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From Dispossession to Compensation: a political ecology of the Ord Final Agreement as a partial success story for Indigenous traditional owners

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ABSTRACT The recent digging of a new channel for water delivery to expand irrigation in the Ord provides a good opportunity for unearthing the native title agreement that allows for intensification of agriculture there. Initial irrigation development in this north-eastern Australian catchment did not include recognition of, consultation with, or distribution of benefits to Indigenous people impacted by dam creation and land flooding. Forming agreement between those affected by previous dispossession, and associated accumulation of wealth via mining and irrigation, with those initiating such activities was an important and challenging process. The Ord Final Agreement (OFA), formalised in 2006, came from negotiations between Miriuwung and Gajerrong traditional owners and government and private interests. Through qualitative research, I dissect the context and content of the OFA to identify the strengths and weaknesses therein. While the agreement does allow for co-management of significant land- and waterscapes, it does not provide for Indigenous water rights, showing one instance of loose ends and missing links within the Ord.

KEY WORDS Ord Final Agreement; Indigenous water rights; political ecology; Indigenous people; co-management.

Introduction

With the completion in 2011 of the channel to supply water for irrigation expansion in the Ord, it is timely to look at the Ord Final Agreement (OFA) that precedes further agriculture production in the area. The OFA, formally registered in 2006, is an Indigenous Land Use Agreement (ILUA) that is the outcome of native title negotiations between Miriuwung and Gajerrong peoples, the State government of Western Australia and some private-sector interests. An ILUA is a document that specifies what is agreed between parties during negotiations over native title arrangements and is context specific. ‘Miriuwung Gajerrong people’ is the legal term used to describe the traditional owners involved in the native title negotiations for the OFA. ‘Miriuwung’ (also spelt Miriwoong) refers to one nation, ‘Gajerrong’
another. The OFA stipulates the creation of joint management conservation areas, a compensation package for impacts from Ord Stage 1 and some involvement of Miriuwung and Gajerrong traditional owners in Ord Stage 2 decision-making processes. Accompanying this, and for agricultural expansion to proceed, significant forgoing of native title rights over country has occurred.

However, of key concern within this otherwise relatively comprehensive agreement is the absence of a water allocation from the Ord River for Miriuwung and Gajerrong traditional owners to determine the use thereof, in accordance with their native title interests. This absence is notable given that irrigation expansion in the Ord Valley is one outcome of the negotiated agreement. Indeed, 20 000 ha of high-value black-soil plains is relinquished under the OFA by the Miriuwung Gajerrong native title holders for irrigation purposes. For Ord Stage 2 to progress, a substantial water allocation is required from the Ord River to irrigate the black-soil plains. Water allocations are thereby fundamentally linked to intensification of crop production in the Ord catchment. Taking the absence of an Indigenous water allocation in the OFA as a starting point, this paper examines some repositionings of Indigenous peoples’ rights in the Ord following these major political transformations. The Ord catchment has two dams regulating it, a substantive current irrigation area and three Ramsar sites—two of them direct products of water storage by impoundments (see Figure 1).

Underpinning this analysis is recognition that the governance transformations in the Ord are discursively portrayed in different ways. There is a range of understandings of why the OFA was negotiated and what it hopes to achieve. Some of these understandings slide away from Eurocentric readings while others move towards this position. Regardless of how the OFA is viewed it is essential, nevertheless, to analyse the main structures and their functions as prescribed and provided for in that negotiated agreement. Such an analysis gives some indication of what was and was not up for negotiation in the process, including how a water allocation was not on the metaphoric negotiation table.

After introducing the theoretical framework for this argument, this paper shows important ‘success’ events leading up to the OFA, unpacks two readings of the OFA, and concludes with a situated analysis of the OFA within current debates relating to sustainable development, co-management and Indigenous peoples. The analysis of major natural resource governance changes also provides an overview of the changing society–nature relations leading up to the OFA. The theoretical approach adopted in this paper embraces both material and discursive dimensions, drawing on ideas from both political ecology and environmental justice theory and practice.

**From discourses to practices: where’s the water?**

Political ecology is the overarching philosophical framework used here. This broadly defined approach is useful in examining the negotiated agreement, which addresses many native title issues in a substantial part of the Ord Basin, and the context within which this agreement sits. The discursive representation of a process is, in this method, just as important as the material reality of a particular environment (Blaikie & Brookfield 1987). It is also helpful as it examines the dialectical relationship of a range of social and environmental processes (Zimmerer
FIGURE 1. ‘The Ord Catchment, showing Indigenous communities and major towns and the positions of the two dams.’
& Bassett 2003, p. 3), not just one or the other. A political ecology analysis facilitates an understanding of the material and discursive realities around natural resource management (NRM) transformations, primarily through its integrative approach. Environmental justice, married with this political ecology philosophy, provides the structuring theoretical framework for this paper. Environmental justice examines practices that may or may not involve recognition of difference, plurality of participation, and equitable distribution of resources and costs and benefits (Schlosberg 2004). It is instrumental in organising this analysis of major reconfigurations in NRM practices within the Ord.

Within the Australian context, Hillman (2004, 2009) has called for a justice approach to be applied in river management, and his contributions also inform this paper. He advocates integrating knowledge other than strictly scientific, including community-based knowledge, and this resonates with the Ord case as Indigenous peoples’ water values are only partially incorporated in current planning. The success of river management depends upon this multiple knowledge inclusion, especially ‘contextualised and place-based wisdom built on experience and incorporation of cultural values’ (Hillman 2009, p. 1988). The opportunity to do so arises with recognition of contemporaneous multiplicity.

This mode of analysis sits well with an understanding of space as a product of interrelations (Massey 2005, p. 10). In the Ord, partial attempts to resolve issues of land and water justice inevitably construct a ‘space of loose ends and missing links’ (Massey 2005, p. 12) which is dialogically related to other scaled spaces including Western Australia, Australia and international Indigenous political spaces. Through incorporating Massey’s (2005) discussion of the multiplicity of space, this paper demonstrates how counter-discourses to hegemonic management regimes also exist within Indigenous Australian contexts. It draws on Massey’s recent examination of how space and multiplicity are co-constitutive (Massey 2005). As such, an understanding of the social as characterised by heterogeneity based on coevalness is possible.

Moreover, the narrative of the OFA brings into perspective sets of institutional questions about codification of native title within Australian political spaces. Native title processes and environmental management regimes are critiqued for their imposition of Eurocentric categories on Indigenous peoples (see Howitt 1993; Lane 1997; Povinelli 1999). Howitt and Suchet-Pearson (2006) argue that modern NRM regimes in Australia are Eurocentric, and that they have a silencing effect on Indigenous lifeways through their discursive techniques. Similarly, Gibbs (2010) takes issue with the Eurocentrism in environmental values surrounding water matters. This paper, by drawing on Howitt and Suchet-Pearson’s (2006), and Gibbs’s (2010) analysis through delving into some aspects of the OFA and its antecedents, portrays coeval trajectories in the Ord, including the success of Indigenous people in the Ord Valley in securing compensation for economic and social impacts from earlier development and future acts, and, by so doing, presents an illustration of the multiplicity of space. What Howitt and Suchet-Pearson (2006) offer could be interpreted as a postcolonial critique of NRM regimes that fail to take into account different lifeways. By extending their analysis through a case study of the Ord, this argument shows that while hegemonic regimes do exist, counter-discourses also inhabit these spaces, indicative of a Masseyian space of loose ends and missing links.
The cross-cultural politics played out in the OFA is a key element of the material and discursive domain that comprises this case study. The neo-colonialist concerns raised by Howitt and Suchet-Pearson (2006) include discussion of how within Indigenous Australian experience discourses and practices of both development and conservation reflect highly problematic assumptions about relationships between people, and between people and their surroundings, which are rooted in Eurocentric ontologies, and that failure to challenge these assumptions risks reimposing colonial power relations on groups who make different sense of the world. (Howitt & Suchet-Pearson 2006, p. 323)

They challenge normative frameworks that uncritically apply concepts such as ‘sustainable development’ and ‘natural resource management’ to Indigenous places and thereby effectively continue the colonising process. This political ecology of the recent governance shifts in the Ord Valley comprises analysis of the production of conservation areas, the organisational dynamics that resulted in a successful negotiated agreement on native title, and touches on an analysis of the actors and institutions involved in bringing about the OFA and who will be involved in its implementation. By doing so, it contributes to a progressive political ecology that moves away from detailed description of the failings around environmental management, as has characterised some political ecologies to date (Robbins 2004), and towards a critique of recent shifts within the Ord. Robbins (2004) suggests that political ecology, as an explanatory framework, is very good at revealing the failures of environmental management but could be employed more frequently to also start showing the successes.

The governance changes introduced with the OFA have the potential to belong to the ‘success stories’ but there are some notable absences—including a substantive water right for Indigenous purposes—that will be explored herein as well. This analysis also identifies some of the risks around joint management, from contexts where this has already begun, and shows what lessons can be gleaned from these stories that may be applicable in the Ord Valley to ensure it is a success story. I wish to contribute to the work that is involved in ‘recognizing and responding respectfully to those elements of cultural landscapes that Eurocentric management discourses routinely deny exist’ (Howitt & Suchet-Pearson 2006, p. 333). Howitt and Suchet-Pearson’s (2006) argument is lucid in its call for plurality in approaches and context-specific work but, as this paper endeavours to show, there are also instances of strategic deployment of Eurocentric categories or classifications by Indigenous peoples within Australia. This paper builds on Howitt and Suchet-Pearson’s (2006) critique through offering a nuanced understanding of power relations by means of a case study of resolution of native title in the Ord that demonstrates a tactical use of discourses coming from elsewhere.

**Impetus for the OFA: before the success**

In pursuing Robbins’s (2004) invitation for political ecologists to detail positive narratives in environmental contestation, I briefly represent moments leading up to the Miriuwung Gajerrong people successfully obtaining due acknowledgement of their rights; where their particular trajectories were more visible to the colonising
peoples and preceded the forging of the OFA. The OFA came to be after many
years’ campaigning by the Miriuwung Gajerrong people for official recognition of
their native title rights, including those relating to NRM. Like most areas of
Australia, the expansion of primary industry in the Ord Valley did not include
recognition of Indigenous custodianship of land, did not encourage participation of
Indigenous people in planning over natural resources, or, as to be expected without
the previous two conditions, was not premised on fair distribution of the benefits of
development. These injustices form the bedrock upon which the Ord River
Irrigation Area (ORIA) has flowed. With this history well documented elsewhere
(1989), Symanski (1996), Head (1999) and Lane (2003), the following discussion
iterates three seminal points that underpin the OFA.

First, Indigenous relationships with land survived the considerable upheavals of
agricultural expansion in the Ord Valley. The introduction of pastoralism did not
preclude some continuity of Indigenous lifeways in the Ord Valley. Evidence of this
can be found in early anthropological accounts including Phyllis Kaberry’s
Aboriginal women: sacred and profane (1939) and also in later work by Shaw,
including his Countrymen (1986) and ‘When the dust come in between’ (recorded
in 1982 but published 1992). These works provide some insight into Miriuwung
Gajerrong realities from the beginning of the twentieth century, including their
complex relationships to the pastoralism industry. The stories captured in Shaw’s
work also describe how economic and social contexts for Indigenous people
changed dramatically in the 1960s. Mass unemployment in the pastoral industry
occurred then, mainly due to a ‘combination of the consequences of growing
capitalization and concentration of ownership in the pastoral industry, as well as the
increased cost of labour due to, inter alia, the granting of the pastoral award (1968)
to Aboriginal workers’ (Smith 2003, p. 555). The diversification of agricultural
production in the 1970s was facilitated by the creation of Kununurra to service a
regionally new production regime based on irrigation. So at the same time that
many aspects of the ‘station days’ were coming to a close, a burgeoning irrigation
agriculture industry was starting in the Ord.

Second, the Australian native title regime has provided an administrative vehicle
for Miriuwung Gajerrong relationships with land to be recognised in whitefella law.
The possibility of securing capital and gaining access to participation in NRM in
northern Australia arose with the emergence of a mechanism for common law to
recognise the native title rights of Indigenous peoples through Mabo and later the
Native Title Act 1993 (Cwlth). In 1994, the Miriuwung Gajerrong peoples filed a
native title application with the National Native Title Tribunal. This application
sought recognition of their native title rights and interests over 7653 km². Ben Ward
was the appointed spokesperson for the 100 traditional owners lodging the
application for an area spanning the Western Australia/Northern Territory border.
In 1995 the claim was referred to the Federal Court and Justice Lee handed down a
decision in 1998 saying that ‘substantial and exclusive native title rights which are
equivalent to full ownership of the land’ exist in the region. Lee held that the native
title rights of the Miriuwung Gajerrong people included, among other things,
‘a right to possess, occupy, use and enjoy the area, a right to make decisions about
the use of the area . . . a right to use and enjoy the resources of the area’ (Meyers
2000, p. 3). Appeals were launched by the Western Australian and Northern
Territory governments and these were successful in watering down the original
decision. A counter-appeal was taken to the High Court by the Miriuwung Gajerrong people and the decision from the High Court recommended negotiations between disputing parties, including sorting out compensation measures.

Third, local institutional supports have been critically important for the translation of Miriuwung Gajerrong native title rights into the OFA negotiations. These negotiations were aided by an Aboriginal Social and Economic Impact Assessment (ASEIA), undertaken by the Kimberley Land Council (KLC 2004), which investigated the range of experiences that the Miriuwung Gajerrong people have had as a result of Ord Stage 1. This involved the KLC compiling data on the current economic and social disadvantage experienced by the Miriuwung Gajerrong people as a result of the uneven access to development in the Ord Valley. The resulting report, entitled *Ord Stage 1: Fix the past—move to the future* (KLC 2004), includes 33 recommendations which a committee of Miriuwung Gajerrong traditional owners aimed to implement. The ASEIA committee initiated dialogue with various local, State and federal government institutions and others who approached the ASEIA committee of their own accord. The text and its deployment partly underpin the OFA.

Some different readings of the OFA

The OFA is still relatively new, and as a sort of treaty between Indigenous and non-Indigenous parties in the Ord there are varying ways in which the agreement is discursively represented. I now explore some of these to examine the uneven visibility of different trajectories. In using the term trajectory I draw on Massey’s (2005) interpretation of different ways of being and, by extension, how these are reified in governance practices. First, I examine the trajectory that posits the OFA as providing compensation for the Miriuwung Gajerrong traditional owners (TOs) for the impacts coming from the creation of Lakes Argyle and Kununurra in the late 1960s–early 1970s, including dispossession and relocation, while also providing for the acquisition of their native title rights and interests in approximately 65 000 ha of land in and around Kununurra. This viewpoint is an assessment of the OFA that positions Indigenous people as central to the agreement.

I then examine a second interpretation of the OFA that interprets it as simply paving the way for expansion of further irrigation development in the Ord Valley. This interpretation situates native title as an impediment to Stage 2 going ahead and views the OFA as a necessity; the OFA is something that the State simply had to negotiate in order to facilitate further intensive development in the region. This interpretation perceives native title as obstructive or something to be dealt with, rather than perhaps an intrinsic value strongly held by Miriuwung Gajerrong TOs. This reading of the OFA is more colonialist. There is some evidence for this thinking in both media reporting around the junctures in the negotiations for the OFA and the setting up of the Yawoorroong Miriuwung Gajerrong Yirrgeb Noong Dawang Corporation (MG Corporation). Reverberations of this perspective can also be seen in the way the OFA is described by State government parties to the negotiations in documents such as fact sheets designed to communicate to the public what the OFA is about. Different trajectories are not mutually exclusive, and stakeholders may slide between more or less Eurocentric positions depending on specific contexts.
The negotiations involved in getting to the OFA and the implementation process now underway were—and are—both complex and demanding. One key instrument in implementing the OFA is the MG Corporation, an Aboriginal corporation designed to manage the means for economic and social development for the Miriuwung Gajerrong people. The State government set the bar high in establishing the criteria that the people had to meet in setting up the MG Corporation, in order for it to be deemed a fit organisation. The Miriuwung Gajerrong people and their workers have so far proved to be capable of meeting these very high standards expected in ensuring a framework of good governance for implementing the OFA.

The OFA as compensation to Miriuwung Gajerrong peoples: a less Eurocentric reading

One of the key celebration points in the work around forming the MG Corporation was reaching satisfaction on 7 July 2006. On this day, the State was then satisfied that the Miriuwung Gajerrong had set up the MG Corporation and the Community Foundation Charitable Trust, and was ready to receive title to land and investment and operational funds. The MG Corporation was officially opened for business on this day. The strategic deployment of native title legislation and the ASEIA report (KLC 2004) indicates the capacity of local Indigenous peoples, when strongly supported by Indigenous and non-Indigenous people from institutions such as the Kimberley Land Council and consultancies, to find a means of engagement with institutions not set up by them. This strategic action demonstrates tenacity on behalf of the Miriuwung Gajerrong people previously excluded from decision-making processes over their country.

The OFA is the culmination of negotiations that began in September 2003 and finished in October 2005 after extensive discussions between the Miriuwung Gajerrong people and the Western Australian government. This negotiation process followed 10 years of litigation during which the TOs from the Ord Basin struggled to get their native title rights appropriately acknowledged by the State. During this time, there was significant uncertainty within the Indigenous community as well with regards to formulating agreement on native title. The celebrations involved in marking the steps in firstly achieving the OFA and then beginning to implement it through the setting up of structures to facilitate greater prosperity for Miriuwung Gajerrong people included the Satisfaction Day celebration of July 2006. One of the speeches on Satisfaction Day came from the chair of the Ord Enhancement Scheme (OES), Helen Gerrard. She spoke about the processes leading up to Satisfaction Day and what is hoped for the future:

We are very happy to have got this far. We have had our disagreements but we have managed to work through them and now we are all getting on with the job. We have learned a lot through the process. It has been very good for our capacity building and our confidence building…

We have surrendered our Native Title and that has been very hard for us; that is our major contribution to the Agreement. We now need to have the ongoing commitment from the State to ensure that all parties implement the letter and the spirit of the Agreement, and especially to make us a true partner in the development of the region. We include the private sector developers in this partnership.
We would like to have a more formal relationship with the State Implementation Committee; to have the resources to meet regularly with properly structured meetings; say 4 times per year in Kununurra.

OES is now up and running. We need to ensure that the State agencies properly engage with the OES process. We want to develop a good working relationship with the Minister for the Kimberley as a key person in the OES. He will also have a role to play in the overall development of Ord Stage 2 and help ensure Miriuwung Gajerrong people become real partners.

These words were spoken before a broad gathering, including the then Deputy Premier Eric Ripper and other assembled dignitaries from local and State governments, members of the private sector, as well as invited members of the public, on the lawns of a function centre fronting Lily Creek Lagoon, a body of water that adjoins Lake Kununurra. The most powerful part of this speech is the clear declaration of the difficulties associated with surrendering native title—how this is far from an easy thing to do. This is qualitatively different from the way native title is frequently understood by non-Indigenous people. As I discuss below, it is often perceived to be something that needs to be overcome before development can proceed. By hearing how an Indigenous leader expresses the experience of resolving negotiations over native title, people might be better able to understand some of the Indigenous values captured in native title. The centrality of connection to country and the difficulties surrounding relinquishing possibilities of continuing that are two things that emerge here. Further, the willingness of Indigenous people to be pragmatic in working towards a better future on their country is echoed in this speech. This speaks volumes about the commitment that the Miriuwung Gajerrong people have to the OFA and its implementation and their willingness to look to the future through building strong partnerships. From this speech, it seems that this is not a group of people dwelling on past wrongdoings or wishing to return to some romantic notion of a pristine past. Rather, in the words ‘become real partners’ there is a genuine sense of a desire for equal participation in current and future development on Miriuwung Gajerrong country.

The change in the governance landscape through this negotiated agreement has the potential to translate into meaningful partnerships in NRM in the Ord and, through the MG Corporation, economic development opportunities for the Miriuwung Gajerrong people. I have delineated one reading of the OFA that is less Eurocentric, that focuses on creating equal partnership arrangements between Indigenous and non-Indigenous peoples. The risks around partnerships in this place, given its specificities mentioned above, will be discussed in further detail in the final portion of this paper.

Paving the way for Ord Stage 2: a colonising perspective

A more Eurocentric reading of the OFA sees native title as simply obstructive to development interests. This is an extreme position but echoes of this can be detected easily around the OFA. The process of acquiring land to begin Ord Stage 2 started before the State government and private parties entered into negotiations leading up to the OFA. Evidence of this is found in texts produced by the Office of
Native Title within the Western Australian government. The Western Australian government’ provides extensive information on its website, including the whole OFA document which is available for download in PDF format. Most of the provisions detailed in this document are in complex legalese that is impenetrable to most laypeople. More accessible information is found in fact sheets and media releases about the OFA and photos of various events leading up to and including the signing of the OFA. These documents describe how the signing of the agreement followed extensive negotiations between the State and the Miriuwung Gajerrong people. In a particularly definitive fact sheet entitled ‘ORD FINAL AGREEMENT: FACT SHEET’, the background of the OFA is described as follows:

The signing of the Ord Final Agreement follows extensive and complex negotiations between the State and the Miriuwung Gajerrong people. These negotiations were initiated in September 2003, following plans by the State to compulsorily acquire 65,000 hectares of land for the development of Ord Stage 2. As native title holders and claimants for the land to be developed, the Miriuwung Gajerrong people had the right to negotiate under the Native Title Act. (ONT 2005)

Table 1 sets out the distribution of funds under the OFA.

While the OFA may seem to be a substantial compensation package and a large bucket of new money upon which to build economic and social development for the Miriuwung Gajerrong people in the Ord Valley, when weighed against both need and the relative benefits incurred from the intensification of agriculture there, a more realistic assessment of the package emerges. The total package is worth $57 million, approximately as much as irrigated agriculture earns annually in the Ord Valley, and this is mostly staggered over a 10-year period. The periodic investment structure is useful in ensuring less risky investment strategies and longer term viability of the development strategies but this message is rarely communicated to the general public. For instance, the Kimberley Echo, a 100 per cent locally owned and operated newspaper in Kununurra, reports the Satisfaction Day celebrations in the following way under a banner title ‘Ord Stage 2 closer’.

An historic agreement, paving the way for Ord Stage II, was scheduled to go ahead in Kununurra today. The agreement between Aboriginal claimants and the State Government brings to an end Australia’s longest-running
### Table 1. OFA breakdown of distribution of funds

<table>
<thead>
<tr>
<th>Amount of money</th>
<th>Mode of distribution (one-off or instalments or as land)</th>
<th>Managing body</th>
<th>Details of purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>$24 million</td>
<td>Instalments over 10 years</td>
<td>MG Corporation</td>
<td>Establish and operate the new MG Corporation. This includes setting up a special Economic Development Unit and an Investment Trust.</td>
</tr>
<tr>
<td>$15 million</td>
<td>Land area</td>
<td>MG Corporation</td>
<td>This area includes Yardungarrl(^a) (50,000ha) and 19 Community Living Areas (CLAs).(^b) The figure includes a percentage of future land development.</td>
</tr>
<tr>
<td>$11 million</td>
<td>Instalments over 4 years</td>
<td>Ord Enhancement Scheme— housed within the Kimberley Development Commission</td>
<td>Funding for the Ord Enhancement Scheme (OES) to address the recommendations of the Aboriginal Social and Economic Impact Assessment of Ord Stage 1.(^c) This includes enhanced social services to the north-east Kimberley.</td>
</tr>
<tr>
<td>$6 million</td>
<td>Instalments</td>
<td>Department of Environment</td>
<td>Fund joint management arrangements for new conservation areas with the Miriuwung Gajerrong people.</td>
</tr>
<tr>
<td>$820 000</td>
<td>One off</td>
<td>MG Corporation</td>
<td>Freehold establishment costs.</td>
</tr>
<tr>
<td>$381 000</td>
<td>One off</td>
<td>MG Corporation</td>
<td>Establishment costs of MG Corporation.</td>
</tr>
<tr>
<td>$119 700</td>
<td>One off</td>
<td>Department of Water(^d)</td>
<td>Fund joint management arrangements for Reserve 31165 (=) at the south end of Lake Argyle. It is a wetland area that will be managed to maintain its conservation values to Miriuwung Gajerrong and non-Indigenous people; further discussion below.</td>
</tr>
</tbody>
</table>

**Notes:**

\(^a\) Yardungarrl is a package of land that is meant to directly replace the country flooded by the creation of Lake Argyle with the construction of the Ord Main Dam. It has a fifty year lease.

\(^b\) CLAs are discrete units of land where the Miriuwung Gajerrong people are able to live on country.

\(^c\) The ASEIA report (KLC 2004) was instrumental in the negotiations between the Miriuwung Gajerrong people and the State government of WA. The OES will run over four years and perhaps beyond this if it is deemed to be a successful process (Employee of Kimberley Development Commission and local Traditional Owner, pers. comm.).

\(^d\) Reserve 31165 is at the south end of Lake Argyle. It is a wetland area that will be managed to maintain its conservation values to Miriuwung Gajerrong and non-Indigenous people; further discussion below.

**Source:** condensed from ONT (2005).
native title claim. It is estimated to deliver benefits of about $50 million for East Kimberley Aboriginal people. However, the Kimberley Land Council (KLC) is swift to point out that the money will not go to individual recipients, instead it will be used for projects and schemes aimed at improving the lot of Aboriginal people. (*Kimberley Echo*, October 5, 2005, p. 1)

A persistent misreading of the economic dimensions in the OFA is common in a Eurocentric reading of this negotiated agreement. The total amount of money in the compensation package is $57 million and, according to the fact sheet on the OFA given by the Office of Native Title and summarised in Table 1, this money is divided between economic development units, long-term investments and land packages—an altogether different arrangement than the simplified inaccuracies presented as front-page material. If this compensation package is considered as reparations for impacts associated with Ord Stage 1 then this is a modest package when weighed against the considerable impact associated with appropriation of resources and a history of alienation for the Miriuwung Gajerrong people from mainstream development opportunities since frontier expansionism began. The two readings of the OFA described do not describe the whole gamut of discursive practices that might regulate interpretations of governance transformations. They do, however, provide some indication of the way in which the OFA is being translated *in situ* and also indicate some dimensions of a space where mediation of water values in the Ord catchment is played.

**Where the water comes in**

The space of loose ends and missing links so far depicted in this case study of the Ord demonstrates beginnings and openings, as well as diverging and tangential movements, in the recognition of Indigenous rights and participation of the Miriuwung Gajerrong people on the basis of this acknowledgement. I now examine incipient acknowledgement of Indigenous rights to water, the growing plurality of participation here, and the relationship of realigning environmental NRM to Ord Stage 2. By doing so, a potentially environmentally just future is glimpsed. There is insufficient space here to explore the growing body of work on Indigenous water values and acknowledgement of these through cultural flows (for more on this, see Langton 2002; McFarlane 2004; Morgan *et al.* 2004; Toussaint *et al.* 2005; Weir 2009; Jackson 2008) or the specific cultural water values of the Miriuwung Gajerrong people (Barber & Rumley 2003).

**Partial acknowledgement of Indigenous rights to water in the Ord**

Just as allocation of land for European development purposes did not involve Indigenous consultation, allocation for water has, in times past, proceeded along similar lines. Even recently, the Draft Interim Water Allocation Plan for the Ord (Water and Rivers Commission, 1999) projected consultation with Indigenous peoples occurring some time in the future rather than during initial discussions around water allocations. An updated Ord River water management plan became public in December 2006. This management plan does provide some recognition of traditional owners’ values with relation to the Ord River, including their preference...
for reduced dry season flows (Department of Water 2006, pp. 47–50). It also reports that ‘it is not possible or desirable to re-establish the pre-dam flow regime’ (Department of Water 2006, p. 49). The argument for a water right for the Miriuwung Gajerrong people is expressed in the ASEIA report (KLC 2004) in the following way:

It is water that has been the root cause of the impacts of Ord 1. From the flooding of country to collect and store water, to the alienation of the farm land that is now where the water is used for agriculture; the collection, storage, distribution, consumption and disposal of water has led to irreversible impacts.

The benefit of the water rights option is that it is the most direct way of ensuring traditional owners have a long-term economic stake in the region. As distinct to a one-off payment of compensation based on some monetary value calculated at a particular point in time, this form of compensation comes from the growing value of the commodity over time. (KLC 2004, p. 24)

However, it seems that this simply was never up for negotiation, and, as a consequence of this, a water right was not included in the OFA.

There is nascent recognition of the different water values belonging to the Miriuwung Gajerrong people in the Ord found through more subtle mechanisms within the OFA. The two main features of the OFA that do relate to water management are:

- **Reserve 31165**—a portion of land at the south end of Lake Argyle that is to be jointly managed between Indigenous people and the (newly formed) Department of Water;
- **Lake Argyle Aquaculture Lease**—special provisions for Miriuwung Gajerrong Corporation to develop an aquaculture business under an aquaculture licence on their lease adjacent to Reserve 31165.

The first provision, Reserve 31165, is novel in Western Australia as water management is usually positioned as a government responsibility. The arrangements around Reserve 31165 mirror the conservation joint management arrangements for the new conservation areas around Kununurra. The aquaculture provision is designed to contribute to the economic development of the Miriuwung Gajerrong people. The objects of Reserve 31165 include: protection of water resource values for Lake Argyle and Ord River Dam; protection of Lake Argyle’s wetland values; maintenance and enhancement of traditional culture of the Miriuwung Gajerrong people; and placement of the care, control and management of Reserve 31165 jointly with MG Corporation and WRC (summarised from Western Australian Government 2005). To achieve these ambitious aims, just over $100 000 was provided in the OFA. While these are useful starting points in increasing Indigenous people’s involvement in management of water resources in the Ord, they are far from a water rights option or reflective of a move towards full co-management of the Ord River as sought by some Miriuwung Gajerrong people.
Plurality of participation

A situated analysis of the OFA within current debates relating to sustainable development, co-management and Indigenous peoples brings together the issues raised so far in this paper. Plurality in NRM, particularly based around a partnership approach with the Miriuwung Gajerrong people and government institutions, is one key feature of the OFA. Large tracts of country are being designated as ‘conservation areas’, owned by Miriuwung Gajerrong traditional owners and leased back to the State for joint management with the Miriuwung Gajerrong people, and Reserve 31165 is to be jointly managed by the Department of Water and MG Corporation. Joint management structures are being set up to improve Indigenous involvement in natural resources in the Ord Valley. These important features of the OFA demonstrate how central the notion of conservation was in the negotiation process between TOs and the State.

The strategic deployment of a sustainability framework can also be perceived in the growing alliances between environmental NGOs and Indigenous native title representative bodies in Northern Australia. Evidence of this comes from initiatives advocating the growth of economies based on sustainable use of resources, such as discussed at the Kimberley Economic Roundtable held in Fitzroy Crossing during October 2005. The Kimberley Economic Roundtable was organised by representatives from the Kimberley Land Council, the Australian Conservation Foundation and Environs Kimberley (a regional conservation NGO) and involved participants from both public and private sectors. Community leaders who were involved in the negotiations around the OFA were also involved in the Kimberley Economic Roundtable and it could be expected that the priorities of those participants may translate into the implementation processes for the OFA. Also, representatives from the local Department of Environment who have a close working relationship with the MG Corporation co-presented with local TOs at the Roundtable (Hill & Goodson 2006, pp. 59–61). This paper was on management of the Ord River from a local perspective. In this sketch of dynamics around conservation advocates in the Kimberley, connections to elements of the OFA are found.

Conservation areas are intended to be jointly managed, concomitant with implementation of the OFA. I argue that this is evidence of a strategic deployment of those building blocks from elsewhere (Howitt & Suchet-Pearson 2006) by the Miriuwung Gajerrong people and their supporting institutions. It is something they wanted in negotiating the OFA, and, unlike a water allocation, was something they received. Having said that, there are risks associated with these governance transformations. Setting up a joint management framework requires relationship building between Indigenous and non-Indigenous people and the shifting of priorities in mainstream NRM institutions. Kununurra is a new town: it was created in the 1960s to service the people expected to come and benefit from the government-sanctioned irrigation area. ORIA began during a time when consultation with traditional owners about their aspirations and values—and how these fit within or alongside new developments—did not happen. Native title has provided the means for TOs to have a say in future development, to a limited extent, and provide compensation for the impacts incurred by an earlier development not of their asking. It also provides a voice in NRM beyond the marginal or non-existent participation that has dominated involvement in the past. Renegotiation of existing institutional relationships will be crucial to successful implementation of the OFA.
Joint management suggests equal participation in determining conservation strategies on country. The risks around joint management, as identified by Natcher et al. (2005) and Margerum and Whitall (2004) in papers focusing on North American contexts, should also be raised in relation to the Ord catchment. The dilemmas that occur when culturally diverse groups that share a colonial history, and have fundamentally different value systems, engage in collaborative management are explained by Natcher et al. (2005). Understanding the difficulties around trust issues is central. The way forward, they argue, is to work on understanding these cultural differences and then build working relationships on the basis of engagement through, rather than subversion of, these multiple ways of being. This is reminiscent of a discussion on ethics in a world of strangers by Appiah (2006) where he says that engagement begins with ‘the simple idea that in the human community, as in national communities, we need to develop habits of coexistence: conversation in its older meaning, of living together, association’ (Appiah 2006, p. xix).

Conclusion: strategic deployment of narratives from elsewhere

The OFA has the potential to reconfigure social, environmental, cultural and economic relations in the Ord Valley. It is a breakthrough ILUA in many ways, and, while a water allocation was not included in the final package, some early indications of more inclusive participation in water management are. There are risks to the success of the OFA, including the challenges associated with joint management arrangements in a (post)colonial context and the relatively modest resources available for implementing it.

While there is a need for rethinking the building blocks of environmental regulation, including notions such as ‘natural resource management’, there is also a need to recognise instances of strategic deployment of Eurocentric discourses to serve Indigenous peoples’ interests. The Miriuwung Gajerrong community-driven OFA is one such instance. The self-reflexivity involved in negotiating future development on the basis of native title, a culturally based principle, is evident in the strategies used by the Miriuwung Gajerrong people in describing their relation to surrendering elements of their native title. The social fabric that shapes the Ord Valley is woven from peoples and concepts from all scales but is firmly situated in the local. An environmentally just future in this space will be more possible when multiplicities are not only acknowledged, as through the OFA, but also when the joint management approaches set up through this negotiated agreement become core work of government agencies managing natural resources in the Ord. On top of this, extending nascent recognition of Indigenous water values would continue to support strong relationships already present in the Ord. Finally, moving beyond a purely Eurocentric framing within negotiations over native title, where what is and is not possible becomes defined by the State, may help to achieve a just future here.

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NOTES

[1] The data sources for this analysis include legal documents, fact sheets, media reports and evidence gathered from field research in the Ord Valley. This field research was based in Kununurra where I worked with Aboriginal organisations as a volunteer. I began travelling to the Ord Valley in 2001 for honours research, returned in 2005 for a scoping trip to negotiate a research agreement with the Kimberley Land Council, and spent 6 months spanning the wet-dry seasons in 2006 working within the terms of that research agreement.

[2] Western Australia does not have an Aboriginal land rights regime.

[3] Such as me when approaching the KLC to formulate a research agreement for my thesis submitted in 2009.

REFERENCES

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