
LORE, LAW AND WATER GOVERNANCE: INSIGHTS INTO MANAGING WATER FOR COUNTRY, AUSTRALIA

by Dr Melissa Nursey-Bray and the Arabana Aboriginal Corporation

INTRODUCTION

Governance of water, always a vexed management issue, becomes very complicated when considering how to incorporate Indigenous interests. Indigenous and Western traditions of governance and leadership overlap and intersect in multiple ways¹ that reveal the difference between rights, lore and the law. A key element of national water governance in Australia is the National Water Initiative (NWI) of 2004,² which was the first Commonwealth policy to try and incorporate Indigenous interests in relation to water. Subsequently, State and Federal governments have been trying to establish policy mechanisms for incorporating Indigenous values and interests in water allocation and other planning processes.³ Despite the aims of the NWI, Tan and Jackson argue that the NWI has four features that restrict an expression of Indigenous interests as articulated within the policy including: (i) the low priority given to Indigenous needs in over-allocated catchments; (ii) state government pressures, which result in a lack of clear guidance on balancing competing priorities; (iii) procrastination while awaiting Native Title determinations; and (iv) consultations that do not result in equitable access to valuable economic resource rights.⁴

This paper explores these issues through a case study of the Arabana people of the Kati Thanda-Lake Eyre region in Australia based on two research projects. One project investigated the development of a community based climate change adaptation strategy,⁵ and the other the possibility of developing cultural indicators for assessment of river systems in the Kati Thanda-Lake Eyre region.⁶ Ultimately, both projects show that unless there is acknowledgement and incorporation of Indigenous world views, values and modes of governance into broader water management regimes that the contest between rights, lore and the law will remain.

THE ARABANA PEOPLE

The Arabana people are traditional owners and native title holders of country within the centre of the Kati Thanda-Lake Eyre region. Due to colonial policies, the Arabana people now also live

across the entire continent, from Darwin, through to Adelaide respectively. Native title rights were conferred to the Arabana people on 22 May 2012, and included country at Finnis Springs Station, located south of the Oodnadatta Track, around 50km west of Maree. In total, the determination covers approximately 68 823 square kilometres and includes Lake Eyre (now Kati Thanda-Lake Eyre) and the Wabma Kadarbu Mound Springs Conservation Park. Settlement also resulted in other agreements including an Indigenous Land Use Agreement for a long term lease over Finnis Springs and also a National Parks Indigenous Land Use Agreement and Co-management Agreement. This agreement ensures the contribution of Arabana people into ongoing park management. Political leadership of the Arabana is vested within the Arabana Aboriginal Corporation's Board of Directors, most of whom live in Port Augusta, yet there are important loci of traditional leadership (based in Alice Springs) and social leadership (Darwin) which contribute to the contemporary Arabana identity.

PROJECT DESCRIPTION AND METHODS *CLIMATE CHANGE ADAPTATION PROJECT*

Conducted between 2011–2013 as a collaborative endeavour between the Arabana and a team of University of Adelaide researchers, this project, via a vulnerability assessment, resulted in the development of a climate change adaptation strategy. Water emerged as one of the key concerns, in relation to climate change as well as its use and extraction by other industries such as mining and pastoralism.⁷ Over 100 Arabana people were interviewed or involved in some way (ie employed) during the project period. An even distribution of men and women were interviewed and we ensured that we engaged with Arabana in all places that they live.

CULTURAL INDICATORS PROJECT

The aim of the second project, conducted during 2014–2015 was to develop cultural indicators for assessing water in the Kati Thanda-Lake Eyre region. The project was a sub-component of a larger project that aimed to develop scientific indicators for water that could be used in forthcoming river assessments for the region.

Again, Arabana concerns about water were raised.⁸ In this case about 40 or so Arabana were involved, largely from the Marree and Port Augusta regions, and a discrete amount of funding was allocated to employ an Arabana leader to engage people in Darwin on their views. One member of the research team also travelled to Alice Springs to meet with a key Arabana Elder. To ensure gender equity in this case, we conducted one field trip which was run by men, and then another field trip that was led by women. This also meant that we accessed and learned about different water sites in each case.

In both cases an Indigenist methodology put Indigenous voice and action at the centre of the project and ensured that the research was collaborative at all stages. This action based, community based participatory research approach drew on a range of literature discussing the dimensions of undertaking research with Indigenous peoples.⁹ The geographic spread of the Arabana people was countered by ensuring that field work was conducted in all the places Arabana people live, as well as on/in country. We also made sure that we worked across the different governance structures, both formal and informal. For example, we worked with the Board of Directors throughout both projects, but also kept in constant contacts with key (often female) Elders who instituted informal governance through their grandchildren. In this way we also enabled discussion to be had with young Arabana people. In practice, a combination of participant observation, interviews and field work was used to gather information for both projects.

KEY INSIGHTS VALUE OF WATER

As Langton notes,¹⁰ there are many examples of early Indigenous association with water, with water being important as a source of food, for its sacred qualities¹¹ and for its historical significance where water bodies and their traverse represent knowledge about country.¹² For the Arabana, water has multiple values—as the locus for cultural identity, as a source of survival in a very dry place, as markers of travel routes and as places where historical, recreational and cultural activities take place:

Water is fundamental to existence of all things. Arabana depend on rain, springs, soakages and rock holes for water.¹³

Water is like the sun—it is the essence of life. Water to the Arabana should be seen as critical to the country and is sustaining to that country. There must always be an abundant supply to Arabana lands as it is a giver of life to country and all that exists in it.¹⁴

Often Arabana people spoke of their fear that their water values were being compromised, noting it was 'draining away' in many

places. Some people attributed this to past and ongoing mining, others to pastoralism or climate change:

Water today hardly any water there. Used to be birdlife, ducks and swans, it sad to see that. Belly button plants don't see them so much on sand hills—parachelia too—another plant cattle used to thrive on, live on it, so could live on sand hills for weeks on end—couldn't find it now, maybe cos of climate change, maybe cos of lack of rain.¹⁵

There were fears that changes to sites would bring about changes to cultural practices. For example, the story of an immensely important water site—the Bubbler—was raised time and again. This site is at the heart of Arabana cultural identity and is the site of a crucial dreaming story. During fieldwork, many Arabana recalled that in the past, you could throw a railway sleeper into the Bubbler and it would be thrown back. Today, the Bubbler is much slower and less active and this is a sign of sick country and that water values are being eroded:

I think I am pretty certain the mining has affected our water—it was fine before, springs running and flowing all over the place, nowadays there is nothing and the pressure has gone as well—bubbler another one we used too ... in the past it used to bubble so huge, the noise you could hear it from caward springs, where is that water?¹⁶

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CONCEPTUALISATIONS OF WATER DIFFER

In both projects, it also emerged that the very way that water is conceptualised differs across cultures. For the Arabana, water is not split up into different aquatic ecosystems, or indeed legal jurisdictions, as is the case in Western scientific classification regimes, but understood as one resource (Kurtha) with multiple sites within the country. This was highlighted in fieldwork where it became clear that non-Indigenous researchers wanted to know what was happening in the *rivers*, whereas Arabana were interested in how to delineate water according to the whole *country*, a place where water is indivisible from all other ecological and components. This definitional difference highlights a disjunct in understanding and appreciating what a water site actually is. Another example relates to different understandings of the term catchment. From a Western scientific perspective, a catchment comprises a wide region that captures all the ecologies within a river catchment. The Kati Thanda-Lake Eyre catchment for example is almost one fifth of the continent, and many other huge regions,

such as the Murray-Darling are also understood as catchments. For the Arabana however, a catchment is literally that, a small indented area that fills up when rain comes, they are little in size and scope and are indicators of recent (or not) rainfall. The notion of absent water also highlighted this cultural difference. In this case, an extremely dry site (to the Western gaze) was presented by the Arabana as an important water site, with the region exhibiting fossilised evidence of past waters. Hence this site was, despite the absence of water, a *water* site that needed managing.

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WATER HAS AN ENTITY AND IS FRAMED IN A CONTINUUM—HAVING A PAST, A PRESENT AND A FUTURE

The Arabana people understand and talk about water as an *entity* to be understood simultaneously as having a past, present and future. Hence, when Arabana people look at a water site, they did not just ‘see’ what is physically there, but what has been, and what might be. It is unsurprising then that key to Arabana concern about water is their preoccupation with what might happen to those sites in the future, exemplified by their characterisation of ‘pressure’ indicators for cultural assessment of their water sites. They wanted to know that part of the ongoing assessment of their sites would include an evaluation of the future pressures they might face, including pastoralism, introduction of exotics, mining and climate change.

WATER GOVERNANCE IS CONNECTED TO LIVELIHOODS

Another key insight from both projects is the fact that water is linked not only to culture and country but also to the notion of how to achieve contemporary livelihoods. For the Arabana, water is an enabling resource of enormous potential. In both projects, and also in their *Healthy Country Plan*, Arabana people speak of the importance and urgency of obtaining jobs that will enable them to live on country and overcome ongoing socio-economic challenges. Water and its supply are seen as incredibly important to achieving these aspirations and building cultural and political sovereignty:

In terms of overarching priorities—we must be able to organise means of generate income on country and water—keep water in places where

we want to generate an income ... if food and water goes back to land, so will Arabana especially if you can find way to stimulate an income.¹⁷

INTEGRATING KNOWLEDGE SYSTEMS

A recurring theme within both projects was around how to integrate the relationship between traditional knowledge and contemporary ecology. However, in both cases we found that working out how to ‘integrate’ knowledge was incredibly difficult; knowledge is not an accepted ‘truth’ but is in fact constituted differently in different cultural contexts. Western knowledge systems tend to be linear, sequential, and follow scientific principles, whereas Indigenous people’s knowledge systems are more circular and different knowledge systems operate concurrently within a community in various ways.¹⁸ In the Western world, for example while access to knowledge is mediated by power and resource constraints, it is theoretically ‘open’ to access by all and science is a ‘common pool’ resource.¹⁹ Yet in an Indigenous/community context, knowledge is distributed, held and maintained by different members of society and strictly adheres to various delineations which prescribe specific responsibilities in relation to that knowledge. Indigenous knowledge also tends to be local in nature compared with the (often) global scope of Western scientific knowledge. ‘Integration’ also implies the adopting or incorporation of Indigenous knowledge into current jurisdictional and institutional arrangements, but they may simply, *not fit*. This is partly due to the reality that Indigenous conceptions of country do not compartmentalise functions of management in the way that occurs under common law today, thus attempting integration of both paradigms can create serious management tensions.

INDIGENOUS GOVERNANCE

Another complicating factor affecting how integration may be achieved relates to the different ways in which Indigenous peoples construct and assert their own governance systems. This is important given Indigenous peoples such as the Arabana are not just claiming the right to exercise their own customary regimes, but asserting their right to be part of contemporary environmental governance structures. This is a complicated challenge and one overlain with the ongoing legacy of colonisation and Indigenous actions to reassert sovereignty and rights the world over.

Indigenous governance is defined here as ‘the evolving processes, relationships, institutions and structures by which a group of people or, community, organise themselves collectively to achieve the things that matter to them.’²⁰ Analysis of international studies identifies four features that indicate strong and effective Indigenous governance: (1) power; (2) ownership and access to resources; (3) effective governing institutions and accountability;

and (4) legitimacy and cultural match.²¹ Navigating this challenge also has implications for the power sharing arrangements within water governance regimes, so as to ensure that in enabling their participation in decision making, the Arabana people can maintain their own knowledge without losing power.

SUMMARY: CO-EXISTENT WATER MANAGEMENT REGIMES?

Both projects highlight some key insights about values knowledge, governance and language that can hinder ongoing water management arrangements. In seeking to move forward and redress some of the gaps identified by Tan and Jackson²² we suggest the notion of co-existence perhaps is a better 'fit' and provides a way in which to conceive how cultural and scientific perspectives may work together. Co-existence, is described by Howitt et al as involving the just, equitable and sustainable sharing of space.²³ As such, Indigenous interests and values about country can co-exist alongside, rather than being integrated within other rights and interests about water:

Water planning processes must contain the possibility of an explicit approach to mutual recognition and consequent translation of the conceptual and pragmatic bases of water management and planning in both Western and Indigenous domains.²⁴

It is possible that multi-tenure Indigenous Protected Areas, as well as plans such as the *Healthy Country Plan*, may offer structural frames to deliver appropriate outcomes consistent with Arabana aspirations for co-existent lore/law making about water. The current drive at international level, to examine modes of protection and conservation that are outside of the protected area estate, such as the IUCN Taskforce on Other Environmental Conservation Measures (OECMs) may also be worth exploration. Certainly, models that are holistic and connect multiple disciplines and activities will be more synergistic with notions of country than the demarcated and differentiated approach that characterises so much current environmental governance.

Ultimately, Indigenous peoples such as the Arabana people are often best placed to actively manage their country because they can implement unique cultural and ecological values in both traditional and contemporary ways. Working together we may achieve a water governance regime where Arabana and non-Indigenous parties are equal and each knowledge system is recognised as legitimate and valid: *law* and *lore* coexisting.

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- 1 By *law*, we mean the Western jurisdictional system, by *lore* we mean the laws, customs and systems that prescribe Indigenous knowledge and behaviours in relation to each other and their country, and by rights, we mean the collection of capacities and responsibilities that Indigenous people claim so as to better exercise sovereignty/decision making over their country and/or each other.
- 2 National Water Commission, 'Intergovernmental Agreement on a National Water Initiative' (Water Policy Agreement, Council of Australian Governments, 2004).
- 3 Sue Jackson and Marcus Barber, 'Recognition of Indigenous Water Values and Resource Governance in Australia's Northern Territory: Current Progress and Ongoing Challenges for Social Justice in Water Planning' (2013) 14 *Planning Theory and Practice* 435, 437–438.
- 4 Poh-Ling Tan and Sue Jackson, 'Impossible Dreaming - Does Australia's Water Law and Policy Fulfil Indigenous Aspirations?' (2013) 30 *Environmental and Planning Law Journal* 132, 135.
- 5 Melissa Nursey-Bray et al, 'Indigenous Adaptation to Climate Change: The Arabana' in Jean Palutikof et al (eds), *Applied Studies in Climate Adaptation: Australian Experiences* (Wiley Press, 2015) 316.
- 6 Melissa Nursey-Bray, 'Cultural Indicators, Country and Culture: the Arabana, Change and Water' (2015) 37 *The Rangeland Journal* 555.
- 7 Nursey-Bray, above n 4, 564.
- 8 Nursey-Bray, above n 5, 565.
- 9 Lester Irabinna Rigney, 'Internationalization of an Indigenous Anti-Colonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and its Principles' (1999) 14 *Journal of Native American Studies* 109; Veronica Arbon and Lester-Irabinna Rigney 'Indigenous at the Heart: Indigenous Research in a Climate Change Project' (2015) 10 *AlterNative: An International Journal of Indigenous Peoples* 478.
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- 11 Sue Jackson, 'Indigenous Values and Water Resource Management: A Case Study from the Northern Territory' (2005) 12 *Australasian Journal of Environmental Management* 136, 138.
- 12 Carla Mooney and Poh-Ling Tan, 'South Australia's River Murray: Social and Cultural Values in Water Planning' (2013) 474 *Journal of Hydrology* 29, 475.
- 13 Arabana Respondent 11 quoted in Melissa Nursey-Bray and the Arabana Aboriginal Corporation, 'The Arabana People, Water and Developing Cultural Indicators for Country' (Technical Report Series No 15/29, Goyder Institute for Water Research, 2015), 34.
- 14 Arabana Respondent 12 quoted in Ibid.
- 15 William Creek Respondent 2 quoted in Melissa Nursey-Bray et al, 'Community Based Adaptation to Climate Change: The Arabana, South Australia' (Final Report, The National Climate Change Adaptation Research Facility and The University of Adelaide, 2013), 66.
- 16 Ibid 71.
- 17 Ibid 70.
- 18 Paul Sillitoe, 'Globalizing Indigenous Knowledge' in Paul Sillitoe, Alan Bicker and Johan Pottier (eds), *Participating in Development: Approaches to Indigenous Knowledge* (Routledge, 2002) 108, 9.
- 19 Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press, 1990) 280.
- 20 Janet Hunt and Diane Smith, 'Building Indigenous Community

Governance in Australia: Preliminary Research Findings' (Working Paper No 31/2006, Centre for Aboriginal Economic Policy Research, May 2006), 4.

21 Melissa Nursey-Bray and Chris Jacobson "Which Way?": The Contribution of Indigenous Marine Governance' (2014) 6 *Australian Journal of Maritime and Ocean Affairs* 27, 29.

22 Tan and Jackson, above n 3.

23 Richie Howitt et al 'New Geographies of Coexistence: Reconsidering Cultural Interfaces in Resource and Environmental Governance' (2013) 54 *Asia Pacific Viewpoint* 123.

24 Margaret Ayre and John Mackenzie, "Unwritten, Unsaid, Just Known": The Role of Indigenous Knowledge(s) in Water Planning in Australia' (2013) 18 *Local Environment* 753, 753.

Weres 1

Gail Mabo

Acrylic on canvas

1400mm x 1220mm

