# 2. Indigenous communities, miners and the state in Australia

Jon Altman

## Introduction

Economic globalisation, as noted in the previous chapter, has served Australia well in recent years. Until 2008 this rich developed country was in the grip of an export-oriented resources boom. Even as much of the country was in severe drought, the economy continued to expand uninterrupted for 15 years. Australia, a country of only 20 million people, is the world's fifteenth largest economy. This good economic fortune has not been shared by all Australians. The Minerals Council of Australia (MCA) (2006) notes that 60 per cent of minerals operations in Australia have neighbouring Indigenous communities, but is concerned that the Australian Government is not doing enough to support the development of Indigenous representative structures or investing enough in community infrastructure and social services in remote and regional Indigenous communities. The MCA has identified a need for 70 000 additional employees by 2015 and an opportunity for an alliance between government, the private sector and Indigenous communities that will allow social, employment and business opportunities in mining regions to be taken up. While 2008–09 has seen a substantial number of job losses in the mining sector as a result of the global recession, demand for mining workers is likely to rapidly increase during the next phase of global economic growth. As noted in Chapter 1, an optimistic employment outcome is shared by the Australian Employment Covenant, although it too might be dampened somewhat in reality by the global financial crisis. Nevertheless, in recent years the MCA has shifted its rhetorical emphasis from litigating native title to building sustainable Indigenous communities.

This perspective can be contrasted with the somewhat paternalistic state approach to Indigenous engagement with the mining industry—promulgating a monolithic and mainstream development approach and trajectory. Historically, wealth creation for most Australians has been predicated on expropriation of Aboriginal lands, initially for agriculture and then also for mining from the nineteenth century. In the 1970s, new and progressive land rights laws in the Northern Territory saw much land returned to Aboriginal people, but without mineral and other resource rights. At most, Aboriginal traditional owners were accorded free prior informed consent provisions, but even these could be overridden by national interest provisions.

Since then, and despite the 1992 Mabo No. 2 Australian High Court decision and native title laws, Indigenous resource rights have been diluted: the *Native*

*Title Act 1993* (Cwlth) (NTA) framework provides a statutory right to negotiate but no requirement for Indigenous consent to mine. In the last decade, and especially between 2004 and 2007, the Howard Government controlled both Houses of Parliament and moved to disempower Indigenous communities and to depoliticise their institutions. Counter to emerging international conventions, especially those in the United Nations Declaration on the Rights of Indigenous Peoples (paradoxically supported by the Rudd Government on 3 April 2009) special Indigenous rights to land, livelihoods and resources are not given much support by the Australian state.

The dominant development approach is now focused on statistical equality for Indigenous Australians. An emergent narrative has looked to pillory the past policies of 'self determination' as the cause of the contemporary Indigenous absolute and relative socioeconomic disadvantage that can be tracked with statistical social indicators from each five-yearly census since 1971 (Altman, Biddle and Hunter 2008). The new emphasis in situations where there is mining activity is to emphasise the development opportunity that this presents to Indigenous communities.

The Indigenous response to this development focus has been mixed. In some situations mainstream opportunity has been embraced, in others fiercely opposed: to some extent the two extremes have resulted from the absence of an alternate development discourse where diverse Indigenous views about development can gain a legitimate hearing. Such extremes have also been structured by the nature of statutory provisions for engagement that provide incentive to leverage benefit from adversarial opposition. The absence of support for alternative livelihood options has contributed too, with Indigenous communities often facing the choice between mining or welfare dependence—and increasingly even welfare is being withdrawn if the mining option is not taken up.

The historical legacy of neglect, poor health, poor housing and poor education will make Indigenous economic and social integration into the mainstream mining sector extremely difficult. Somewhat paradoxically, to be in a position to reclaim traditional lands, claimant groups under the NTA framework must demonstrate before the courts continuous connection to the land and the maintenance of custom. At the same time active engagement with the mainstream mining sector could jeopardise the maintenance of custom and connection bases for claim, while the latest case law indicates that mining leases extinguish native title and that the 'bundle of rights' that constitute native title do not include contemporary commercial mineral rights.[1]

[1] See Strelein (2006: 59–77) and her discussion of the redefining of extinguishment in the *Western Australia v Ward* High Court decision in 2002. See Glaskin (2003) on the bundle of rights approach to native title.

This chapter examines the development situation of Indigenous people in Australia, focusing on the interactions between them and mining sector multinational corporations in a developed nation state; and the mediating, regulating and limiting role fulfilled by state governmentality. In a somewhat inconsistent manner that will be investigated, the Australian state—that is committed to economic liberalism in such processes—seems to be voraciously pursuing a strategy to further disempower Indigenous people in an extremely uneven power relationship.

Initially, I will provide an analysis that focuses separately, and at a general level, on the historic and current approaches of the state, miners and Indigenous people to economic development. I will then draw more specifically but briefly on case study material from the three major mines: Yandicoogina in the Pilbara, Western Australia; Ranger (and the adjoining Jabiluka prospect) bordering Kakadu National Park in the Northern Territory); and the Century mine in the Gulf region of north Queensland. These three major resource development projects respectively mine iron ore, uranium and zinc and lead.

Whether the opportunities presented by these major mines on Aboriginal land have generated development outcomes, and according to whose criteria, is a major issue that animates the analytical section on development contestation. The notions of 'power' and 'identity' loom large in this analysis. A final section challenges the currently dominant view of development focused on 'practical reconciliation' (a term coined by the Howard Government largely to discredit the symbolic aspects of reconciliation) and Closing the Gap (that is, socioeconomic equality) by exploring an alternate view that emphasises choice, self determination and cultural continuity, possibly at the expense of material prosperity (Altman and Rowse 2005: 176).

## Scene setting: The overall context

Australia is a continent of some 7.7 million square kilometres that until 1788 was occupied by between 250 000 and 750 000 Indigenous peoples. Colonisation of the continent occurred incrementally over the following 150 years, with this process clearly impacting on the ability of Indigenous peoples to maintain links with their ancestral lands and pre-colonial economic base. As land was expropriated, Indigenous marginalisation and relative poverty was created. While the converse view that return of the land will somehow magically fix the Indigenous development problem today has some intuitive appeal, it also has major shortcomings.

Australia is a liberal democratic federation of eight States and Territories with a population of 20 million people, just over 500 000 of whom are Indigenous (just over 2 per cent of the total). Reliable information on Aboriginal and Torres Strait Islanders was not readily available before 1971. It was only after an

amendment to the *Australian Constitution Act 1901* in 1967 that s.127, which excluded Indigenous Australians from the census count, was repealed. From the 1971 Census, Indigenous people could self-identify and were included in this manner in official statistics. In each of eight censuses the segment of the population that can be identified as Indigenous (owing to the inclusion of a voluntary self-identifying question on Aboriginality from 1971) has fared far worse on socioeconomic indicators than the non-Indigenous population. Numerous analyses since the late 1970s (summarised in Altman and Rowse 2005; Altman, Biddle and Hunter 2008) have highlighted this, although many also caution against reliance on culture-relative 'western science' social indicators. Information from five-yearly censuses over 35 years is analysed in five broad areas—employment, education, income, housing and health—in Altman, Biddle and Hunter (2008). The data indicate that while absolute Indigenous well-being at an aggregate national level has improved, relative well-being has improved much less and has stagnated in recent years. The one outstanding indicator of Indigenous disadvantage that has barely shifted since 1971 is Indigenous life expectancy. This is estimated at 17 years lower for Indigenous Australians compared to the rest of the population, at the national level.

Australia is a so-called strong state, covering a minerals-rich continent. In recent years it has established a reputation as a country with low sovereign risk: its relative isolation that historically constituted a competitive disadvantage is now a positive in terms of isolation and freedom from risk of terrorism. Yet within this rich, post-colonial, post-industrial society is a marginalised Indigenous minority, some of whom live in conditions that are far worse than official statistics and averaging depict.

## The state

The state[2] has loomed large in the lives of Indigenous Australians. Colonisation in 1788 was an instrument of British state policy. The history of state policy is greatly complicated by the emergence in the nineteenth century of an Australia compromising six colonies each of which developed its own policies for dealing with its Indigenous inhabitants. Generally, special laws set Indigenous Australians apart from other colonial citizens for their 'protection': the purpose of this can be interpreted optimistically as either a means to prepare Aborigines for future full citizenship or to 'smooth the pillow for a dying race' (Altman and Sanders 1991: 1). After federation of the six colonies into the Commonwealth of Australia in 1901, the new State governments continued to manage their

[2] The nature of the state is complicated in Australia by the federal system that views Indigenous people as both citizens of the Commonwealth of Australia and of States and Territories. In general, mining is regulated by State and Territory governments, but the focus here is on the Commonwealth government and its bureaucratic apparatus and institutions, in part because it sets the broad policy frameworks for mining and Indigenous affairs.

Indigenous minorities; the Australian Constitution excluded the Federal Government from an active role in Indigenous affairs, except in the Northern Territory which was ceded to the Commonwealth from South Australia in 1911.

By the 1950s it became clear that the Indigenous population was not disappearing; it was officially estimated at between 70 000 and 80 000, representing about 1 per cent of the total Australian population. From then assimilation became the central term of policy although it was only officially defined in 1961. The policy of assimilation operated by providing exemptions for individual Aborigines from the special bodies of laws that continued to be exercised over all Aborigines (until they could prove worthiness for normal citizenship). Assimilated Aborigines could take their place as full members of Australian society without any separate legal status. In some jurisdictions colonial state policy sought to centralise, sedenterise and assimilate Indigenous people in government settlements and missions on reserves up until the early 1970s. By then there was mounting evidence that the policy of economically and culturally integrating Indigenous people into the majority mainstream society was not working, especially in remote regions where state colonisation had arrived relatively late, in some cases in the 1950s.

It was only from the 1970s that federal approaches to Australia's Indigenous minority underwent significant change, with self determination becoming the central term of Indigenous affairs policy for a short period. Suddenly there was a rapid escalation in federal involvement in Indigenous affairs including a dedicated government department, an elected Indigenous representative organisation, Indigenous specific programs, the establishment of thousands of community-based organisations to locally administer programs, and a bold start in the creation of laws to enshrine land rights for Indigenous Australians.

It is the last development that is of greatest significance to the discussion here. The Woodward Land Rights Commission of 1974 (Woodward 1974a, 1974b) recommended a statutory land rights regime for the Northern Territory, a jurisdiction still administered from Canberra. This was a political commitment by the incoming Whitlam Government to address the perceived social injustice of the Gove land rights case where the plaintiffs sought to stop the development of a massive bauxite resource development project in north-east Arnhem Land. The plaintiffs lost the case in the Northern Territory Supreme Court in 1970, but just six years later the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) (ALRA) was passed. This statute created a special form of land title, communal inalienable freehold title, to be held by land trusts and managed by statutory authorities called land councils. While the Woodward Land Rights Commission did not recommend conferring of legal mineral rights on land owners, it did recommend that Indigenous traditional owners of land have a right

tantamount to free prior informed consent over commercial development. This is often referred to as the right of veto.

The ALRA had many innovative and important provisions including a land claims mechanism (although this is limited to unalienated Crown land) and a statutory financial framework that saw the equivalent of mining royalties raised on Aboriginal land shared between people in areas affected by mining (30 per cent), the administrative costs of land councils (40 per cent) and other Indigenous interests in the Northern Territory (up to 30 per cent). The right of veto constituted a tradable de facto property right in minerals because there is provision to negotiate payments for consent (see Altman 1983; Industry Commission 1991). The establishment of land councils provided traditional owners with statutory authorities empowered to claim land on their behalf and to represent them in negotiations with resource developers. Meeting the administrative costs from mining royalty equivalents paid by the Commonwealth was an innovative means to provide them budgetary certainty and *a degree of independence* from the government of the day.

Subsequently some other Australian States passed land rights laws, but none have been as comprehensive as the ALRA.[3] While the Whitlam Government had intended this land rights law to be the benchmark for other States, no subsequent Federal government was willing to introduce national land rights. Indeed an attempt to do so in 1984 by the Hawke Labor Government became an electorally contentious issue, especially in Western Australia where proposals for State land rights law following the Seaman Inquiry were jettisoned by the Burke State Labor Government after a virulent anti-land rights campaign mounted by the Western Australian Chamber of Mines (Libby 1989).

The 1992 Mabo judgment, that jettisoned the concept of *terra nullius* and recognised that Indigenous native title could exist in Australian common law, was the precursor to the NTA. This law was as much about validating existing non-Indigenous interests in land as about providing opportunity for native title to be claimed over unalienated Crown land and pastoral leasehold land. The State where native title was most likely to be determined was Western Australia because over 34 per cent of the State (or 863 000 square kilometres) remained vacant Crown land in 1993. Consequently, the Western Australia Government initially refused to accept Commonwealth native title law and instead passed it own Land Titles and Traditional Usage legislation that was challenged and deemed unacceptable in the High Court. Pastoral leasehold land that covers over 40 per cent of Australia was shown in the High Court Wik decision of 1996 to be potentially compatible with native title. This resulted in amendments to weaken native title law in 1998 by the Howard Government largely to privilege

[3] For a detailed recent summary see Aboriginal and Torres Strait Islander Social Justice Commissioner (ATSISJC) (2006).

the commercial interests of miners over native title interests in the name of workability.

Strelein (2006) has recently referred to native title case law since Mabo as 'compromised jurisprudence'. It is extremely complicated law that has nevertheless seen native title determinations (some exclusive possession, some partial) over an estimated 8 per cent of Australia (Altman, Buchanan and Larsen 2007). Native title has seen the establishment of new institutions including native title representative bodies (to represent native title claimants); a National Native Title Tribunal based in Perth, Western Australia to register native title claims (that then are heard in the Federal Court) and to mediate Indigenous Land Use Agreements; and Prescribed Bodies Corporate to hold native title in perpetuity once determined. The emergent institutional landscape is extremely complex.

What is especially significant is that the native title legal framework provides native title interests (claimants and holders) no special rights over minerals beyond negotiation rights. The so-called right to negotiate is just that but if agreement to proceed cannot be met in a strictly stipulated time frame of six months, then an arbitral process allows mining to proceed with compensation determined without recourse to the value of minerals. This mechanism is intended to hasten agreement making between resource developers and Indigenous parties, with commercial deals possible within the six-month window of opportunity with registered claimants as well as determined native title groups. To date, most agreements have been made with claimants.[4]

It is estimated that 1.5 million square kilometres is now held under some form of Indigenous title. As Fig. 2.1 shows, these land holdings are heavily skewed in favour of regional and remote Australia owing to colonial history that saw only land of low commercial value reserved for Aboriginal use or unalienated. It is estimated that only about 100 000 Indigenous people, or about 20 per cent of the 'officially enumerated' Indigenous population, live on their now legally recognised ancestral lands increasingly referred to as 'the Indigenous estate' (see Altman, Buchanan and Larsen 2007).

What is especially important for the discussion is the broad new direction that was taken by successive Howard Governments from 1996 to 2007, during which time there emerged a narrative to the effect that policies over the past 30 years have failed to deliver 'development' and that land rights and native title laws introduced for a number of broad rationales (see ATSISJC 2006: 16ff) are implicated in this failure. The ALRA is the iconic 'high water mark' statute that has been targeted for special focus with a major review (Reeves 1998) recommending fundamental changes, subsequently rejected by a Parliamentary

[4] See the comprehensive Agreements, Treaties and Negotiated Settlements Database accessed 22 February 2007, <http://www.atns.net.au/>.

Inquiry (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 1999).

These proposed amendments were reintroduced in 2004 when it became clear that the Federal Government would gain rare absolute power with control of both Houses of Parliament for the period July 2005–November 2007. Amendments to the ALRA passed in 2006 were aimed at facilitating enhanced exploration and mining on Aboriginal owned land as made clear in Explanatory Memoranda.[5] It was assumed that benefits would trickle through to Aboriginal communities, a view that has been challenged by the Productivity Commission (Steering Committee for the Review of Government Service Provision 2005). The policy approach here is confused and contradictory: Indigenous representative organisations have been weakened; and incentives to consent to mining have been reduced, as benefit streams need to be applied to community purposes that are arguably the domain of the state. At once neoliberal policy is highlighting the need to incentivate individuals and families, while overlooking that it is not only excluding individuals from direct benefit but also failing to recognise alternate cultural and environmental values of the Indigenous estate.

## Multinational corporations

Mining in Australia is dominated by large multinational corporations, as evident by listings on the Australian Stock Exchange and membership of the principal industry lobby group the MCA[6] : it is estimated that 80–85 per cent of mineral production in Australia is undertaken by multinational corporations.

Historically in Australia mining companies have allied with the state (both Commonwealth and State/Territory) to override Indigenous views about resource development on their lands. There are some situations that have seen extraordinarily unbalanced conflicts between the pro-mining state and large mining companies on one side and the opposing Indigenous communities on the other. The Gove case, where the mining company Nabalco was joined by the Australian Government in opposing Milrrpum and others, has already been mentioned. There have been other examples, such as Comalco on western Cape York where the Aboriginal community of Mapoon was forcibly closed and its residents removed to make way for mining in 1963; Noonkanbah and the Argyle Diamond Mine in the Kimberley region; and iron ore in the Pilbara region of Western Australia. In a landmark study in the early 1980s, Cousins and Nieuwenhuysen (1984) looked at each of these sites and illustrated how Indigenous people with limited, at times non-existent, rights opposed mining

[5] 'The principal objectives are to improve access to Aboriginal land for development, especially mining … ' (Parliament of the Commonwealth of Australia 2006: 3).

[6] See <http://www.minerals.org.au/> and especially the MCA's Board of Directors dominated by major multinational corporations; the MCA is funded by member contributions made on a sliding scale based on economic size.

on their lands. They also illustrated with quantitative data that Indigenous peoples benefited little from major mining activity on their lands and adjacent to their communities. In all the cases of conflict, the state, keen to see resource development and associated regional development (but not necessarily for Indigenous people), sided with miners.[7]

The mining industry's relations with the state in terms of land rights and native title have waxed and waned in the last 30 years but have fundamentally been oppositional, seeing consent or negotiation provisions where the state has supported land rights as just another regulatory hurdle in the way of unimpeded access to Aboriginal land for mineral exploration and exploitation. The Australian Mining Industry Council (as the MCA was then known) strongly opposed land rights in the 1970s, strongly opposed national land rights in the early 1980s, and mounted a very effective campaign (with television advertisements) against Western Australia land rights in 1984 (see Libby 1989). Similarly the mining industry strongly opposed the passage of native title legislation in 1993 and made representation for the dilution of land rights and native title in the 1990s. This was especially evident in the lead up to amendments to the NTA in 1998 that effectively removed the right to negotiate for native title groups on the pastoral estate that covers 40 per cent of Australia.

Much of this changed from the mid-1990s with one company, Rio Tinto, taking a strong leadership role. Its then chairman, Leon Davis, challenged the mining industry to work within the existing native title statutory framework rather than continuing to oppose it (Davis 1995).[8] There has also been a growing recognition of the extent of Indigenous disadvantage and the contemporary strains on communities' social fabric associated with large scale development. The Rio Tinto booklet *The Way We Work* (published regularly) indicates a cautious recognition that mining companies might need to be the catalyst for sustainable regional development, especially in the absence of other commercial opportunity. This corporate shift has been influenced by the weak leverage that native title law provides, as well as events at Bougainville and Ok Tedi in nearby Papua New Guinea which demonstrate the complexity of issues circulating around national sovereignty, democratic governance, local community and business autonomy (Kirsch 2006).

Improved global communications and globalisation have made mining companies more accountable transnationally and have made competitive advantage partially

[7] The one exception to this general rule occurred with the Coronation Hill dispute, where the Hawke Government in 1991 accepted the recommendation of the Resource Assessment Commission to disallow mining in the southern part of World Heritage Kakadu National Park. This exceptional decision was based on both environmental grounds and Indigenous opposition on cultural/religious grounds. It was a *cause celebre* that resulted in a considerable political backlash.

[8] Research about Rio Tinto reported here has focused on some of its operations in remote Australia, and none of its operations in settled Australia or globally.

dependent on community relations track record. Concomitant with the increased power to trade that economic liberalism has brought to transnational capital is a growing international interest in how mining companies might demonstrate a commitment to socially sustainable development. However, the ethical requirement to profit share rarely extends beyond the requirement to gain licence to operate.

Harvey (2004) outlines how, in the Australian context, Rio Tinto is keen to operate as a good corporate citizen and in a socially responsible way. Rio Tinto's recent policy changes mean that it now seeks to make agreements with Indigenous peoples well-represented by their own organisations, with agreements always signed off by the state (usually with major agreements at both Commonwealth and State/Territory levels). Modern agreements seek to deal directly with local Indigenous land owners, although as we shall see below, this can be a problematic interest group to unambiguously define and target; and to ensure that benefits are utilised for regional development. In parts of remote Australia, it is large mining companies that sometimes make the significant social investments that are the responsibility of the state, in part because historically the development of new mining towns was a condition of licence to operate. As Holcombe (2006) notes, in regions like the Pilbara these towns were initially closed to Indigenous people, being earmarked for mine site personnel only.

In the past the peak mining lobby group, now the MCA, often sided with the state counter to Indigenous interests, especially in relation to diluting land and native title rights (as noted above). Through the MCA, some mining companies have had the ability to influence state policies that have resulted in changes to laws that have directly benefited their interests.[9] More recently, the MCA has developed an overarching position of looking for strategic partnerships with Indigenous communities and leaders, the latter through its Indigenous Leaders Dialogue, and by sponsoring meetings between the National Native Title Council (the peak association for native title representative bodies), the MCA and senior industry representatives.[10] In its Indigenous Relations Strategic Framework, the MCA notes that there are now over 300 agreements between minerals companies and Indigenous communities throughout Australia. By necessity the MCA interacts with remote Indigenous communities, many of which have poor public service delivery owing to remoteness. There are limited mainstream economic development opportunities at such communities and often the minerals industry claims that it is the only vehicle for socioeconomic development (MCA 2004).

[9] Also, some companies operate less ethically than others, as noted in an assessment of 45 mining agreements by O'Faircheallaigh (2004a).
[10] See <http://www.minerals.org.au/>.

The challenges that the minerals industry faces in its relations with Indigenous communities though are significant. Some are legal and structural—for example, a recent High Court decision in *Western Australia v Ward* judged that historic mining leases extinguish native title, which places mining companies and Indigenous claimants in direct political conflict. Similarly, the inevitable environmental damage caused by mining activity places it in conflict with those Indigenous interests that accord high value to the cultural and physical landscape. Also, the minerals industry defines economic development in a similar vein as the state: in western and mainstream terms of jobs, commercial opportunities and incomes. The industry is increasingly recognising that it needs to be careful not to take on state-like functions, because meeting the significant backlog could jeopardise a project's profitability. This is evident in the MCA's increased willingness to criticise governments for poor delivery of essential community social and physical infrastructure like education and health services and housing and water (MCA 2004: 5).

The new positioning of the MCA suggests that its members are more willing to ally with Indigenous communities in their quest for greater needs-based service delivery and independent representative bodies (MCA 2006). However the fundamental issue of what might constitute the sustainable economic legacy that the mining industry might leave Indigenous communities is rarely addressed. It is clear that even if all opportunities at mine sites were taken up by Indigenous people, eventually the mine will close—so mine dependence, like state dependence, can be very risky.

## Indigenous rights and economic levers

As already noted, while the 2006 Census estimated the size of the Indigenous population at just over 500 000, the colonisation process and the subsequent mechanisms for returning land to Aboriginal people under land rights and native title laws have meant two things. First, returned land has by and large been limited to unalienated Crown land in an inverse relationship to the colonial settlement pattern.[11] Consequently, most is remote and has very limited commercial value. Second, returned land is very inequitably bestowed. Exact figures are not available, but in spatial terms Indigenous land holdings are only significant in three jurisdictions: the Northern Territory (just over 600 000 square kilometres), in South Australia (just over 200 000 square kilometres), and in Western Australia (just over 360 000 square kilometres). These figures are conservative and do not include native title determinations that are seeing Aboriginal reserves and leasehold in Western Australia rapidly converted to

[11] There is a history of programs established by the state to purchase land for Indigenous groups, mainly for commercial pastoral and agricultural purposes. In 1995, an Aboriginal and Torres Strait Islander Land Fund was established to provide land for Indigenous people whose native title had been extinguished, see <http://www.ilc.gov.au/>.

exclusive native title possession, often after lengthy litigation.[12] In New South Wales, Victoria, Tasmania and the Australian Capital Territory there is little Indigenous owned land, with some in recent times being purchased and then vested with Indigenous traditional owner groups.[13]

There are no data that accurately quantify the total number of Indigenous people who are land owners or who live on Aboriginal land. Two proxies are often used. The first is the number of Indigenous people residing at about 1200 discrete Indigenous communities mostly located on Indigenous owned or managed lands. This figure is estimated in official statistics at between 100 000 and 120 000 (Altman 2006). The second is the number of Indigenous people living in regions classified in census geography as remote and very remote; this figure is just over 120 000 (Taylor 2006: 5). It is these people who interact most frequently with mining companies in relation to exploration and mining on their lands.

As already noted, land rights and native title provide a variety of weak forms of property (resource) rights to Indigenous land owners, ranging from full property rights to a limited range of minerals in two jurisdictions (New South Wales and Tasmania) at the strong end, to a mere right of consultation under amended native title law at the weak end. In reality, the strongest property rights are the right of consent provisions of the ALRA. Even here problems remain owing to the conjunction between exploration and mining[14] and the absence of opportunity to disengage if the impacts of long-life intergenerational mines are socially or environmentally negative. Again two qualifications are important (Altman 2001a). First, all land rights and native title laws passed in Australia have guaranteed that existing mining interests will prevail; so-called 'prior (commercial) interest'. Second, a series of High Court decisions in land and sea native title claims to date have ruled that commercial (usually non-Indigenous) interests always take precedence over customary Indigenous interests.

The clear message is that Indigenous interests are subordinate to commercial interests in Australian society today. Yet the mechanisms available if Indigenous interests want to engage commercially are limited, as if the dice are doubly loaded against Indigenous people.[15] For example, a shortcoming of the available political and economic levers to consent or negotiate is not only that they can

[12] See native title claim and determination maps at <http://www.nntt.gov.au/>.

[13] For a spatial summary see Fig. 1, Pollack (2001) and Altman, Buchanan and Larsen (2007); for a discussion of land rights regimes see ATSISJC (2005) and for native title determinations see the National Native Title Tribunal website <http://www.nntt.gov.au/>.

[14] While in Australian policy and popular discourse it is common to speak of the Indigenous right to veto mining, in reality Indigenous interests at best have a right to veto exploration; changes to Northern Territory land rights law in 1987 meant that traditional owners could not exercise the veto over mining once exploration had been approved.

[15] For a recent analysis of the quality of agreements struck see O'Faircheallaigh (2004a) and for an analysis of the imbalance in arbitrated decisions see Corbett and O'Faircheallaigh (2006).

be overridden, but that they are most effective at the pre-production phase of a resource development project.

Interestingly the dominant neo-liberal focus on individualism, entrepreneurship and profit maximisation does not extend to Indigenous peoples in the mining context. Under all statutes there are some—at times hotly contested—legal mechanisms for land owners whose lands are affected by mining to distribute any compensatory benefits from mining companies to other regional Indigenous interests, irrespective of social or economic affectedness. The purpose for which compensation is paid is unresolved in Australian law and policy. As has been discussed elsewhere (Altman 1983, 2001a) it is unclear if compensation is paid as a share of mineral rent (in which case it should go to land owners) or as a means to offset social and economic disruption, in which case it should be targeted to such purposes.

In the case of the native title legal framework it is clear that compensation is payable for impairment of native title rights, but mechanisms embedded in the right to negotiate process actually seek to expedite agreement making by getting resource developers and native title interests to make agreements rather than seek compensation determinations by the National Native Title Tribunal or court system. In this process, the value of a mine can be considered in agreement making, but not in compensation determinations. The very fact that the language of compensation is used suggests that there is an expectation of negative impacts from resource development (Altman and Pollack 1998).

Indigenous aspirations for engagements with mining companies are highly variable, even for traditional owner groups and other Indigenous interests in mine hinterlands. It is not surprising to have a diversity of views ranging from pragmatic acquiescence to mainstream views of development, to total opposition based on fundamental and at times culturally-based opposition to mining, unavoidable environmental damage, and the possible desecration of sacred sites. It is rarely appreciated that for many Indigenous groups the landscape is both a source of livelihood and the essence of the Dreaming, the sentient landscape being created according to Indigenous ontology by Ancestoral Beings.

For Indigenous people who have an interest in land and who are likely to engage with resource development, two fundamental contradictions arise. First, many Indigenous groups have had to fight hard to reclaim their land under Australian law. In general, this has placed a legal burden on Indigenous claimants to demonstrate spiritual attachment or right to forage over the land claimed (under the ALRA) or continuity of customary practice and connection with claimed native title land. Such continuity of customary practice is clearly incompatible with mining because mining disrupts connection and is incompatible with the maintenance of custom. Second, is the issue of sustainable livelihoods. It is broadly unclear how Indigenous people are to retain sustainable livelihood

futures after mine closure. Non-Indigenous (or non-local Indigenous) mine workers might simply migrate to the next mine, but for Indigenous people living on their ancestral lands this might not be an option. Paradoxically, the greater Indigenous integration into the mine economy the greater is the likelihood of localised livelihood vulnerability after closure; and the greater the vulnerability to loss of cultural connection to the land that is predicated on living on country. As Bridge (2004) illustrates graphically with reference to mineral-to-waste ratios, large scale mineral producers often operate at environmental regulatory limits. Pollution, even as weak chemically-active waste streams, can threaten livelihoods that are dependent on wildlife harvesting.

## Development outcomes

Under the enormous contemporary pressures exerted by the state to homogenise and mainstream approaches to Indigenous development, any divisions within the Indigenous domain are exploited often to the detriment of Indigenous bargaining power. The outcomes from interactions between miners and Indigenous people mediated by the state can be understood from two perspectives: mainstream criteria and local perceptions.

The development outcomes from engagement between miners and Indigenous peoples have been highly variable and dependent on many factors including regional histories of colonisation, the nature of mines, the value of negotiated benefits packages, and the forms of Indigenous engagement with the mine economy. As suggested above, notions of development are culturally constructed and never easy to objectively measure. In the general absence of comprehensive frameworks to independently monitor development outcomes, any study is generally limited to either using official statistics that have not been purpose designed to socioeconomic impact assessment or to undertaking case studies (see Taylor, Chapter 3). A problem with the former approach is that it requires implicit acceptance of the dominant modernisation framework and leaves no room for local perspectives; data are generated from standard census instruments. A problem with the latter is that it can be difficult to make comparisons and to move from the particular to the general. Both approaches are briefly examined here.

### Formal outcomes and social indicators

The formal approach in this research project used 2001 Census data for cross-sectional comparative purposes. These data were made available to the project in 2006 at an unusual level of geographic disaggregation. The analysis examined health, education, income, employment and housing social indicators as collected in the census. Eight remote regions with major mines were

statistically clustered together.[16] The analysis undertaken in Table 2.1 compares the socioeconomic status of Indigenous people in this mining aggregation with a number of other aggregations: people in adjacent regions, people in remote areas with major tourism destinations, control areas in remote locations where commercial opportunity is largely absent, and then all Indigenous and non-Indigenous Australians. This suggests that there are positive statistical outcomes for Indigenous people from mining activity. In Table 2.2 this socioeconomic information is provided at the level of individual regions within major mine sites. These are the data that were aggregated in Table 2.1. A major qualification for this analysis is that it does not take into account the possibility that in some cases other significant opportunities besides mining might be available in the eight selected regions.

There are indications from Table 2.1 that mining does make a difference in outcomes, according to the statistical social indicators available, although clearly the economic status of Indigenous people in mining areas does not approach that of non-Indigenous Australians. Furthermore, at the individual mine site level there are clear indications that employed Indigenous people do not do as well as non-Indigenous mine workers (ABS 2004). Information in Table 2.2 suggests that there is enormous variability between mining regions.

The social indicators in these tables raise two important issues. First, they demonstrate how badly off Indigenous people are compared to other Australians according to mainstream criteria. This, as we shall see below, raises concerns about whether mining strategies can 'close the gaps' in socioeconomic outcomes. Second, the tables demonstrate how difficult it is to generate appropriate census geographies that can actually measure the impact of major resource developments on host or adjacent communities using official data (see Taylor, Chapter 3). In reality, the impacts on supposed beneficiaries can only be assessed at the local level on a case by case basis. But even at this level, identifying who has benefited can be extremely problematic.

[16] The eight regions are: Gove/Groote Eylandt/Jabiru/East Kimberley/West Cape York/Borroloola/Gulf/Pilbara respectively operated by Alcoa/BHP Billiton (GEMCO)/Rio Tinto (ERA)/Rio Tinto (Argyle Diamond Mine)/Rio Tinto (Comalco)/Xstrata/Zinifex/Rio Tinto (Pilbara Iron), BHP Billiton, Woodside.

## Table 2.1 Social indicator outcomes at mine site and some other jurisdictions, 2001 Census

| Demography/health status[a] | Aged under 55 | Aged 55 years + | Aged 55 years + (%) |
|---|---|---|---|
| Mining areas | 16 306 | 1 255 | 7.2 |
| Control areas: Tourism | 3 522 | 287 | 7.5 |
| Control areas: Other | 2 464 | 183 | 6.9 |
| Australia: Indigenous | 382 420 | 27 583 | 6.7 |
| Australia: Non-Indigenous | 13 717 012 | 3 874 477 | 22.0 |
| **Education status** | **Not completed Year 10** | **Completed Year 10 or higher** | **Completed Year 10 or higher (%)** |
| Mining areas | 4 694 | 5 037 | 51.8 |
| Control areas: Tourism | 1 313 | 759 | 36.6 |
| Control areas: Other | 2 464 | 183 | 6.9 |
| Australia: Indigenous | 83 616 | 131 933 | 61.2 |
| Australia: Non-Indigenous | 2 526 996 | 10 353 748 | 80.4 |
| **Income status** | | | **Median income** |
| Mining areas | | | $120-$199 |
| Control areas: Tourism | | | $120-$199 |
| Control areas: Other | | | $120-$199 |
| Australia: Indigenous | | | $200-$299 |
| Australia: Non-Indigenous | | | $300-$399 |
| **Employment rate (aged 15 + )** | **Not employed** | **Employed** | **Employment to population ratio** |
| Mining areas | 5 576 | 4 953 | 47.0 |
| Control Areas: Tourism | 1 510 | 783 | 34.2 |
| Control areas: Other | 1 162 | 521 | 31.0 |
| Australia: Indigenous | 140 466 | 100 393 | 41.7 |
| Australia: Non-Indigenous | 5 689 004 | 8 144 486 | 58.9 |
| **Home ownership rate** | **Not purchasing or does not own home** | **Purchasing or owns home** | **Purchasing or owns home (%)** |
| Mining areas | 2965 | 461 | 13.5 |
| Control areas: Tourism | 660 | 82 | 11.1 |
| Control areas: Other | 284 | 3 | 1.1 |
| Australia: Indigenous | 74 047 | 37 131 | 33.4 |
| Australia: Non-Indigenous | 1 703 078 | 4 531 597 | 72.7 |

a. Proportion of population aged 55+ years used as a proxy for life expectancy; for further discussion see Altman, Biddle and Hunter 2008.
Source: ABS 2001 Census of Population and Housing.

## Table 2.2 Social indicator outcomes in eight mining regions, 2001 Census

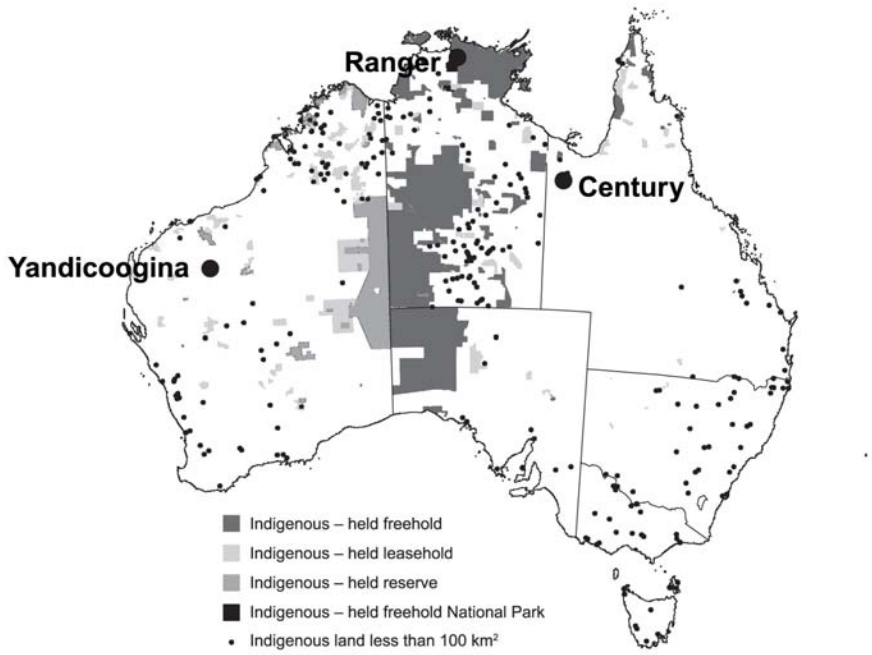
| Demogrpahy/health status[a] | Aged under 55 | Aged 55 years+ | Aged 55 years+ (%) |
|---|---|---|---|
| Gove/Nhulunbuy | 1 207 | 72 | 5.6 |
| Groote Eylandt | 1 421 | 85 | 5.6 |
| Jabiru | 467 | 26 | 5.3 |
| East Kimberley | 487 | 47 | 8.8 |
| West Cape York | 1 460 | 136 | 8.5 |
| Borroloola | 1 006 | 80 | 7.4 |
| Gulf | 5 494 | 429 | 7.2 |
| Pilbara | 4 466 | 360 | 7.5 |
| **Education status** | **Not completed year 10** | **Completed year 10 or higher** | **Completed year 10 or higher (%)** |
| Gove/Nhulunbuy | 502 | 244 | 32.7 |
| Groote Eylandt | 666 | 234 | 26.1 |
| Jabiru | 137 | 149 | 52.1 |
| East Kimberley | 146 | 161 | 52.4 |
| West Cape York | 557 | 427 | 43.4 |
| Borroloola | 403 | 182 | 31.1 |
| Gulf | 1 193 | 1 928 | 61.8 |
| Pilbara | 989 | 1 664 | 62.7 |
| **Income status** | | | **Median income** |
| Gove/Nhulunbuy | | | $120–$199 |
| Groote Eylandt | | | $120–$199 |
| Jabiru | | | $120–$199 |
| East Kimberley | | | $200–$399 |
| West Cape York | | | $120–$199 |
| Borroloola | | | $120–$199 |
| Gulf | | | $200–$399 |
| Pilbara | | | $200–$399 |
| **Employment rate (aged 15+)** | **Not employed** | **Employed** | **Employment to population ratio** |
| Gove/Nhulunbuy | 384 | 410 | 51.6 |
| Groote Eylandt | 628 | 240 | 27.7 |
| Jabiru | 121 | 180 | 59.8 |
| East Kimberley | 130 | 199 | 60.5 |
| West Cape York | 437 | 595 | 57.7 |
| Borroloola | 251 | 414 | 62.3 |
| Gulf | 1 840 | 1 576 | 46.1 |
| Pilbara | 1 698 | 1 256 | 42.5 |
| **Home ownership rate** | **Not purchasing or do not own home** | **Purchasing or own home** | **Purchasing or own home (%)** |
| Gove/Nhulunbuy | 167 | 3 | 1.8 |
| Groote Eylandt | 227 | 3 | 1.3 |
| Jabiru | 101 | 19 | 15.8 |
| East Kimberley | 68 | 7 | 9.3 |
| West Cape York | 262 | 0 | 0.0 |
| Borroloola | 167 | 5 | 2.9 |
| Gulf | 959 | 250 | 20.7 |
| Pilbara | 963 | 171 | 15.1 |

a. Proportion of population aged 55+ years used as a proxy for life expectancy; for further discussion see Altman, Biddle and Hunter 2008. Source: ABS 2001 Census of Population and Housing.

## Local views about outcomes

An analysis of local situations is clearly enormously complicated and an attempt is made here to briefly canvass issues that arise in the three cases, the Ranger Uranium Mine (Northern Territory), the Yandicoogina Iron Ore Mine (Western Australia) and the Century Zinc and Lead Mine (Queensland) (see Fig. 2.1) that are given more coverage in later chapters. In each case major benefit sharing agreements have been completed: in the case of Ranger signed in 1978 under the ALRA; in the case of Yandi as an Indigenous Land Use Agreement completed outside, but informed by, the native title framework in 1997; and in the case of Century under the NTA right to negotiate procedures. These are three landmark and major agreements in the Australian context and a brief examination of each will show that regional studies suggest that outcomes might be far less beneficial than official statistics suggest. By looking at particular agreements it is possible to also dig a little deeper to look at environmental, social, cultural and other impacts that go beyond the criteria dictated by a limited range of mainstream social indicators.

**Fig. 2.1 The location of the three case studies**




## Case 1: The Ranger Uranium Mine agreement

The Ranger Uranium Agreement was the first major post-ALRA mining agreement completed. It has many unusual features: it was a prior interest mining prospect, so the right of veto could not be exercised; the Australian Government was a

major stakeholder in the uranium project so was in a conflict of interest as a party both to the mine and the agreement with traditional owners; and the agreement was signed as part of a regional deal that included the creation of Stage 1 of Kakadu National Park and a settled land claim (Fox, Kelleher and Kerr 1977). The Ranger Agreement covered a range of issues including benefit flows, employment at the mine, and environmental protections. In its early days, it was judged to be a very positive agreement. The Gagudju Association, a specially incorporated regional organisation, received 'areas affected' monies. These monies were utilised between 1981 and 1996 to provide services to about 300 members; to make investments, especially in tourism infrastructure and enterprises in Kakadu National Park; and to make limited cash payments to its members. Since 1978, royalty equivalents of over $A200 million have been paid in relation to this mine, with over $A60 million flowing back to the region under the ALRA formula.

The very positive story of the Gagudju Association soured somewhat from the mid-1990s after the traditional owners of the mine site, the Mirarr Gundjeihmi, sought the re-channelling of areas affected monies to a far smaller group of 26 adult traditional owners. The cause of this change was evident in a politically complex dispute that had its genesis in two key issues (Altman 1997). First, the Mirarr were concerned that mining had had a negative impact on local Aboriginal people. Second, and related to this, they opposed the mining of another major uranium prospect, Jabiluka, that has lain dormant since 1983 owing to the Commonwealth Labor Government's 1983–96 freeze on new uranium mines. A subsequent comprehensive social impact study, the Kakadu Region Social Impact Study (1997b, 1997c) undertaken by two groups[17] broadly supported traditional owner concerns. It was noted, for example, that mining payments had generated regional conflict and were largely offset by reduced state expenditure in the provision of normal citizenship services on a needs basis. A study using available social indicators demonstrated that Aboriginal people in the mine catchments were no better off than people in adjoining regions (Taylor 1999).

A recent report, 'Aborigines and Uranium: Monitoring and Health Hazards' (Tatz et al. 2006), documents high cancer rates in the region, which has generated vigorous debate about whether these are linked to uranium or not. Since 1981 there have been more than 120 spillages and leaks of contaminated water at the mine; a major spill in 2004 resulted in temporary mine closure and subsequent successful prosecution by the Northern Territory Government in 2005 for breach of environmental regulations. The predictions of the Fox Inquiry in 1977 that mining in the region could have negative social impacts appear to have been

[17] The Kakadu Region Social Impact Study was undertaken by a mainly local Aboriginal Project Committee (1997b) and a mainly external Study Advisory Committee (1997c). I was the independent expert to the latter.

prescient. There is little evidence of sustainable economic benefits from the mine whose life has now been extended to beyond 2020 owing to an increase in the price of uranium oxide in recent years. Local Aboriginal people are reluctant to work at the mine; those who are 'job ready' prefer instead to take up jobs in the national park or in tourism, although the unemployment rate for locals remains high.

## Case 2: The Yandicoogina Land Use Agreement (YLUA)

The YLUA was the first major post-NTA agreement, but it was completed as a negotiated agreement outside the NTA framework. The signatories were Hamersley Iron (now Pilbara Iron, a wholly owned subsidiary of Rio Tinto) and the Gumala Aboriginal Corporation representing 430 Nyiyapareli, Banyjima and Yinhawangka people. The agreement covers an area of approximately 26 000 square kilometres. Initially the agreement was to provide $A60 million to the Gumala Aboriginal Corporation over 20 years, but a scaling up of production at Pilbara Iron's Yandi mine and a confidential payments schedule might see payments ramped up, possibly over a shorter period.[18]

The YLUA was completed in the Pilbara, a region where Aboriginal people had historically been actively involved in mining on a small 'cottage' scale until driven off by large scale development and state policies in the 1960s (Holcombe 2006). As noted earlier, Western Australia is the only jurisdiction in Australia that has no land rights law and the State government has always taken a very pro-mining position, often in the face of significant Aboriginal opposition. The YLUA was seen positively a decade ago as possibly being the harbinger of a new era in relations between mining companies and Indigenous people: its focus is on the provision of jobs, training, and business enterprise opportunities for local people. A major element in the agreement is site clearances which are required under the Western Australia Aboriginal Heritage Act for broad acre open cut iron ore extraction; this weak statute requires that sites of cultural significance be recorded and that any movable cultural objects be relocated. Rather than contracting heritage clearance work to an independent third party, Pilbara Iron manages this process in collaboration with Aboriginal consultants in a manner that could be perceived as problematic (Holcombe 2006). This situation has evolved for historical reasons when Indigenous representative organisations were not operating effectively in the region.

A recent comprehensive study by Taylor and Scambary (2005) analysed regional statistical social indicators, while also seeking detailed Indigenous views about development impacts. On the statistical side it was shown that employment status for Indigenous people had barely changed for 30 years despite

[18] It is noteworthy that the extensive Yandi deposit is mined by both Rio Tinto-owned Pilbara Iron and BHP Billiton who have a separate agreement with a similar group of native title interests.

multinational corporations like Rio Tinto and BHP Billiton setting ambitious employment targets for Indigenous employment. The authors found that, despite strong demand for Indigenous labour, there were significant problems on the supply side owing to poor education, health, substance abuse and high interaction with the criminal justice system. Much of this was linked to state neglect over the past 40 years. From the Indigenous perspective, there was disappointment that the YLUA appeared focused primarily on mainstream outcomes associated with engagement with the Yandi mine, rather than in meeting the diverse aspirations of local people that included living at small outstation communities and engaging in non-mainstream economic activity. In particular, there was concern that the YLUA tied up compensatory payments in trusts that could not be accessed by supposed beneficiaries. Scambary (2007) summarises this in a widely articulated local sentiment: 'We've got the richest trusts but the poorest people'.

## Case 3: The Century Mine agreement

This agreement is generally referred to as the Gulf Communities Agreement (GCA). The GCA was signed in 1997 between Century Zinc Limited (CZL) (then a subsidiary of Rio Tinto, now owned by Zinifex), the Queensland Government and the Waanyi, Mingginda, Gkuthaarn and Kukadj people after prolonged and at times bitter political dispute (Martin 1998a). The agreement was signed under the NTA framework before the diluting 1998 amendments and covers the Century zinc/lead mine, a 350 kilometre slurry pipeline, and a port facility.

The GCA provides $A60 million over 20 years to signatory groups, but unlike the YLUA also includes significant State government commitments of an anticipated $A30 million for the provision of education and training, infrastructure and the conduct of a major regional social impact assessment. It is noteworthy that the leverage provided by the NTA right to negotiate process under s.29 saw an initial CZL offer of $70 000 in cash increased to an eventual $A60 million agreement package (Trebeck 2007a). The GCA is a little unclear about the intended beneficiaries of the agreement: reference is made to the provision of employment opportunities at the mine to an estimated 6,000 Aboriginal people in the southern Gulf of Carpentaria while cash benefits are limited to an estimated 900 members of the four signatory language groups.

The Century Mine has been one of Australia's most successful in employing Indigenous labour, with over 100 people or consistently about 20 per cent of the mine site labour force being Indigenous (Barker and Brereton 2004, 2005). This is an undoubted success of the GCA. However, the GCA probably over-ambitiously seeks to remove a large and diverse Indigenous population in the region from welfare dependency and to promote economic self sufficiency—admirable goals that one mine agreement cannot deliver. A five-year review of the GCA in 2002 by a number of parties to the GCA recognised this

and highlighted problems in a number of areas, including establishment of viable organisations to channel compensation payments to beneficiaries.[19] Subsequent local dissatisfaction with the review process and with the company's approach to community relations saw a 'civil disobedience' sit-in at the mine that threatened its operations: as Trebeck (2007a, this volume Chapter 6) notes, the sit-in demonstrated that local communities had the potential to impede operations. Subsequently, a separate review of the GCA by the regional representative body articulated community concerns especially in relation to meeting obligations in the GCA to fund outstation and other development (Carpentaria Land Council Aboriginal Corporation 2004). These criticisms were directed as much at the Queensland State as the mining company, but the political lever was far greater with the latter. As in the other two cases, there are tensions following the GCA between Indigenous beneficiaries groups about distribution of benefit payments and a lack of clarity about intended agreement beneficiaries especially with respect to distribution of employment and training opportunities (Scambary 2007).

The three cases briefly canvassed here highlight six commonalities that can be summarised as follows:

In all cases there are expectations mismatches that reflect differential power relations and an inability of agreements to recognise regional Indigenous diversity. Clearly some Indigenous people see mines as providing opportunity for formal employment while others see agreements as a means to pursue life projects (Blaser 2004; Peterson 2005; Trigger 2005). Some Indigenous people interviewed by Taylor and Scambary (2005) articulated a clear aspiration to use agreement benefits to live on their land and engage in the customary sector rather than in mine site employment. From the Indigenous perspective, there was little indication that mining agreements were investing in sustainable futures.

It is unclear who the intended beneficiaries of agreements are. On one hand, supposed benefits are in the nature of mine site employment that also benefits the state and the mining industry. It is very clear in all situations that intended Indigenous beneficiaries have limited autonomous control of how benefits are spent and there is limited capacity for adaptive management of agreements (Ballard and Banks 2003).

Demarcating government from company responsibilities is extremely problematic. Historical underinvestment in social and physical infrastructure by the state means that many Indigenous people do not have the capabilities to work at mines, even if they wished to. There is a tension between mining companies and the state about who should deliver basic services and infrastructure with some evidence of cost shifting from the state to mining companies (Altman 1983;

[19] It should be noted that the author was engaged as an adviser to this review.

O'Faircheallaigh 2004a). There is recent evidence that Indigenous peoples have articulated a desire to sign mining agreements with companies to gain access to essential services that should be provided by the state.[20]

Friction within the Indigenous population of mine hinterlands is common, with major tensions arising from lack of clarity about intended beneficiaries and consequent political conflict between traditional owners (who may or may not live near the mine) and other Indigenous people, some of whom have been long-term regional residents (so called historical people) and some who may have migrated specifically for mine site employment. Mine site statistics show great variability in local and non-local Indigenous employment (Tiplady and Barclay 2007).

The capacity of Indigenous people to benefit from major resource developments, even where they seek engagement, can be extremely limited owing to a legacy from past neglect of poor health and education and high arrest rates that have made them unsuitable for mine employment. A particular problem that Indigenous peoples face is poverty traps (represented by extremely high effective marginal tax rates, sometimes over 100 per cent) that undermine incentives for mine site employment. These can be exacerbated by agreement payments to individuals, although these are rare.

Everywhere there are environmental concerns. Examples from the cases being discussed include the potential to impact on a sacred site or on food-rich wetlands at Jabiluka; the impact of landscape scale strip mining on cultural heritage sites in the Pilbara; or on coastal subsistence fisheries or the location of a cyclone-mooring buoy on a sacred site in the Gulf of Carpentaria. These environmental concerns can provide fruitful bases for Indigenous alliances with environmental non-government organisations as occurred very effectively at Jabiluka (Trebeck 2007a, this volume Chapter 6; Triggs 2002).

## Contestation over development

In historical terms the past decade or so is a period when the state has clearly moved to dilute Indigenous rights, reflecting a particular political climate and a national focus on economic imperatives, as articulated by the elected government of the time. A political economy analysis might suggest that the state and capital have formed an enduring alliance that marginalises Indigenous people. Yet even such an analysis raises questions about enlightened self interest (Ferguson 1994) that would suggest that the state's economic growth project might be best served by addressing Indigenous poverty and marginality in mine hinterlands specifically and Australian society generally.

[20] R. Taylor, 'Aboriginals say uranium mines answer to poverty', *The West Australian*, 29 June 2006, p. 6.

Bridge (2004: 205) suggests that four distinctive approaches (technology and management centered accounts, public policy studies, structural political economy and cultural studies) can be used to address this question. Similarly a large number of analytical approaches could be used to understand the contestation over development evident in remote Australia between mining companies, the state and Indigenous peoples. I focus here on two broad approaches, political economy and cultural analysis, to highlight power differentials that are seeing the state undertaking a strategy to depoliticise Indigenous institutions and to incorporate Indigenous people in a monolithic project of industrialisation; simultaneously, and against the odds, Indigenous people are mobilising to highlight cultural difference as a means to articulate their diverse and different notions of development in relation to their lands.

The global discourse of development today is dominated by the perspectives of affluent states and multinational corporations. Despite growing global concerns about climate change, resource depletion and limits to growth, economic liberalism remains in the ascendancy (Harvey 2007). And despite occasional nods to multi-cultural citizenship (Kymlicka 1995), the power of states to define development trajectories for its citizens is growing. This is despite alternate views that, with globalisation, the nation state will lose influence to multinational capital (Blaser 2004; Howitt, Connell and Hirsch 1996).

In the Australian context, economic liberalism and its associated discourse of development is in the ascendancy, recognition of special Indigenous rights is currently at a low point (despite the new Rudd Government supporting the United Nations Declaration on the Rights of Indigenous Peoples), and the state's power to define a development trajectory for the Indigenous minority is hardly challenged in popular or policy discourses or by high profile Indigenous leaders some of whom actively advocate for this project of improvement. The state appears all powerful, immune from serious international scrutiny of its domestic policies—perhaps because the global community itself is too eager for access to Australian minerals?

State power, with a compliant media, is increasingly exercised to define development in terms that reflect dominant group values. Somewhat paternalistically, after abolishing the Aboriginal and Torres Strait Islander Commission (the national Indigenous representative organization) in 2004, the state is limiting its notion of Indigenous development to mainstream aspirations: employment success, high monetary incomes, individual home ownership, entrepreneurship and material accumulation. This somewhat hegemonic and monolithic take on development is problematic for many Indigenous groups and especially those living on the Indigenous estate in remote regions. It is based on universalism, a focus on the individual, a growing intolerance of cultural

difference, and a limited view of development that is committed to market-based solutions to deeply entrenched Indigenous marginalisation.

There are two broad readings of this approach each with its own inherent contradictions and inconsistencies. The first is that the political and bureaucratic elites genuinely believe that mainstream development at mine sites can deliver regional socioeconomic statistical equality. Such a policy aspiration makes some sense if 'seeing like a state' (Scott 1998) for it could reduce the high direct and indirect costs to the state of Indigenous dependency, generate labour in situations of shortage, and generate additional national wealth from taxation of Indigenous workers.

The second equally plausible reading is that the extent of Indigenous land ownership that has incrementally grown over the past three decades as a result of new laws based on social justice principles and new legal interpretations, is just too great. It is certainly the case that land rights and native title laws have seen the Indigenous estate grow to over 20 per cent of the Australian continent. While the state might not seek to openly dispossess Indigenous people of their new land holdings, it might seek to facilitate access to such lands for mineral exploration and extraction by weakening resource rights, weakening associated Indigenous negotiating power, and weakening the Indigenous institutions that can effectively negotiate on behalf of their constituents.

The 'mainstreaming for engagement' versus the 'mainstreaming for exploitation' readings have logical contradictions. Attempts at Closing the Gap(s) would benefit from a strengthening not weakening of Indigenous property rights, while exploitation of the Indigenous estate is hardly likely to close the gaps unless Indigenous people embrace mine employment. Similarly, it is the extent of Indigenous dependence on the state that leaves them so vulnerable to state interventions—'welfare poison' can disempower (Pearson 2000a). Hence while the state's particular form of development demands enhanced Indigenous engagement with mining, the social investments to facilitate such participation are inadequate and the property rights frameworks that might enhance Indigenous levers to negotiate for such investments are weak.

Mining companies are keen to deal directly with traditional owners to gain social licence to operate on the Indigenous estate. Owing to security concerns, the massive 'greenfields' Indigenous estate within the strong Australian state is highly desirable to multinational corporations. Direct relations between miners and Indigenous peoples are clearly on an upward trajectory, as evidenced by the hundreds of agreements referred to by the MCA (2006). Two recent studies (Langton et al. 2004, 2006) clearly show that agreement making is on the rise.

As material on the MCA website shows, its members (who include some of the world's most powerful multinationals) have embraced corporate social responsibility as a new approach in relations with Indigenous communities.

However, as Trebeck (2005, 2007a, this volume Chapter 6) notes in her study of the Yandi, Ranger and Century mines, while head office might hold lofty responsibility ideals and sponsor affirmative programs, these ideals are not necessarily penetrating to mine site business units. Not only do these units have greater capacity for technical excellence than social policy, but the financial bottom line looms large as a priority for mine managers. There are clear tensions between social, economic and environmental elements of the triple bottom line.

At times these tensions erupt into civil disturbances at or near mine sites and individual mining companies have not been immune from such Indigenous activism at Marandoo (in the Pilbara), at the Jabiluka prospect, and at the Century mine. While sovereign risk in Australia is low, from the Indigenous perspective such activism provides a means to demonstrate local dissatisfaction with mining activity and to leverage and then re-negotiate for post-agreement mine site changes. At Jabiluka, Indigenous traditional owners scored a rare victory when, via environmental non-government organisation alliances, shareholder activism and the prolonged and zealous campaigning of the Gundjeihmi Aboriginal Corporation (that included visits to the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in Paris resulting in the UNESCO Kakadu Mission in 1998[21] and to the Rio Tinto Annual General Meeting in London), the company in 2000 agreed not to mine Jabiluka without traditional owner consent. This outcome is iconic because it represents the only occasion in Australia where traditional owners have seen the rescinding of an existing agreement (signed under duress between the Northern Land Council, Pancontinental and the Australian Government in 1982).[22] Very importantly, this decision by Rio Tinto has been taken despite state pressures to proceed with mining.

Just as individual mining companies have operated more responsively to traditional owner views than the state, so too the MCA has repositioned itself. In the past, the Council used to campaign for amendments to the law to dilute Indigenous political and economic leverage. More recently, as evidenced by its recent submission to the Commonwealth government (as well as to Senate Inquiries into proposed amendments to land rights law in 2006 and to the NTA in 2007), it has begun to campaign for enhanced government resourcing of remote Indigenous communities and for support for Indigenous representative organisations that have a degree of independence and capacity. This is a surprising development that says as much about the disempowering

[21] I was an Australian government appointed member of the Mission.

[22] ERA could have mined Jabiluka but would have needed to process the uranium ore on site, something that was not financially viable in the late 1990s. Consequently, ERA needed to gain traditional owner consent to transport ore to the Ranger milling facility some 25 kilometres away, permission that was not forthcoming from the Mirarr Gundjeihmi owners of the transport corridor. It is paradoxical perhaps that the anti-Jabiluka campaign was at least part-sponsored by an organisation set up with Ranger Uranium Agreement payments. However, arguably, institutional capacity must be resourced from somewhere to provide independent voice.

mainstreaming measures of the Australian Government as it does about the new ways of doing mining business in Australia.

Indigenous views on development can be very different from mainstream notions. As already noted this is especially the case in remote regions where the struggle to win back land has often required provision of proof in the courts of land connection and extant customary practice. Having won back legal title to land, many groups are frustrated that their traditional lands are nevertheless available for exploration and mining in all jurisdictions, except where there are free prior informed consent provisions. Owing to their minority status and limited political power, Indigenous views about development form a subordinate discourse that has great difficulty being heard.

Peterson (2005) uses recent writings from North America (Blaser 2004) to distinguish Indigenous 'life projects' from state 'development projects'. Such life projects are structured by colonial history and ongoing relations of high dependence with the state. They are also structured by ongoing engagement in the customary (non-market) land-based sector of the economy. Trigger (2005) assesses mining projects in remote Australia as sites for contestation between Indigenous and mainstream views about economic and cultural futures. These contestations can be stylised as a clash between market-based and kin-based economies (Austin-Broos and MacDonald 2005) and much more. As a general rule, it is clear that Indigenous land owners look to maintain the environmental integrity of their land, whilst miners look to exploit the land's non-renewable resources; Indigenous people see the land and the landscape as a cultural asset, not just a commercial asset. An important strength of Trigger's analysis is his engagement with mining as an intercultural process: his research reports that some Indigenous people believe that they can commercially engage with mining, while maintaining their identity and distinct cultural practices. To paraphrase Stanner's poignant words, there are some Indigenous people who believe that the market and the Dreaming are compatible, others who do not.[23]

The problem that Indigenous people face is that in the face of a power narrative of Indigenous policy failure, there is a growing national intolerance of Indigenous diversity and cultural differences. This is very clearly encapsulated in the couching of the dominant development discourse in terms of practical reconciliation or statistical equality between Indigenous and other Australians. Such policy focus on Closing the Gap has been rejected by Indigenous people elsewhere internationally because it pathologises Indigenous disadvantage by defining it in relational terms to mainstream standards that are constructed according to distinct non-Indigenous cultural values (Durie 2005; Smith 1999; Storey 2003). In this way very different Indigenous views of development are

[23] Stanner's exact words were 'Ours is a market-civilisation, theirs not. Indeed there is a sense in which The Dreaming and The Market are mutually exclusive' (1979: 58).

marginalised and development debates are structured by the dominant western paradigm.

The capacity of Indigenous peoples to resist state-sanctioned mining or to ensure equitable benefit sharing is highly dependent on enhancing the capacity of regionally-based Indigenous organisations to protect Indigenous legal rights. The current approach using existing organisations and negotiation levers is resulting in Indigenous people becoming increasingly vulnerable to unequal agreement making (see Corbett and O'Faircheallaigh 2006) and increasingly being unable to oppose development pressures.[24] This is a growing problem because in recent years the state has become increasingly intolerant of dissenting views, be they in the academy, the public service, or in advocacy support (Hamilton and Maddison 2007). In some cases, as documented by Trebeck (Chapter 6), local Indigenous agency and activism has clearly demonstrated the vulnerability of mining companies to local hostility. This might explain why companies are more responsive than the state to Indigenous perspectives and why the industry is concerned about inequities in bargaining power. An adversarial approach, however, may not be sustainable as a source of bargaining strength.

## Reconciling different views of development

This chapter has focused on three very broad categories—Indigenous peoples, states and mining companies—and examined their interactions in development processes. As with all such articulations there are clearly category overlaps and cleavages: Indigenous people are citizens of Australia and companies operate within the nation's borders and in accord with Australian laws. In terms of motivating simplifications, it could be argued that the state seeks authority and compliance with its dominant notion of development, Indigenous peoples seek autonomy and the right of self governance, and mining companies seek licence to operate and secure access to resources.

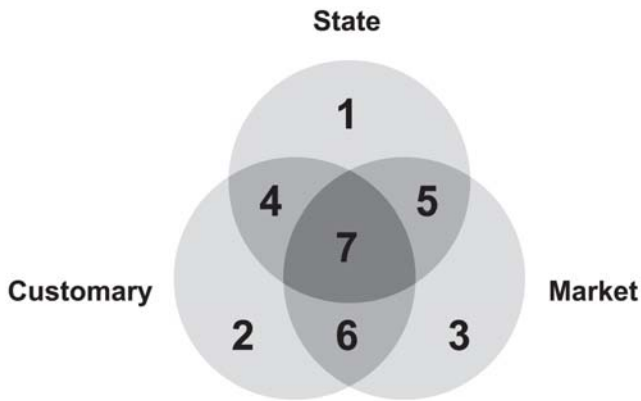
In terms of dominant ideology, it is increasingly the case that the states subscribe to economic liberalism, while Indigenous peoples are seeking recognition of their right to be different and to be heard—as outlined in post-development theory that problematises western notions of development (Storey 2003: 34–37). In Australia, this tension is evident in debates about practical versus symbolic reconciliation, economic equality versus cultural plurality, and market-based versus kin-based economic systems. Is some commensurability between such binaries a possibility, or are what Mander and Tauli-Corpus (2006) term 'paradigm wars' inevitable?

[24] Corbett and O'Faircheallaigh (2006) argue that even when using the available and supposedly impartial National Native Title Tribunal institutions for arbitration, native title parties are disadvantaged and 'grantees' (mining companies) advantaged.

An alternative model that is applicable to Indigenous people in remote Australia is the hybrid economy framework (Altman 2005a). This model is based on a critique of orthodox development approaches that privilege the market and the state and ignore the customary or non-market sector of local economies. The model has some commonalities with both the livelihoods (de Haan and Zoomers 2005) and community economy approaches (Gibson-Graham 2005).

The hybrid economy model is depicted conceptually and diagrammatically in Fig. 2.2. To simplify considerably, it is made up of three sectors (represented by the circles marked 1, 2 and 3). A crucial feature of the model is the articulations (or inter-linkages) between these sectors (depicted by the segments 4, 5, 6 and 7). An important feature of the model is that the relative scale of the three sectors and four points of articulation vary from one context to another. In remote Australia, many Indigenous people regularly move between these seven segments with the mobility evident in pre-colonial times in the food quest now evident in livelihood adaptations. For example, an individual might participate in wildlife harvesting for domestic use, the production of an artefact for sale, employment at a mine site or in the public sector or be in receipt of income support from the state.

**Fig. 2.2 The hybrid economy framework**




In such circumstances people are not solely reliant on welfare, on the non-market sector, or on income from market engagement. In a sense, part of the emerging post-colonial adaptation observed is a risk-minimisation strategy, whereby a diversity of sources of livelihood results in engagement in all sectors of the local economy. What differentiates the Indigenous Australian situation from many other Third World situations is the central role of the state providing citizen entitlements to various degrees. This support occurs directly, for example, in the provision of income support and indirectly, for example, through the provision of state patronage of community enterprise.

While the notion of the hybrid economy in Australia grew from case study work in Arnhem Land among an encapsulated minority in a post-colonial state who have shaped their local economy into a very distinct form, there are two broad reasons to believe that this concept has wider Australian applicability.

First, a major survey undertaken by the Australian Bureau of Statistics, the National Aboriginal and Torres Strait Islander Survey 2002 indicated a very high level of Indigenous participation in non-market activity in hunting and fishing and in paid cultural activities like production of art for sale (Altman, Buchanan and Biddle 2006). While the 2002 Survey had major shortcomings in fully capturing the significance of all elements of the hybrid economy, it certainly demonstrated that the land had important productive value for Indigenous people which is often overlooked. It also reinforced the view that the nature of the economic problem in remote Indigenous Australia is misunderstood as the level of engagement with the customary sector is overlooked.

Second, in Australia as elsewhere, climate change and associated national concerns about water quantity and quality and potential loss of biodiversity are all high priorities. Recent research shows that the Indigenous estate includes some of the most biodiverse lands in Australia (Altman, Buchanan and Larsen 2007). Official natural resource atlas maps produced by Land and Water Australia and the Department of Environment and Heritage indicate that many of the most intact and nationally-important wetlands, riparian zones, forests and rivers and waterways are located on the Indigenous estate. Mapping also shows that these lands are at risk of species contraction and face major threats from feral animals, exotic weeds, changed fire regimes, pollution and overgrazing. Potentially there is a crucial role for Indigenous people in environmental management of the Indigenous estate they own. This is an area where Indigenous ecological knowledge and Western science can be linked and where Indigenous people are actively seeking enhanced engagement. While much is already undertaken, Indigenous people are poorly remunerated for the provision of a range of environmental services. There are significant opportunities to enhance such Indigenous engagement as an element of the hybrid economy that could be supported by the state or by mining companies in environmentally managing their properties.

The hybrid economy model does not seek to ignore the contestation within the Indigenous domain about economic futures. There are influential Indigenous leaders (as noted by Trigger 2005) who advocate a fuller Indigenous embrace of the market as a means to create wealth and long-term prosperity and address social problems. In the hybrid economy model, market engagement is not precluded. As noted earlier, some people near mine sites seek employment with various motivations including as a means to accumulate financial resources to get back onto their country (Scambary 2007, this volume Chapter 9). This

highlights the plurality of development approaches sought by Indigenous people. The question remains, can the state and mining companies accommodate and foster such plurality while also facilitating productive engagement with mine economies?

It is here that contradictions emerge, because even within the state there is debate—evident, for example, in the very different approaches of industry and environmental agencies. Dominant political and bureaucratic views support expansion of mining onto the Indigenous estate, while less powerful environmental agencies are seeking to include more and more of the Indigenous estate into the conservation estate using the Indigenous Protected Areas program. On the other hand, mining companies appear reluctant to directly support employment in natural resource management, choosing instead, perhaps from self-interest, to focus all effort on training and employment on mine sites even if take up is poor. There may be more productive ways to engage with Aboriginal people in mine hinterlands especially given the extent of occupational migration between all sectors of the 'hybrid' economy.

## Conclusion

This chapter highlights contestation over economic development, with the state and mining companies looking to exploit the mineral wealth of the Indigenous estate, and Indigenous Australians often seeking to challenge this powerful alliance with different and diverse notions of development. It has been argued that the state, having made laws in the recent past to return considerable tracts of land to Indigenous Australians, is now looking at this estate as 'greenfields' for mining development and as the means to deliver mainstream development to Indigenous communities. The state has constructed a new discourse of policy failure and a need to break business-as-usual approaches. Arguably, the state is also seeking to encourage commercial penetration of the Indigenous estate by weakening already weak Indigenous property rights and institutions in a manner that is at odds with emerging international conventions on the recognition of Indigenous rights such as numerous articles with the United Nations Declaration on the Rights of Indigenous Peoples.

The analysis here highlights two fundamentally different views about the appropriate development pathways on the Indigenous estate. The perspective of dominant national interest and global geopolitics seeks to explore and exploit the mineral wealth of the Indigenous estate irrespective of the wishes of the land owners. An alternative view, based on emerging alliances between Indigenous land owners and environmental and developmental non-government organisations, emphasises the biodiversity value of the Indigenous estate as an alternative form of development to mineral extraction.

At present, the former perspective is in the ascendancy, dominated by the views and political and economic power of the state and mining companies. At the start of the twenty-first century there has been an acceleration of a new economic order predicated on world trade and energy-intensive industrialisation that is right now being challenged by a global slowdown. As a commodity-export dependent economy, Australia has been at the vanguard of the neoliberal order that has been so dominant in recent years. At the same time, there are concerns about climate change that the Australian Government, in recent years, has been at the vanguard of ignoring, at least until a change of national government in November 2007. At such a time it is extremely difficult for any alternative development perspective, based on proven links to land and continuity of custom, to gain political traction. This is especially the case because the Australian state is in the process of depoliticising Indigenous institutions, and mainstream political channels reflect the views of the majority only.

The means that the powerful use to support arguments in favour of modernisation is to suggest that Indigenous people living in remote Australia face a stark choice between tradition and modernity: the former is associated with material poverty, the latter with affluence. This is a false dichotomy because Indigenous people in remote Australia are already participating in a hybrid economy that is thoroughly intercultural and is inclusive of both the customary and the market. Indigenous people undergo rigorous tests to show that they maintain custom and identity in order to regain land ownership; they now face new challenges in retaining that land ownership. There are immense pressures to join the mainstream, but the issue then arises of whether economic integration is possible for Indigenous Australians without losing their links to the land. Conversely, if a choice is made not to join the mainstream, then there is the unenviable prospect of ongoing poverty and marginalisation.

There are many possibilities that are currently not being considered. A new approach is needed that gives institutional recognition to the inherent rights of Indigenous Australians to control the nature of development on their ancestral lands by bestowing them with more potent property rights. Indigenous peoples need to be empowered by the state, as noted by the MCA, so that they can participate in negotiations with mining companies on a more equitable basis. Such empowerment will ensure that Indigenous Australians have the capabilities and capacities to engage with the state and mining companies, and can define their own aspirations. This is a right, as espoused by Sen (1999), to develop capabilities to negotiate the forms that development and participation will take. The Australian states and mining companies need to recognise that the security of the poor and of the prosperous are inter-linked; poverty and instability has the capacity to destabilise states and to enhance risk.

In the political struggle over ideas about development and how Indigenous land should be used, Indigenous Australians need to use available political instruments and alliances to gain a hearing. This may entail appeal to international forums, although as noted the Australian state has historically been relatively impervious to international opinion. There is a glimmer of hope in the shifting national mood and changes in direction of the moment (post the onset of the global financial crisis) that might see a greater acceptance of alternate development models, like the hybrid economy framework, that have the capacity to incorporate Indigenous priorities. The challenge for the Australian state is to recognise the value of cultural diversity and economic hybridity; and to acknowledge that there is nothing inherently valuable about monolithic approaches based on resource extraction. The challenge for mining companies is to recognise that the fostering of sound regional relations with Indigenous people might involve agreement making that supports their aspirations for economic diversity beyond mine site options. Given poor past relations, Indigenous scepticism about rampant development is understandable. Whether the marginal situation of Indigenous peoples in remote Australia can be improved will be highly dependent on acceptance by the state and mining companies that all their interests are interdependent.