed, like many judgements in the native title process.\(^{56}\) The determination was finally made two years later, on 2 May 2005. It was the first native title claim to be determined in the Pilbara. The judge handed it down in Roebourne, on the Old Reserve. David Daniels, who gave his name to the case and who had been a driving force in the development of the claim, did not live to join in the celebrations. Too many of the other representatives named in the original claim, as well as other claimants, had also passed away during the course of the proceedings.

\(^{52}\) ibid., para. 246.
\(^{53}\) ibid., paras 246, 354.
\(^{54}\) ibid., para. 1387.
\(^{55}\) Moses v State of Western Australia [2007] FCAFC 78 (7 June 2007).
\(^{56}\) Justice Nicholson’s decision is among those giving comfort to those wishing for native title holders to enjoy the full benefits of the Mabo decision. In contrast, and because of its novelty, the legal implications of the recognition of native title have been examined exhaustively in the courts. With a few exceptions, notably the Wik determination, the courts have progressively narrowed the promise and potential of native title for Indigenous Australians.
David Daniels’ wife, Tootsie Daniels, and James Solomon’s son, Trevor Solomon, spoke on behalf of the claimant group in acknowledging the very important role played by them. ‘They urged the younger people to remember them as role models, and to continue with the fight for land and recognition that they began over a decade ago.’

Atomisation, however, continues. Before the Ngarluma/Yindjibarndi determination, all three of the registered native title claimant groups were involved in the very difficult two-year negotiations with the State Government and a number of companies over the Burrup Peninsula. Together with the surrounding Dampier Archipelago, the Burrup has one of the world’s largest and most important collections of rock carvings or petroglyphs. The exact number of these is not known, but they are estimated to be in their thousands and many to date back thousands of years. Unlike the Yandicoogina negotiations, for the Burrup negotiations the three native title claimant groups did not combine though, in the end, all three signed the agreement in 2002 and the combined Murujuga Aboriginal Corporation was incorporated in 2006. The Corporation is to manage the benefits that flow from the agreement on behalf of the Ngarluma Yindjibarndi, Yaburara Mardudhunera and Wong-Goo-TT-OO people.

In practice, the logistics remained fraught; heritage clearances over the agreement area, for example, were often carried out twice, with the Wong-Goo-TT-OO insisting on their ongoing rights under the Aboriginal Heritage Act as ‘a representative body of persons of Aboriginal descent [which] has an interest in a place or object to which this Act applies that is of traditional and current importance to it’. Since their determination, disputes also emerged between the Ngarluma and Yindjibarndi groups, impeding access to their joint benefits for both. And, in the Central Pilbara, the Bunjima and Martu Idja Bunjima dispute for a decade proved resistant to agreement. The claims were finally combined into a single new claim, Banjima People, in July 2011.

At the same time, the Bunjima and Innawonga joint claimants agreed in 2008 to the boundary that would be used to separate the Innawonga Bunjima claim into its separate country areas. And the two Innawonga groups have resolved their key differences. In 2010, a joint Yinhawanga claim was lodged over the area overlapped by the two previous claims. Indeed, the transformation of Pilbara Aboriginal people through native title from affected observers to active participants has led increasingly to a culture of agreement-making rather

58 The Burrup and Maitland Industrial Estates Agreement Implementation Deed (the Burrup Agreement), 1 November 2002.
59 Section 9.
60 The Yindjibarndi group itself splintered in 2011 in response to proposals for mining and infrastructure development and related benefits by Fortescue Metals Group.
A Good Life: Human rights and encounters with modernity

than of litigation. Yamatji Marlpa Aboriginal Corporation, the Native Title Representative Body, has played a key role in this development. So, too, have some of the major resource companies since 1996.

Agreements as a negotiation of meanings between the old and the new

Agreements, along with native title itself, have become one of the intercultural arenas where Pilbara Aboriginal people are demanding attention, and forging new meanings for their traditional cultural beliefs and practices as they attempt to maintain them under the general pressure of modernisation and the particular and intense pressure of the latest resource boom. Companies have now to accommodate alternative meanings. The various agreement processes have turned out to be a test of the possibility of negotiating meaning between the old and the new in the context of a mediated modernity. They would not have happened without the native title process.

They have resulted in significant benefits for the claimant groups. They have also carried high costs for them, not least the constant and urgent demand for a response to developments by an increasing multitude of companies: the big ones, Rio Tinto, BHP Billiton, Woodside, Chevron; increasingly high-profile operators: Fortescue Metals, Sino Iron (joint-venture partner with Mineralogy); and the plethora of juniors. After the hiatus in 2007 and 2008 prompted by the global financial crisis, all returned to rapid expansion mode. Not all the resulting agreements are of high standard and the state has too often been absent from the scene.

Nevertheless, Rio Tinto, BHP Billiton and others have engaged in extensive and long-term negotiations with those native title groups affected by their operations and raised expectations—some possibly unrealistic—among the groups as to what is possible. In 2006, for example, Rio Tinto embarked on a coordinated and ambitious agreements project that included 10 of the 11 groups within its ‘footprint’.62

This followed the publication in 2005 of a book by John Taylor and Ben Scambary, Indigenous People and the Pilbara Mining Boom, researched as part of an Australian Research Council linkage project between The Australian National University’s Centre for Aboriginal Economic Policy Research and Rio Tinto. With its recent history of agreements, Rio Tinto expected to find that the

62 The eleventh group is the Eastern Guruma, with whom separate negotiations were already under way.
socioeconomic situation of Pilbara Aboriginal people had improved significantly over the previous two decades. The company was startled to find that this was not the case, and that there had been little or no improvement at all.

The authors summarise their conclusions:\textsuperscript{63}

It was noted that the number of agreements between mining companies and Indigenous community or regional organisations had grown substantially over the past two decades\ldots However, research to date indicates that for a complex set of reasons, Indigenous economic status has changed little in recent decades—dependence on government remains high and the relative economic status of Indigenous people residing adjacent to major long-life mines is similar to that of Indigenous people elsewhere in regional and remote Australia.

The authors go on to give some reasons for this ‘unexpected outcome’:

This situation of stasis partly reflects the limited capacity of Indigenous community organisations both to cope with the impacts of, and take advantage of, large-scale operations. On the other hand, it is also seen that such organisations and the people they represent may have ambivalent responses to the potential cultural assimilation implied by their increasing integration into a market economy and its monetisation of many aspects of social life.

Combined with the unwelcome reflections generated by the Taylor-Scambary report was the finalising, also in 2005, of a commercial agreement with Hancock Prospecting for a joint-venture development of Hope Downs mine. It was the urgency for Rio Tinto to develop Hope Downs, and the fact that it was covered by the various registered combined and overlapping native title claims, that was the main trigger for the development of the Rio Tinto Pilbara Agreements Project.

Working with the Native Title Representative Body, Yamatji Marlpa Aboriginal Corporation, agreements with seven of the groups were signed by the end of 2006. These were binding initial agreements, dealing with the company’s need for clearance for development and, in return, providing substantial ongoing financial benefits to the groups. These agreements also included a commitment by the company to negotiate final agreements that would cover other matters such as employment and training, business development and contracting, cultural and environmental protection, and cultural awareness training.\textsuperscript{64} In

\textsuperscript{63} Taylor and Scambary (2005: 1).
\textsuperscript{64} Litchfield (2009). Despite intensive negotiations over 2007 and 2008 and agreement on the key elements by the end of 2008, the process then limped on over the next two years. At the end of 2010, the stage-two agreements had not been finalised, suggesting that commercial urgency continues to play a key role in mobilising the company’s attention and priorities.
addition, Rio Tinto proposed and successfully lobbied the Federal Government to fund a Connection Report Project that would allow Yamatji Marlpa to produce connection reports for all the claimant groups involved in the Agreements Project, including the Martu Idja Bunjima, as part of a broader Bunjima report. The company also funded Yamatji Marlpa to engage consultants to work with the groups over several years to develop governance structures for the trusts that would manage the financial benefits from the agreements.

The results of this project remain to be seen but, with the financial benefits secured, the approach made a major contribution to the developing agreements culture and to the expansion of the intercultural space where the groups could assert what mattered to them and make clear that some meanings, whatever happened in practice, were non-negotiable. Also made clear in the process was that the Rio Tinto vision of regional governance, controversially embodied in the incorporation of Marnda Mia Proprietary Limited in early 2007, could only work if it was grounded in people’s local rights and given local support.

The processes involved in making agreements also provide more protection than does litigation or other adversarial options to those areas of traditional law and custom that people do not wish to reveal to outsiders: the specifically Aboriginal space that lies outside modernity and that is essential to the maintenance of a distinct Indigenous social imaginary. In engaging with the legal processes now available to them, which represent one of the avenues offered by modernity, Indigenous people are confronted with a decision about the extent to which they are prepared to subject their knowledge to external scrutiny and, by so doing, risk altering its social and cultural roles. The majority of Pilbara Aboriginal people made the choice to pursue their claim; in the long run, they saw it as their best way to protect and maintain the traditional bases for their values and practices, to pass on Law and culture to the next generations, and to do so under the conditions of modern life. Increasingly, they see agreements, including agreement about their native title claim itself, as the most effective avenue for achieving this.

At the same time as the attempts to maintain a distinct Indigenous space, modernisation has changed the lives of Indigenous people, drawing them...
increasingly beyond the local into regional and global arenas. Not least in this process has been the growing awareness by Indigenous groups, including Pilbara Aboriginal people, of international standards of human rights and, based on this, of Indigenous rights, an awareness based in international networks that has increasingly informed their local and regional politics, and what they expect from agreements.

One of the transformations brought about by modernity, indeed, is the development of identity as Indigenous, as well as Aboriginal.\(^{68}\)

The term [indigenous] is relatively new, actively used for only the past few decades, yet it invokes people’s sense of permanence and their ability to survive and stay close to their cultures and homelands despite almost insurmountable odds. With this paradox as its starting point, indigenous identity reveals itself to be a quintessentially modern phenomenon.

Pilbara Aboriginal people recognise their broader Indigenous identity, but that identity remains firmly grounded in their local domains. What remains at stake for Aboriginal people in the Pilbara generally is their interpretation of what constitutes the good and how they define a good life. The Pilbara experience suggests that people found their basis for action in reasserting the values grounded in traditional life and culture and in reaffirming these as their moral source. They did this through political action in the face of attempts to relegate their values and concerns to nostalgia for the past. They lost the battles over the Harding Dam and the Marandoo mine, but the Mabo decision offered legitimacy to their reasons for fighting them. It also, together with the Native Title Act, provided them with the first effective legal means to reposition themselves in relation to modern Australian society of which they are now part. The native title claims became an active reconstruction of a framework of meaning, offering the possibility of a coherent engagement with the broader society, and bringing the land, the Law, and ceremonial life out of the shadows to become potent not just for Pilbara Aboriginal people but also between them and those who had defined them as Other.

At the same time, native title has meant that that engagement has had to be negotiated in relation to the present and in a dialogue with modernity. As one of the Yindjibarndi native title holders commented, ‘We always knew about our country. We didn’t need to go to court to tell people about it.’ But he also observed, ‘Things in Roebourne are very different from what it was. A lot of positive things are happening.’ To cite but a few, Roebourne is now home to a flourishing community of Aboriginal artists, with several centres providing
work spaces and commercial opportunities. Local Aboriginal artists figure increasingly in the Cossack [Acquisitive] Art Awards—which began in 1993 and have now become the richest Regional Acquisitive Art Award in Australia—as well as in major exhibitions.

The Ngarluma Aboriginal Corporation is actively pursuing social improvement and commercial opportunities. The Ngarluma Aboriginal Sustainable Housing (NASH) development project in Roebourne is being undertaken jointly with government. In 2012, stage one of the project for 100 housing lots was near completion. The Yindjibarndi people have developed a successful media organisation, Juluwarlu, dedicated to the recording, preservation and maintenance of Yindjibarndi language and culture. In the few years that it has been operating, Juluwarlu has undertaken live recording with people on country, developed an archive, and applied successfully to the Australian Broadcasting Authority for an open narrowcast television licence, one of only four such licences in Australia. It has established a media centre and mentors trainees who will receive a certificate in multimedia. Michael Woodley, Woodley King’s grandson, sees operations such as Juluwarlu TV as ‘adjusting to what society is now’. In 2004, the organisation prepared and published the booklet Know the Song, Know the Country, based on the film Exile and the Kingdom. In 2005, working with Frank Rijavec and Noeline Harrison from the original team, they released a DVD copy of Exile and the Kingdom, with extra material added. Their project, Ngurra: Two Rivers, involves the production of a video documentary about ‘the Fortescue and the Lower Sherlock rivers that run through our minds, souls and hearts’.

In other parts of the Pilbara, agreements with resource companies have resulted in substantial financial benefits being paid into relevant Aboriginal charitable and other trusts. Aboriginal contractors play an increasing role in resource and other projects. A few groups, such as the Eastern Guruma, have embarked on joint ventures with other companies.

The dialogue continues to be uneven and unequal, questioning and calling to account various notions of the good, such as the monetisation of many aspects of social life, proffered as characteristic of modernity. Nevertheless, the involvement of the native title claimants in negotiations such as Yandicoogina, the Bururrpa...
Hope Downs indicates that the distinction between these differing notions of the good is not absolute; nor are the domains inhabited by Indigenous and non-Indigenous Australians bounded and separate. Much of the development of native title is located in a profound collaboration between Indigenous and non-Indigenous individuals and groups.

At the same time, disjunctions between Indigenous and non-Indigenous understandings of what constitutes a good life and its sources, and resources, remain, and the engagement with modernity has generated often stark contradictions for Pilbara Aboriginal people, both internal and external. One of these is the question of culture loss, in terms of the need for culture to be practised as well as thought, now that yet another generation who lived on and knew the country intimately has passed away. Opposed to this is the sense of culture as not only a heritage but also a project,\textsuperscript{76} Bauman’s ‘permanent revolution of sorts’.\textsuperscript{77} In the Pilbara today, this means that the link between people and country remains a primary, though no longer the sole, connection or source of self. And new organisations, like those that emerged in the 1980s to counter the second colonisation, are becoming a nexus for the encounter between the old and the new.

In looking at the situation in the Pilbara today, I recognise the complexity and the challenges. But I am also reminded of the buoyant comment of an Aboriginal woman in another part of the country: ‘It’s a winnin’ battle now. It used to be a losin’ battle, but now it’s a winnin’ one.’

\begin{footnotesize}
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\item[\textsuperscript{76}] Sahlins (2005: 58).
\item[\textsuperscript{77}] Bauman and Tester (2001: 32).
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