

10. Beyond native title: the Murray Lower Darling Rivers Indigenous Nations

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I never gave up my Country to you people. You can destroy the River all you like but in the end we'll still be here.

Mary Pappin, Mutti Mutti Elder, Up the River Forum, Message Sticks 2004.

Introduction

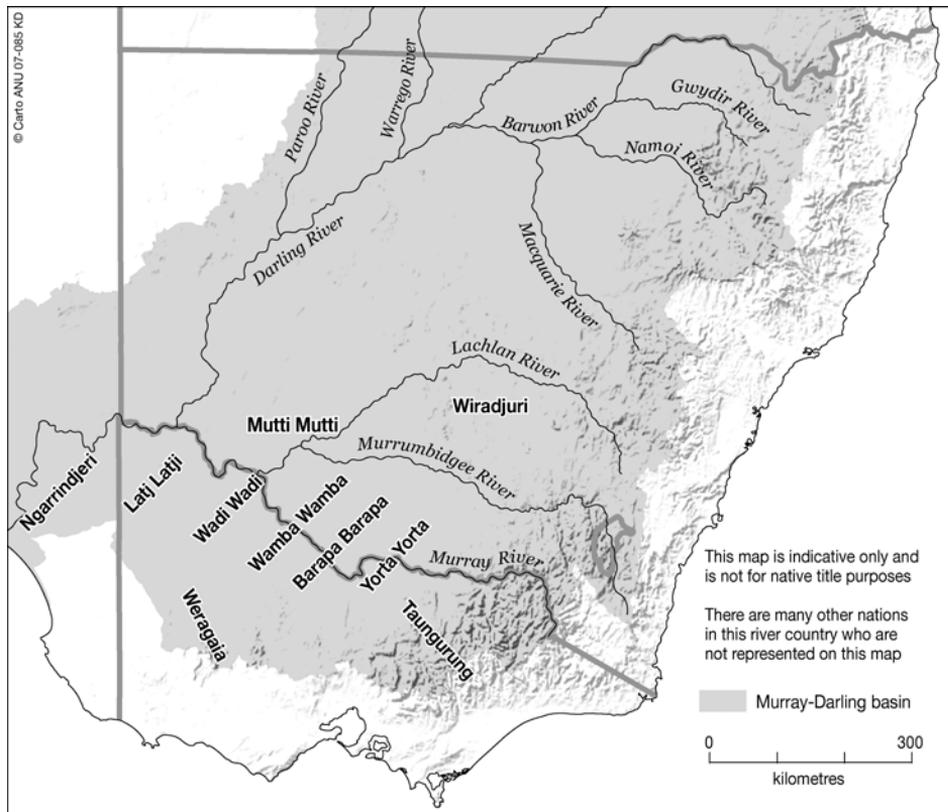
The recognition and development of native title law has focused attention on Indigenous peoples' traditional identities. Indigenous peoples who collectively hold traditional laws and customs are now explicitly recognised as holding rights to their traditional country and implicitly recognised as forming political systems of self governance (Strelein 2001). Native title has been described as a 'recognition space' where traditional laws and customs intersect with the Australian legal system (Mantziaris and Martin 2000: 2). Native title is thus produced by a combination of traditional laws and the common law. However, this interaction of laws has been incredibly problematic, and is at times experienced by Indigenous people as being at odds with the continuance of their laws and customs (Smith 2005: 230).

Moreover, the notion that Indigenous peoples' traditional laws and customs are operating in a realm distinct to and outside of the Australian legal system and colonial administration is unsustainable (Weiner 2003: 99). Indigenous and non-Indigenous histories and lives are so intertwined that a 'profound syncretism' has occurred (Smith 2003: 28). Today, Indigenous peoples' cultural life and traditions are a part of contemporary intercultural Australia (Merlan 2005), and engagements over native title are no exception. Despite this, the influence of native title has been to continue an emphasis on the separateness of Indigenous traditions that are unchanged by 'civilisation' (Smith 2005: 223).

In the more densely settled south east part of Australia, narrow understandings of 'tradition' at the common law, and the extinguishing effect of certain categories of land tenure, has limited the potential of native title to recognise the laws and customs of traditional owners. Instead, traditional owners are asserting their traditional authority irrespective of native title outcomes. This paper engages with this context in relation to the Murray Lower Darling Rivers Indigenous Nations (MLDRIN), an organisation that has formed as an alliance of 10 traditional

owner groups from along the River Murray and its tributaries (see Fig. 10.1). It is argued that the rhetoric of this alliance consolidates the native title trend of emphasising a traditional authority that exists in a distinctly separate Indigenous domain. However, the work of the alliance is deeply intertwined with government structures and processes within intercultural Australian society. Indeed, native title law has had a particular effect on the mobilisation of this alliance.

Fig. 10.1 The Indigenous nations of the Murray–Darling system



MLDRIN: a brief introduction

In August 1999, the Yorta Yorta people organised a two-day meeting in the Barmah Forest for traditional owner groups whose country is along the Murray River. The meeting resolved to develop a stronger voice for traditional owners in policy and management responses to the severely degraded Murray River, including strengthening the relationships between traditional owner groups through the development of ‘Nation to Nation’ protocols (see also Morgan et al. 2006: 142–3). At a second meeting two months later, the traditional owners decided to create an umbrella body that could represent traditional owners and

be a platform to engage with government. Specifically, a board of delegates was proposed which would have representation from each traditional owner group. A broader consultation process with traditional owners followed, undertaken by Yorta Yorta woman Monica Morgan (working for the Yorta Yorta Nation Aboriginal Corporation) and Mutti Mutti elder Jeanette Crew (working for the New South Wales Department of Land and Water Conservation), and in 2001 MLDRIN held its inaugural meeting. Since then, MLDRIN has consolidated its organisational structure and election processes, and has incorporated under the *Corporations Act 2001* (Cwlth). MLDRIN usually meets four times a year with two delegates attending for each traditional owner group. Crucial to its ongoing operation, MLDRIN has also been able to secure its funding base. In 2003, MLDRIN secured a three-year funding agreement with the Murray–Darling Basin Commission which included funding for meetings and a full-time coordinator. This three-year funding agreement was renewed in 2006.

Today MLDRIN remains an alliance of 10 traditional owner groups, also known as Nations: the Wiradjuri, Yorta Yorta, Taungurung, Wamba Wamba, Barapa Barapa, Mutti Mutti, Wergaia, Wadi Wadi, Latji Latji, and Ngarrindjeri. These traditional owners have country in the southern part of the Murray–Darling Basin (see Fig. 10.1). A lot of the work of the alliance is focused on increasing the involvement of traditional owners in natural resource management and planning, particularly ecological restoration projects, and it is lobbying for an Indigenous water allocation. The MLDRIN alliance is also supportive of the work and aspirations of each traditional owner group. However, MLDRIN has a principle that the alliance cannot interfere with Nation business, because it argues that traditional authority is vested in the Nation group and not the alliance.

In 2007, the delegates established a web presence for MLDRIN at www.mldr.org.au, which details that the role of MLDRIN is to perform the following functions for the traditional owners of the Murray–Darling River Valleys:

- to facilitate and advocate the participation of 10 Indigenous Nations within the different levels of government decisions on natural resource management
- to develop responses on the cultural, social and economic impacts of development on Indigenous traditional country, and
- to be a collective united voice for the rights and interests of their traditional country and its people.

MLDRIN is thus a creation of the traditional owners that seeks to consolidate the traditional owner identity by forming a regional alliance within which traditional owner groups acknowledge and support each other. The alliance also emphasises the distinct responsibilities that traditional owners hold in their traditional country, and argues that that they require greater representation and

rights in order to fulfil their responsibilities to country. It chiefly engages with State governments and departments, the Murray–Darling Basin Commission, and the Commonwealth government, and it also works closely with environmental groups who are concerned about river health. The support it has already received from government—funding, employment positions, inclusion on boards and in briefings—shows that the confederation is valued by government as a consultative body for policymakers. The political assertions of the delegates, that they are the ones who speak for country, have been acknowledged by government in Memoranda of Understanding signed between MLDRIN and the former New South Wales Department of Land and Water Conservation (in 2001), and the Commission (in 2006).

Traditional ownership, native title and establishing MLDRIN

Native title interacts in multiple ways with the arguments that the MLDRIN confederation makes about their traditional authority, and their identity as a confederation of Nations.

The 1992 High Court Mabo native title judgement has motivated traditional owners across Australia to assert a distinct traditional identity because native title recognises their collectively held traditional laws and customs. One of the ways traditional owners have asserted this identity and authority is to make native title claims over their country. A positive native title determination is a recognition of their traditional authority by the common law as it is developed in the Federal and High Courts. Another assertion of traditional authority that is responsive to the Mabo decision is the mobilisation and incorporation of traditional owner groups, and the formation of MLDRIN is an example of this.

However, the MLDRIN delegates emphasise a distinction between native title and their organisational basis as founded in traditional authority. Yorta Yorta woman Monica Morgan, who was a key figure in the establishment of MLDRIN, has spoken about how the MLDRIN alliance is founded in traditional authority and native title:

the development of MLDRIN isn't something new, it is just with the advent of native title Indigenous peoples could then focus on their traditional selves, who they are, their makeup and regain their identity in making decisions that are around that ... So there is a natural progression from old days to now, and so this is a modern concept and Yorta Yorta were the first ones to invite people from along the Murray River to regain our self-determining process within our traditional frameworks.¹

¹ Interview with Jessica Weir, 1 July 2004.

While Monica explicitly states the influence of native title in the formation of MLDRIN, at the same time she asserts the continuance and revival of traditional authority. They are both important, but MLDRIN is described as an extension of the traditional decision making frameworks of the traditional owners, and not as an alliance of native title groups. Indeed, on its website and in its documents, traditional authority is asserted to the exclusion of native title, or at least traditional authority is not contingent on a positive native title outcome. While there is an issue of scale here, in that native title claims are made by traditional owner groups, and not by large multi-state regional alliances, there remains a marginalisation of native title issues in the delegates' rhetoric and strategic planning. The changes being wrought to Australia's land management landscape by native title are not a noticeable part of the agenda for MLDRIN. Indeed, MLDRIN is a model of representation and governance which specifically circumvents the native title system, relying instead on self-identification which is endorsed through the informal networks, kinships and histories held and known between the traditional owner groups.

Many of the delegates who are on MLDRIN talk about how being self-determining makes MLDRIN a different organisation to the Indigenous organisations which are created by government law and policy, such as the land councils in New South Wales or the cultural heritage cooperatives in Victoria. This self-determination is grasped as a continuation of traditional authority from pre-colonial times. As MLDRIN delegate and Mutti Mutti elder Mary Pappin has said: 'We are still coming together, we are still enjoying a meal, we're still talking about country and rivers. What we're doing is tradition and that is the most important thing.'²

This repeated emphasis on traditional authority relates to the specific history of MLDRIN and the Yorta Yorta people, and the narrow 'recognition space' for claiming native title in the more densely settled south east of Australia. The Yorta Yorta people's native title claim was seen by many as a test case for whether native title rights and interests would be recognised in the rural south east. Unfortunately, the Yorta Yorta were the first people in Australia to receive a Federal Court decision that their native title rights and interests had not been continuously maintained through the experience of colonisation, or, as described by Justice Olney's gross euphemism, that their traditional laws and customs had been 'washed away by the tide of history'.³ Thus, the Yorta Yorta were the first traditional owners who had to explicitly assert their traditional authority as

² Interview with Jessica Weir, 22 July 2004.

³ *Members of the Yorta Yorta Aboriginal Community v The State of Victoria* [1998] 1606 (18 December 1998), para 19. This decision was unsuccessfully appealed to the Full Federal Court, and then to the High Court of Australia: *Members of the Yorta Yorta Aboriginal Community v State of Victoria* [2001] FCA 45 (8 February 2001); and *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58 (12 December 2002).

distinctly separate to native title, that is, external to any native title rights that may be recognised by government. For the Yorta Yorta, gathering traditional owners from along the rivers together to work co-operatively on water issues was part of the reassertion of their own identity, their 'self-determining processes', against that determined by native title at the common law.

Under the *Native Title Act* there are provisions for the extinguishment of native title rights and interests, and a judge can make a determination that native title is no longer held by a traditional owner group, but these decisions are not part of the traditional laws and customs of traditional owners (Strelein 1999). It is not possible under Indigenous law to sever the intimate relationship held between a group of traditional owners and their country in this way. However, after a judge makes a negative native title determination, the traditional owners will not have the rights and interests of native title holders, nor the procedural rights they held while registered as native title claimants. This is a considerable loss as native title rights and interests provide traditional owners with opportunities to exercise their traditional authority, including being consulted on development applications on native title lands. Thus, native title law has the power to undermine the capacity of traditional owners to exercise their traditional authority. Indeed, this is just one aspect of how traditional authority is increasingly enmeshed with native title law.

The native title loss for the Yorta Yorta people was felt strongly by their neighbouring traditional owners, not least because of the precedent it set for south east Australia: that native title would not be recognised, or at least would struggle to be recognised, given the narrow legal parameters of the common law. Within the MLDRIN confederation, half of the traditional owner groups—the Ngarrindjeri, Latji Latji, Wamba Wamba, Barapa Barapa and Wadi Wadi—have native title claims, and some parts of Wiradjuri country are also subject to native title claims. The Wergaia are the only delegates who have had native title rights recognised, as part of the Wotjobaluk determination in December 2005 in western Victoria.⁴ For those traditional owner groups whose country overlaps State boundaries, they have limited their native title claim to within State borders. This procedure has reduced the complexity of the claims process and the number of opposing parties, however it reminds us that native title is in many ways a compromise for traditional owner aspirations and identity. Native title is not a comprehensive response to traditional owner aspirations across Australia. For many traditional owner groups, making a native title claim is not something they are planning to do.

The combination of the philosophical change wrought by the Mabo decision, and the failure of native title to then recognise the traditional authority of the

⁴ *Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria* [2005] FCA 1795 (13 December 2005).

Yorta Yorta people, did lead to the development of political will in government to respond positively to the aspirations of traditional owners. In fact, support for MLDRIN has come from the same government bureaucracies who had contested the native title claim, including the Murray–Darling Basin Commission and the Victorian, New South Wales, and South Australian governments. Government recognition of the Yorta Yorta as the traditional owners of country was formalised by the Victorian government in 2004 when the two parties signed off on the Yorta Yorta Cooperative Land Management Agreement for the Barmah-Millewah forest.⁵ Thus, the behaviour of the Yorta Yorta as the traditional owners of country was understood by the Victorian government as a credible assertion of traditional identity. It is deeply ironic that the negative and traumatic experience of an unsuccessful native title claim was part of that validation process.

With a more mature government policy, the negative native title context in the south east is now changing. The trend is towards consent determinations, whereby native title claimants and government come to an agreed native title determination without resorting to litigation. However, the MLDRIN delegates continue to assert their confederation as a model that represents the traditional authority of traditional owners outside of the native title system. This MLDRIN model forms the basis of the following discussion.

A confederation of Nations

Native title and the traditional authority of traditional owners have been informing each other since the Mabo decision, and traditional authority and colonisation have had a much longer period of interaction, an interaction which has also informed the conceptualising of native title. The MLDRIN confederation is a particular example of how these interactions have been interpreted by traditional owners in south east Australia, and how the traditional owners have decided to organise and incorporate a regional governance structure.

While the delegates assert their distinct traditional identities, the formation of MLDRIN has occurred within a very complicated intercultural context. The term ‘intercultural’ has come into increasing use in Indigenous studies as part of a rejection of the notion of cultures as exclusively bounded, self-defining, and self-reproducing domains (Martin 2003: 4). James Tully describes what he calls ‘interculturalism’ as being where cultures overlap geographically, are interdependent in their formation and identity, existing in complex historical processes of interaction (2004 [1995]: 10–11). For example, the term ‘nation’ has a long history of interaction. The use of the term to describe the social and

⁵ Yorta Yorta Nation Aboriginal Corporation and The State of Victoria, 2004. *Co-operative Management Agreement between Yorta Yorta Nation Aboriginal Corporation and The State of Victoria*, signed 10 June 2004.

cultural organisation of Indigenous peoples comes from the late 19th and early 20th century anthropologists who used 'nation' to describe Aboriginal groups that were cultural blocs based on genealogical descent. At that time, the term 'nation' did not carry implications about sovereignty, which have developed since the early 20th century (Blackburn 2002: 150, 153). By describing themselves as Nations, emphasised with a capital letter, the MLDRIN delegates assert the reference to sovereign authority that is now linked to the term. They are also connecting their experiences to the Indigenous rights struggles of First Nations people in North America. However, not all of the traditional owner groups within the alliance have adopted the term 'Nation' to describe themselves.

Interculturalism informed Indigenous peoples' way of life prior to colonisation. However, since colonisation Indigenous peoples' cultures have experienced radical upheavals in a very short space of time. As part of surviving and adapting to the colonial context, the identities of traditional owner groups have been transformed. The more finely defined relationships with country, such as clan and estate groups, have not always continued through colonisation, and the trend in south east Australia has been for traditional owners to broadly define themselves with language groups as their most important political identity (Sutton 1995: 47). In addition, the early anthropologists were keen to identify Indigenous people as part of broader groups—as tribes or nations—and to produce maps that fixed these groups to physical land boundaries (Blackburn 2002: 135). These simplistic maps have misrepresented the complex, indeterminate, and multi-layered relationships held between traditional owners and with country (Sutton 1995: 40, 49–50). However, this mapping of boundaries and peoples is a practice that influences how land claims are recognised today. The *Native Title Act 1993* (Cwlth) requires traditional owners to provide a clear explanation of how the group is defined, what laws and customs unite them, and the extent of their territory. The influence of native title in south east Australia has been to consolidate an already existing trend of describing relationships between traditional owners and their country in a more bounded way. The creation of the MLDRIN alliance has also contributed to this trend of articulating traditional owner identities and matching them to their particular country. Indeed, it is a consolidation of that trend into a regional alliance.

In such a confederation of diverse Nation groups based on the traditional owner identity there are complex issues concerning how identity relates to the political formation embedded in its governance structure. That is, the governance processes of the MLDRIN alliance are intertwined with how the identity of both a traditional owner and a traditional owner group is determined. For example, the Wamba Wamba and the Barapa Barapa have separate delegation on MLDRIN. However, kinship and language ties between the two groups are very close and some of their country is shared. The language of the Wamba Wamba is almost identical to their eastern neighbours the Barapa Barapa (Hercus 1992: 3). The

identity networks move further outwards geographically, following this language heritage. Both Wamba Wamba and Barapa Barapa are part of what has been called the Kulin language group in western Victoria, which also includes the Mutti Mutti, Wergaia and the Wadi Wadi (Hercus 1992: 1). The positioning of identity is also being negotiated in the alliances which are being made over native title. The Wergaia are part of the Wotjobaluk native title determination, which includes the Jaadwa, Jadawadjali and Jupagulk peoples as well. There are relationships of scale and definition here: where does a family group, clan, tribe, nation and language group begin and end? A fraught example is that of the Yorta Yorta and the Bangerang. The Yorta Yorta Nation Aboriginal Corporation is a union of the Wolithiga, the Moira, the Ulupna, the Bangerang, the Nguaria-iiliam-wurrung, the Kwat Kwat, the Kailtheban and the Yalaba Yalaba clans (Atkinson 2004: 23). Since the unsuccessful Yorta Yorta native title determination, some members of the Bangerang have asserted a separate identity as a traditional owner group rather than as a clan within the Yorta Yorta Nation.

Identity issues and representation are important to the governance of MLDRIN, to ensure that an individual delegate is representative of their traditional owner group. For individuals, their personal genealogical history can link up with numerous traditional owner groups, connected by the marriages and alliances made through the generations. Individuals are born or adopted into their traditional owner group, and the complicated genealogical histories they inherit are accommodated by some flexibility in self-identification. Identity is influenced by family heritage—drawing on two parents, four grandparents, eight grandparents and so on—as well as the individual's own personal history and experiences (Davies 1995: 77).

When complex identity issues about an individual are presented to the alliance, the delegates defer to the authority of the Nation groups. The delegates argue that it is an internal matter for the traditional owner group to determine who is a member of that group. Yet, when it comes to issues of the identity of a Nation, arguably the traditional owner groups regulate the group identity of other traditional owners groups among themselves. This can be seen in the formation of the MLDRIN alliance. For example, the Manatunga Council of Elders, who are based in Robinvale on the Murray in Victoria, used to sometimes send a representative to the MLDRIN meetings. However, in the process of becoming incorporated, MLDRIN sent the Manatunga Elders Corporation a letter which clarified that, as they are not a traditional owner group in their own right, they are not eligible for MLDRIN delegation. These are politically sensitive decisions, and depend crucially upon the networks of knowledge and relationships held informally between the traditional owners.

By formalising their governance structures on a large scale, as a confederation of Nations, the delegates are exposed to, on very rare occasions, making decisions

about group identity. While negative native title determinations can be discredited as an exercise in colonialism by the Australian legal system, and the decision making process of the traditional owners can be argued to be otherwise, MLDRIN's decision making processes are not being made in a realm external to the colonial experience. It is also a decision making process which is informed by native title. It is hard to predict whether the success or failure of the currently lodged native title claims will cause readjustments and realignments in the MLDRIN alliance, however, clearly assertions about distinct traditional owner authority are complicated by this interconnected intercultural life.

Election processes and the diversity of political identities

The complexity of this political context, and how MLDRIN operates today, can be examined in relation to the election processes for the MLDRIN candidates. Because the alliance is about respecting the self-determining decision-making processes of the Nations, there is no uniform election method for the delegates. Election depends on the governance structures of the respective Nation group. The election process of each Nation is influenced by a number of factors; put briefly these include:

- the traditional laws and customs of the Nation
- the geographic size of its country and where large concentrations of traditional owners live within their country
- the relationship with and reaction to colonial processes
- the history and changes within the population, such as forced removal or relocation of peoples
- the existing leadership and other capacity within the Nation, and
- organisations formed within the Nation and Nation membership to other organisations.

These influences can impact on the capacity of a Nation to choose its delegates and on how information is distributed throughout Nation networks. The Nations without the current capacity to meet regularly have been encouraged by MLDRIN to establish incorporated bodies to represent their Nation. With incorporation, that body could receive funding and administration support from the alliance for Nation meetings. Moreover, incorporation increases accountability for external Nation business, as the incorporation process includes a naming of the representatives of that Nation. This also creates a clear governance structure for government to communicate with. Knowing who to contact among the informal networks of traditional owners is often unclear for government (Forward NRM and Arrilla-Aboriginal Training & Development 2003: 77), and the current informality of these communication networks is open to manipulation both by individuals within the Nation and by the government. The MLDRIN coordinator

is working with those Nations that have asked for assistance in the incorporation process.

The business of electing MLDRIN delegates in each Nation reveals both the diversity of governance structures in operation, and the way in which informal traditional authority makes use of Indigenous organisations that have been created and funded by government. Traditional owners are generally not funded to be traditional owners, or to mobilise themselves into an organisation of traditional owners. The logistical and funding constraints experienced by the Nations means that an opportunity to meet for a matter which is funded by government also becomes an opportunity to deal with other decisions that require a Nation meeting. The following information has been collated largely from the information supplied by each Nation at the time of election to the MLDRIN co-ordinator Steven Ross, one of the authors of this paper. At some of these meetings, Steven has attended and given a presentation about the work of MLDRIN prior to the election of the delegates.

The Wiradjuri face a problem common across most of the Nations, that of being a political identity with responsibilities to country but operating as such without organisational support. The Wiradjuri have an Elders Council which meets regularly, but there is no Wiradjuri organisation that is truly representative of all the families and/or communities. Some clan groups within the Wiradjuri Nation have formalised their governance to the extent of becoming incorporated bodies. MLDRIN is supporting a Wiradjuri governance project to assist this Nation and its delegates. This will involve establishing a traditional owner steering committee that will draft a governance framework, which will then be put to the Wiradjuri people at a series of Nation meetings for amending, endorsement and implementation. When it came to electing a MLDRIN delegate in 2004, the Wiradjuri were able to take time out from a meeting in Wagga Wagga that had been organised by the Murray–Darling Basin Commission as part of their consultation processes with Indigenous communities.

Another important forum for the election of MLDRIN delegates has been the meetings of the former North-West Clans Group in Victoria. The North-West Clans was a coalition of traditional owner groups—the Dhudoroa, DjaDjaRung, Wergaia, Wadi Wadi, Latji Latji, Wamba Wamba and Barapa Barapa—as organised within a Victorian government cultural heritage administration region. The Barapa Barapa and the Wadi Wadi selected their delegates through the North-West Clans heritage group meetings. In 2006, the passage of Victorian cultural heritage legislation disbanded this administration region, and cultural heritage is now administered differently. The Barapa Barapa have since become incorporated and will now select their delegate out of this legal entity. The Wadi Wadi will probably select their delegate through their native title meeting.

The two MLDRIN delegates for the Wamba Wamba represent the two geographic population centres of Wamba Wamba descendants—Deniliquin (in New South Wales) and Swan Hill (in Victoria). The Swan Hill Wamba Wamba delegation was originally selected at the meetings of the North-West Clans Group, and is now selected at their native title meetings in Victoria. The delegate from Deniliquin is selected through a process held between the Yarkuwa Indigenous Knowledge Centre and the Deniliquin Local Aboriginal Land Council. Yarkuwa is a traditional owner-based group that records genealogies and offers cultural services. The land council is a government legislative body whose membership is based on residence. However, because of the profile of the resident Indigenous population, approximately 95 per cent of this membership are Wamba Wamba. Together these organisations select a MLDRIN delegate, who is then endorsed at a land council meeting by the traditional owners. Deniliquin land council has an internal protocol that only traditional owners within their boundaries can make decisions on Nation matters.

The Yorta Yorta have formalised their governance structures through the process of incorporating under federal legislation as the Yorta Yorta Nation Aboriginal Corporation. This corporation is charged with advancing Yorta Yorta self-determination, which includes holding and managing Yorta Yorta rights and interests in trust. Yorta Yorta governance is established on genealogical connection to country, and is centred on 16 Yorta Yorta families. The 16 families elect a Council of Elders and a governing committee. The MLDRIN delegates are selected by this Council of Elders.

The Mutti Mutti have recently become incorporated as the Mutti Mutti Aboriginal Corporation, under a genealogical model similar to Yarkuwa, and will select their delegate through that corporation. Previously, their MLDRIN delegates were selected during Nation meetings, which were supported by the New South Wales Department of Natural Resources and MLDRIN. The Taungurung, the newest Nation member of MLDRIN, are already incorporated as the Taungurung Clans Aboriginal Corporation. Their MLDRIN delegates are selected at the annual general meetings of this Corporation.

Native title meetings also provide an opportunity to elect MLDRIN delegates. Both the Wergaia and the Latji Latji elect their delegates at their native title meetings. However, native title claims are not always organised along the lines of a match between traditional owners and their country, and are thus not as representative of the traditional owner group as they might be. As discussed earlier, some of the traditional owners have lodged 'single-state claims'. The Wamba Wamba have two election processes for their delegates to ensure broader representation. Native title has also influenced the Ngarrindjeri delegation from South Australia. In 2003 the Ngarrindjeri split their native title claim and the northern half of the claim became a separate body, which includes the Riverland

peoples made up of Ngarrindjeri, Latji Latji and Mauraura claimants. In early MLDRIN meetings the Ngarrindjeri had four delegates to cover the north and south of their traditional country. The MLDRIN delegation currently comes from the southern part of Ngarrindjeri country, selected through their Ngarrindjeri Heritage Committee and Native Title Committee meetings.

The election processes of the delegates engage with issues of scale and identity, geography, logistics, interactions with existing Indigenous organisations, and the transformation of traditional owner identities since colonisation. One of the tools that MLDRIN has embraced to manage these complexities is the process of becoming incorporated. However, incorporation creates another layer of complexity, and is changing the way decision making is occurring within the Nations.

Incorporation, governance, and certainty

We have already shown how the MLDRIN alliance is influenced by the common law creation that is native title, and how it operates within the broader intercultural context of south east Australia. Within this context, MLDRIN is influenced by government requirements for Indigenous people to have organisational and legal structures that will create more security in transactions (Mantziaris and Martin 2000: 100–1).

Becoming an incorporated body under government legislation is now a common example of how Indigenous organisations adopt western administration structures to improve their engagement with government. This governance mechanism, which draws on the values and practices of the general Australian society, helps the Indigenous organisation to strategically engage with broader Australian institutions (Martin 2003: 9). The formation of western-style organisations to represent Indigenous peoples' interests has also become meaningful to Indigenous peoples as part of their experiences of living within intercultural Australia.

More than just engagement, the formalisation of organisational structures and the creation of a legal body through incorporation has become critical to how Indigenous peoples' rights are being recognised by governments. As Tim Rowse observes, group rights for Indigenous people are evolving in a piecemeal fashion as 'a series of loosely integrated organisational projects' (2002: 179). Rowse writes that, 'in practical terms, the collective subject of these rights is neither "the Indigenous people" nor "the Indigenous population", but the organised instances of their mobilisation' (2002: 179). The governance structure of MLDRIN needs to have the confidence of government if the Nations are to have their rights recognised and to exercise those rights, and going through the process of incorporation is part of achieving that confidence. Since becoming incorporated, the MLDRIN delegates have been able to have more substantive negotiations with State governments about the recognition of an Indigenous water allocation.

Native title is part of this trend. One of the reasons why the delegates have incorporated MLDRIN is to facilitate the type of agreement making between governments and traditional owner groups made possible by the influential policy changes wrought by native title. Since Mabo, governments across Australia have become familiar with making agreements with traditional owners who are asserting a collective identity and collective rights. Incorporated bodies have been designed by government as a part of this agreement making context. Under the NTA, native title groups are compulsorily required to become incorporated to hold their collective rights and to facilitate legal transactions with government and development proponents.

However, the mobilisation of traditional owner groups through organisational structures and incorporation raises concerns about the 'juridification' of what were previously informal decision making structures. Juridification is a trend in western legal systems to transform previously non-legal social relations into legal obligations (Mantziaris and Martin 2000: 127). While juridification does not necessarily have negative social consequences, for traditional owners the process of becoming incorporated does run the risk of supplanting their informally held decision making structures. Bureaucratic corporate practices such as annual general meetings, quorums, voting by proxy, the need to keep a register of members, and such like, are assumed to be a culturally neutral administrative regime, but they impose strong western cultural values which have consequences for how decisions are made (Sullivan 1996: 19–20).

One of the main concerns about incorporation is that it will narrow the group of people making decisions within the Nation. For MLDRIN, the incorporated body is the most efficient way to engage with the Nation, but there can be something important lost in this efficiency: the involvement of the Elders and the broader Nation group. The people who like going to meetings and are happy, or comfortable, with corporate structures, will likely be the people who have the most involvement in this mobilisation of traditional owner groups through legal entities. If the Nation is represented by very narrow interests only, the informed consent of the Nation group will be undermined, which then also undermines the legitimacy of MLDRIN.

MLDRIN is actively encouraging the incorporation of the unincorporated traditional owner groups within the alliance as a calculated risk. While incorporation may supplant their informal decision making processes, informal decision making structures are already supplanted when government consultation with traditional owners takes place through incorporated bodies which are not formed by traditional owners (such as some land councils and cultural heritage cooperatives). Several traditional owner groups within the MLDRIN alliance have already incorporated to address this problem with representation, as well as to pursue their own aspirations which require a contractual relationship with

government. What is critical to ensuring informed consent is that robust relationships are established between the incorporated body and the informal political structures of the Nation (Martin 2005: 197).

Another risk of the incorporation process is the further consolidation of the traditional owner identity. The traditional owners have to create the organisational stability required by government, because the traditional owners are dependent on the government to accommodate their rights within the nation state (Tully 2004 [1995]: 165). However, there are complex issues of identity and scale for each traditional owner group. There is an instability that results from this difficult project of fixing dynamic and multi-layered relationships between people and their country. As this process of consolidation has been designed as fundamental to the governance structure of the MLDRIN alliance, the concomitant instability may hamper the realisation of the delegates' aspirations for MLDRIN. The MLDRIN alliance is going through processes of change and amendment as the delegates and the Nations determine how best to represent and organise themselves. Indeed, rather than expecting MLDRIN to achieve a design endpoint, these processes of change are a part of the exercising of their political authority.

The relationship between traditional owners and their country is a broad intellectual and spiritual framework that informs traditional owners where their responsibilities lie in relation to their neighbours. Country and identities move over time and shift as populations move and shift through marriage, other alliances, or through political manoeuvring. This includes the experience of colonisation, such as the location of towns, mission lands, and roads. Movements and shifts will always continue, because relationships between groups, and between groups and their country, are dynamic, living relationships. This dynamism complicates the organisation of structures that seek to fix and determine relationships between traditional owners and their country.

The shifts in identity that occur and continue to occur reflect the complexities and politics of identity formation. Such shifts can be manipulated to undermine the legitimacy of the MLDRIN alliance if the government expects a traditional owner identity that is more fixed and bounded than it is in reality. Because of the persistence of porous boundaries in both traditional and contemporary times, the people–language–country identity which is being consolidated in the south east will always struggle to keep within that definition.

Conclusion

Rather than populating organisations that are created for them by government, the MLDRIN traditional owners have come up with their own organisational approach. By organising themselves along the lines of traditional authority, they are seeking to consolidate their political identity, and build their governance capacity to take care of their Nation and country. The traditional owners are

determining a form of engagement with government that is more meaningful to them, and thus potentially more resilient.

However, the rhetoric of a distinct and separate traditional authority is problematic and can expose the alliance to criticism. Native title has a problematic influence in this regard. Instead of fostering a more sophisticated understanding of Indigenous identity, the influence of native title has been to generate a lot of tension over the understanding of 'tradition', and has sought to fix Indigenous peoples' identity. The capacity of MLDRIN to negotiate this complexity and make agreements with government, reflects the capacity and power of the Nations to assert their rights in their own way, rather than through native title claims.

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