Reference No. 81

Summarising: Mantzari & Martin (2000), Native Title Corporations: a legal and anthropological analysis
Responsibility for the preparation of this research summary rests with the authors of the MCEETYA report *Education, Training and Indigenous Futures: CAEPR Policy Research 1990–2007* and not the original author(s) of the summarised material.

Title of Research:
Native Title Corporations: a legal and anthropological analysis

Research Publication:
The Federation Press 2000

Name of Researcher(s):
C. Mantziaris and D.F. Martin

Time period:
2000

Geographic location:
Australia

Methodology:
The researchers draw upon their extensive legal and anthropological experience in their analysis of the legal framework for Native Title in Australia.

Aims:
This book aims to analyse the intersection of Indigenous traditional laws and customs and the Australian legal system in regard to Native Title. In so doing it addresses the concerns of the National Native Title Tribunal that, if native title determination processes are to progress in an orderly way, it is essential that corporate bodies be established that can operate effectively and accountably within both the legal system and the local Indigenous community.

Selected findings and insights:
The findings and insights presented in this book are extensive. The researchers have explored the legal and social context in which the native title holding bodies arose, explaining the intricacies of the legislative framework and their implications within a cultural context. This summary focuses on only one aspect of their book – that dealing with authority structures to act on behalf of native title groups and the responsibilities of elders within Indigenous communities.

The researchers point out that it is common for age and ritual status to be necessary attributes (though not sufficient) for holding the necessary authority to act on behalf of a group. However:

- There is widespread diversity across Indigenous Australia in how authority is determined, due to variation among the many systems of traditional law and custom. Whilst such variation is due to long-held tradition it may also be influenced by the extent and type of interaction with non-Indigenous Australia.

Different authority structures operating in different parts of Australia are described:

- Amongst the Yolngu people of north-eastern Arnhem Land, birth order is the major defining principle underlying rank in a very hierarchical Yolngu society. The first born of a sibling set has prime decision-making power about matters affecting it and ‘country’. Similarly, the senior man of a clan or sub-clan with prime authority is generally the oldest male member (that is, the ‘elder’);
This is also generally the case for the highly egalitarian Wik groups of western Cape York peninsula. Each Wik clan usually has a senior man or woman who is the spokesperson and the ‘regional boss’ usually comes from among these senior persons. The book notes that even within such authority structures there are limitations on the range of issues over which they have authority;

Western desert Pintupi and north-central desert Warlpiri people are also highly egalitarian, but their systems of geographically-based organisation are fundamentally different and age is not necessarily the prime determinant of authority. There is no governing body of elders for the wider affairs of the community. Rather authority is much more contextual and is primarily defined through relations of kinship. Authority is not exercised within geographically-based local groups and the emphasis is upon personal autonomy and self-reliance.

The book also notes that in many ways the term ‘elders’ has arisen through interaction with non-Indigenous societies:

‘Elders’ are the individuals with whom governments, agencies and resource developers consult to ascertain the views of Indigenous groups about a wide range of issues.

However there can be considerable dispute as to the extent to which such identified persons or elders can in fact speak authoritatively on significant matters such as land title.

Educational implications:

This article provides useful background information for school staff and staff involved in policy and program development about the complexity of Indigenous culture, especially in regard to authority structures and most appropriate consultative strategies when engaging communities in and training delivery [community engagement] [education partnership agreements]

Relevance:

Introductory Topic: Culture, Community and Family Life

Related papers:

Martin D ‘The incorporation of ‘traditional’ and ‘historical’ interests in Native Title Representative Bodies’, CAEPR Research Monograph No. 12 1997