Social Justice, Aboriginal Leadership and Mineral Development in Australia

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Introduction

Australia's Aboriginal people experience serous economic and social disadvantage. For instance, compared to Australia's population as a whole, Aboriginal Australians have a life expectancy at birth that is 17 years shorter; suffer an incidence of kidney disease 10 times larger; are only half as likely to have a post-high school qualification; and are three times more likely to be unemployed (Productivity Commission 2007). At the same time Australia is experiencing a period of sustained economic growth associated with one the largest 'resource booms' in its history, driven in part by ever-increasing demand from China for Australia's abundant mineral resources. Many of these resources are located on the ancestral land of Aboriginal people.

A situation in which unprecedented wealth is being extracted from Aboriginal territories at the same time as Aboriginal people live in poverty and lack access to basic human services represents a profound challenge to social justice. At the same time the resources boom creates an opportunity to address this challenge, if recent changes to Australian law recognising Aboriginal title to substantial areas of land (Strelein 2006) can be used to capture a share of mineral wealth, and that wealth can be used to create social and economic opportunities for Aboriginal people (Kimberley Land Council 2008). In this situation effective Aboriginal leadership is critical in ensuring that current opportunities are turned to maximum advantage. Absence of effective leadership will mean that the current resources boom, like earlier booms in Australia's history, will pass Aboriginal people by.

This is not to suggest that in the past Aboriginal leaders have not sought to protect their people from the negative impacts of mining and tried to obtain for them a share of the wealth it generates. The case study of the Argyle diamond mine outlined below highlights the efforts of

Aboriginal leaders in earlier decades. But they have faced formidable problems, including limited resources in dealing with large, wealthy mining companies; a legal context that afforded limited recognition to Aboriginal land rights; and governments concerned mainly with facilitating mineral development rather than with promoting indigenous interests. This chapter shows how a new generation of Aboriginal leaders, who have benefited from educational opportunities denied their parents and grandparents, are working with 'traditional' leaders to address these problems, to challenge existing power structures and to create more just outcomes from resource development on Aboriginal land.

Leadership in Aboriginal Australia

In order to understand Aboriginal leadership in contemporary Australia, it is necessary to consider both the nature of pre-contact or 'classical' Aboriginal society and politics[1] and the recent history of Aboriginal engagement with mainstream Australia.

Pre-contact Aboriginal societies were generally small in scale, and based around groups defined by their kinship ties and relations to specific areas of land. Leadership was contextual and contingent. Different individuals might play a leading role in different spheres of activity, and specific roles shifted from one person to another depending on their relationship to the individual or individuals around whom, for instance, initiation or mortuary ceremonies were organised. Many aspects of social and religious life were gendered, creating another limitation on the exercise of influence or decision-making by particular individuals. Thus while there were certainly powerful individuals who played leadership roles in key areas of life, their roles essentially reflected personal characteristics such as their age and wisdom; their knowledge of the land, its resources, and of the law and ritual; and their ability as fighters and defenders of their people. Individual land-owning groups exercised a high degree of autonomy in decision-making. In general, each group made its own decisions about use of resources and conduct of its social and political affairs independently of other groups. Thus there was no supra-local (for instance

regional) body with the authority to take and enforce decisions in relation, for instance, to allocation or management of resources (Edwards 1998; Hiatt 1998; Ivory 2005a; Megitt 1966; Myers 1980; Sutton and Rigsby 1982).

In summary, classical Aboriginal leadership was contextual, contingent, and localised, with little or no precedent for supra-local or regional political or social organisation.

Everywhere in Australia, colonial settlement had massive impacts on Aboriginal social and political life, impacts all the greater because of the complete absence of treaties between colonial governments and Aboriginal peoples. The specific experience of individual Aboriginal societies varied considerably, depending on the timing of colonial expansion, the suitability of different regions to European agriculture, and the presence or absence of mineral resources. In eastern, southern and south western Australia, dispossession of Aboriginal people was almost complete by the mid 19th century and some Aboriginal societies had ceased to exist. In the arid centre and the monsoonal north Aboriginal groups were more likely to be left in possession of their ancestral land, or at least remain resident on it while providing labour to the European operators of large pastoral properties.

While the impact of colonial settlement was uneven and helps to explain the great diversity that characterised Aboriginal social and political life today, it is important to recognise that in every instance its effects were fundamental and far-reaching. For example, it is estimated that the Aboriginal population of Australia fell from between 1.0 and 1.5 million in 1788 to just 90,000 in the 1920s (Butlin 1993, 139, 229). Population decline on this scale had massive impacts on Aboriginal societies, on their social and political institutions, and on their leaders and leadership structures.

The imposition of colonial rule had other and more specific effects. In general colonial authorities were ignorant of and paid no attention to Aboriginal leadership structures. Governments and the missionaries that played a key role in administration of Aboriginal settlements in many parts of Australia imposed their own Eurocentric structures that, until the

1980s, provided few opportunities for Aboriginal participation. Aboriginal settlements were highly institutionalised and regimented, and left little space for Aboriginal people to develop or apply decision-making, organisational and leadership skills. Aboriginal cultural and social practices, and the leadership that accompanied them, were often discouraged or suppressed (see for example Blake 2001; Brock 1993). This does not mean that Aboriginal leadership ceased to exist. It often found expression in attempts to resist the worst excesses of colonialism while maintaining a distinctly Aboriginal way of life, and the capacity of so many Aboriginal people throughout Australia to survive the massive impacts of dispossession and colonisation and retain their distinct social and cultural identities and vitality provides eloquent testimony of the power and persistence of Aboriginal leadership. Importantly, leaders generally worked by undermining the dominant formal authority structures, rather than on working in or through those structures (Blake 2001; Peters-Little 2000). The latter was generally not an option available to them.

Another major impact resulted from the practice of government and missions of bringing members of different Aboriginal societies together in centralised settlements, to facilitate their control, the dissemination of European religion and, especially after the second world war, the provision of education, health and other services. In many cases large numbers of previously autonomous land-owning and language groups were drawn from a wide area to a single settlement. The result today is that these settlements, while often referred to as 'communities', are in fact comprised of distinct groups that may have different interests and do not accept the authority of other groups in the community or of structures such as elected 'community councils' (Ivory 2005b, 2005c; Peters-Little 2000). The legitimacy and authority of 'community leaders' is frequently contested from within.

Until the 1970s, Aboriginal people in Australia were in effect excluded from participation in the political mainstream. They were denied the vote in must jurisdictions until the 1960s; suffered serious limits on their freedom of movement and their right to organise politically; were denied access to educational and employment opportunities; and suffered institutionalised racism

across every facet of social, economic and political life. They were also largely denied the benefits of the huge increase in state activity and government expenditures that occurred after Word war II. The result was that by the 1970s Aboriginal people lagged far behind other Australians in terms of their health, their economic status and their access to key public services such as education and housing. While there has been some improvement during recent decades in certain indicators such as infant mortality rates, little change has occurred in the general social and economic status of Australia's Aboriginal peoples. The poverty, lack of economic opportunity and serious social problems facing many Aboriginal communities is a critical part of the context for contemporary Aboriginal leadership, and current difficulties are likely to be compounded in the future by rapid population growth rates (Ivory 2005c, 1-2; Taylor 2006, 19-20). Resources are scarce, and the demands on them many and urgent.

From the 1960s onwards Aboriginal Australians gained greater access to educational opportunities and became increasingly involved in mainstream political activity. They also became very active in creating Aboriginal cultural, social and political organisations. These included Aboriginal legal services designed to challenge racism and allow Aboriginal people to exercise their legal rights; organisations that took responsibility for delivery of health, education and housing services; and regional land councils focused on winning recognition of Aboriginal land rights and on supporting Aborigines in managing and controlling their traditional lands. As Aboriginal people have achieved access to political rights and built their organisational capacity, they have achieved a significant voice in political and policy debate at state and national levels in Australia. Their political profile has also been substantially increased as a result of the growing recognition of Aboriginal rights in land, initially through legislative initiatives by state, territory and national governments, some of which proved abortive, and more recently and very importantly by the Australian High Court's 1992 *Mabo* decision. The High Court found that inherent indigenous rights in land ('native title') survived the establishment of British colonial rule in 1788, and can still survive today where indigenous peoples have maintained their

connection with their traditional lands and where their title has not been extinguished by the valid grant of titles to other parties. In 1993 the federal government enacted the *Native Title Act (NTA)*, which provides a system for recognising native title where it has survived and for a process of negotiation between developers and native title interests regarding the grant of future interests, such as mining leases, in native title lands (Strelein 2006).

As a result of the developments described above, 'Aboriginal leadership' in Australia is now complex and multi-faceted. For most non-indigenous Australians and for mainstream politicians, 'Aboriginal leaders' refers to a small group of nationally prominent individuals with substantial media profiles who have held senior offices in state or national Aboriginal organisations or in government bodies dealing with Aboriginal affairs. In reality Aboriginal leadership is much wider than this group. It includes for instance Aboriginal office holders in regional land organisations, in rural and urban service delivery organisations and in community councils, and people who play leadership roles in grass roots community movements in areas such as health, justice, arts and culture and resource management. More broadly, in much of Australia there is an extremely important and influential Aboriginal leadership at the local and regional levels whose members may not hold any formal office. These are the men and women who exercise leadership and authority because of the knowledge and experience they hold regarding Aboriginal law, custom and spiritual life and regarding the interlocked areas of kinship and rights and interests in land. Their leadership is often exercised in ways that are unobtrusive, relies on informal communication and involves building consensus among individuals and groups with an interest in a specific issue or decision. According to Ivory, such an approach has its roots in classical times:

> … the ceremonial leader of a clan would have an intimate knowledge of ceremonies, stages, sequences, and objects. He would also have to address gathered clansmen if a situation or problem arose. He would lead the meeting but the final decision would be made in conjunction with the others present (2005b, 10).

Because it is often not associated with any formal organisational role and because of its style, white Australians often fail to recognise the significance and even the existence of leadership at this level (see for example Ivory 2005a, 1). However it represents a critical dimension of leadership because it can mobilise sources of legitimacy and support that cannot be mobilised through the holding of office in formal or 'mainstream' organisations, a point illustrated later in the case study. Indeed in at least some regions of Australia 'classical' sources of authority and leadership are becoming more rather than less important, as Aboriginal people use their growing control of land, resources and organisations to reinvigorate ceremonial life and modify institutions imported from the mainstream (see for instance Ivory 2005b, 2005c).

In summary, Aboriginal leadership is fluid, multi-faceted, complex and contested. It is not organised in a hierarchy from the local to the national. The status of leaders at every level, but particularly at the local level, is often unrelated to the occupation of elected office or of formal organisational roles. Partly for this reason, but also because of the way in which Aboriginal 'communities' have been constituted and because of the enduring emphasis on group autonomy, leadership is often contested (Foley 1998; Peters-Little 2000). From a Eurocentric perspective, with its assumptions of the superiority of Weberian hierarchy, the fluid and contingent nature of Aboriginal leadership could be regarded as a major weakness. However it has arisen from key characteristics of Aboriginal societies and their struggle to survive and maintain their distinct identities within the dominant society, and it in fact offers Aboriginal people important advantages in interacting with that society. We explore this theme in examining the role of Aboriginal leaders in relation to large-scale mineral development on Aboriginal lands.

Large-Scale Mining Projects on Aboriginal Lands

Mining has occurred on Aboriginal lands throughout Australia's history, but since the 1950s the scale and extent of mineral development has increased enormously as Australia has established itself as one of the world's leading mineral producers. Historically Aboriginal people

were marginalised from mineral development. They had no say in whether mining did or did not proceed or regarding the conditions under which it would occur. As a result mining projects often resulted in destruction of sites or areas of spiritual significance; caused widespread environmental damage; and generated few economic benefits for Aboriginal people. In many cases the Aboriginal owners on land on which development occurred were simply pushed out of the way, relegated to fringe camps on the edge of affluent mining towns (Howitt 1990; O'Faircheallaigh 1991). Matters began to change in the 1970s as a result of Aboriginal political mobilization and the introduction of environmental impact assessment and cultural heritage protection legislation that created some opportunities for Aboriginal people to intervene in public decisions on resource projects. The introduction of the *Aboriginal (Northern Territory) Land Rights Act 1976* allowed Aborigines in the Northern Territory to claim unalienated crown land and, where their claims were successful, to determine whether exploration (and so eventually mining) could occur on their traditional lands. However legislative initiatives in other jurisdictions were much more limited or non-existent, and it was not until the passage of the *Native Title Act 1993* that Aboriginal people in most parts of Australia had any legal basis on which to influence development on their ancestral lands.

The failure of Australian governments to recognise Aboriginal rights in land did not, it should be noted, result in Aboriginal people passively accepting mineral development. In a number of high profile cases Aboriginal groups attempted, often in alliance with civil society groups, to use direct action and political campaigns to stop developments that threatened their ancestral lands. In some cases they were successful, as in the campaign of the Jaywon people to stop the Coronation Hill gold project near the South Alligator River in the Northern Territory. However in many they were not, as in the campaigns to stop bauxite mining at Yirrkala and uranium mining in the Kakadu region, both in the Northern Territory, and oil drilling at Noonkanbah in Western Australia, where the government provided a police escort to allow drilling rigs to enter Aboriginal owned land containing sacred sites. The general failure of such

campaigns reflects the power of the mining industry and the strong support of governments in Australia for the industry, reflecting in turn a belief by most Australians that placing constraints on resource development is not in the national interest (Stokes 1987).

An alternative approach for Aboriginal people was to negotiate with developers to achieve a share of the benefits created by mining and to minimise its negative impacts. Outside the Northern Territory, formal opportunities to negotiate were rare until the passage of the *NTA* in 1994. (As we shall see, this did not mean that Aboriginal leaders could not create informal channels for negotiation.) In recent years another important opportunity to negotiate with developers has resulted from the adoption by some major mining companies of 'corporate social responsibility' policies requiring them to achieve the support of affected Aboriginal communities for their mining operations. One such company was Rio Tinto, whose CEO announced in 1995 that Rio accepted the existence of native title and would work to establish positive relations with all Aboriginal communities affected its mining operations. These included the Argyle diamond mine, the focus of our case study.

Aboriginal Leadership and the Argyle diamond mine, 1979-2000

In 1979 the exploration arm of the Australian mining company CRA Ltd, whose major shareholder was the London-based Rio Tinto, obtained licences to search for diamonds in the north west of Western Australia, close to Lake Argyle. While the arrival of the pastoral industry and of government and missionaries in the late 19th century had brought many changes and resulted in most people living on cattle stations or on missions, Aboriginal people in the area maintained strong attachments to their ancestral lands, continued to adhere to Aboriginal law and custom, and maintained a vigorous ceremonial tradition. A number of ceremonies were associated with 'dreaming tracks' that traversed the region, marking the travel routes of ancestral beings during the creative period of the Dreaming,[2] and linking Aboriginal traditional owners[3] in the area to many other Aboriginal groups in surrounding regions.

The area in which CRA focused its exploration contained sites of great spiritual significance, not just in a local but also in a regional context. A number of these sites were registered with the Western Australia (WA) Museum, and as such supposedly protected by Western Australia's *Cultural Heritage Act 1972*. In late 1979 and 1980 Aboriginal people traversing the area realised that a number of sites had been damaged by CRA's activities. They approached the WA Museum, demanding that it protect the sites. When it failed to do so one of the traditional owners (since deceased and referred to here by the acronym BJ) made a Court application in May 1980 seeking an injunction against CRA on the basis that it had breached the *Cultural Heritage Act*. BJ was supported by other traditional owners with an interest in Argyle, a recently-formed regional land organisations the Kimberley Land Council (KLC), and the community council at Warmun or Turkey Creek, the largest Aboriginal community in the region. On 7 July BJ withdrew his application, in the expectation that the WA Museum would act to protect the sites. In fact the Museum, under pressure from government Ministers, deferred its legal action (Dixon et al 1990, 116-17). In the meantime CRA had applied, as it was permitted to under Section 18 of the *Cultural Heritage Act* to 'make alternative use' of a number of key sites. In the context of a mining project, this in effect would allow the company to destroy the sites. In September 1980 the Minister for Aboriginal Affairs, on the recommendation of the WA Museum, approved CRA application. CRA proceed with its exploration and, ultimately, with establishing the Argyle mine, one of the world's largest diamond producers, which became operational in 1983. One of the sites was completely destroyed in the process, and another severely damaged (Dixon and Dillon 1990).

In July 1980 BJ, two of his siblings and two other traditional owners were flown to Perth by CRA and, without the benefit of independent legal advice, signed what became known as the Glen Hill Agreement. This provided for capital expenditure of $200,000 in the first year and $100,000 per annum thereafter on a small community or 'outstation' called Glen Hill that BJ and his family had just started to establish some 30 km from the Argyle mine site. In return the

signatories accepted that CRA's activities would disturb sites, and agreed to support establishment of the Argyle diamond project (CRA Exploration Pty Ltd *et al* 1980).

The signing the Glen Hill Agreement has been explained by some as the action of largely illiterate Aboriginal people who were duped by a wealthy and sophisticated mining company and as a result 'utterly betrayed' Aboriginal interests (Dixon 1990, 67). Another interpretation is that BJ had concluded by mid July that there was no prospect of stopping the mine, that the traditional owners would be overwhelmed by the power of the mining company supported by the state government, as had occurred recently at Noonkanbah, and that the only choices that remained was to try and capture some benefit from the project. This was certainly how BJ himself interpreted his actions (Dixon 1990, 73-74), and other traditional owners shared his understanding of their situation:

> They gave it [the mine site] away because blackfella has no cut [power] to fight back, poor buggers. Blackfella thought, 'We have no power to stop this. We'll just have to let them go ahead'. But they thought they should get something back out of the country to help keep building up the place for the young people coming behind (cited in Dixon 1990, 75).

While there may have been widespread sympathy for the position in which BJ and his family group found themselves, the specific arrangements they negotiated caused considerable resentment among other traditional owners of the Argyle mine site and drew criticism from Aboriginal people in the region and from organisations such as the KLC. There exists in the Kimberley a strong and vibrant system of governance, sharing and exchange called *wunan*. Under this system there is pressure to reciprocate when a person is given something of value, and to share benefits that accrue to any participant within the system. However the very limited benefits offered by the Glen Hill Agreement, combined with the fact that the company insisted they be directed at capital spending, meant that BJ had almost no capacity to spread benefits more widely to include other Aboriginal people with an interest in Argyle and more broadly to comply with *wunan* obligations (Dixon 1990, 68). As a result he was subject to sustained attack by other traditional owners (Bruce and Toby 1980, Dixon 1980) and according to one observer

experienced 'a rupturing of relationships and an end of the leadership role he had previously played. In time, as he marshalled greater resources … he has regained part of his formal influence but not his formal authority' (Christensen 1990, 33).

The outcomes just described reflect the serious imbalance of power between Aboriginal traditional owners and the dominant political, economic and social system. As one traditional owner expressed it, 'The white man pushed us off our land. They give blackfella a little bit of land. Then they find minerals and they take it away from us. When are they going to give us a fair go, the bastards …' (cited in Dixon 1980, 72). Having first tried to prevent damage to sacred sites one Aboriginal leader, coming to the conclusion that the attempt was futile, sought to gain some economic advantage from the creation of the Argyle mine. However the massive imbalance of knowledge and resources between his family group and CRA, combined with a state government steadfast in its support of the company and indifferent to Aboriginal interests, meant that the outcome could not possibly satisfy the demands of the wider Aboriginal interests in Argyle. The repercussions of this situation were, as we shall see, long lived.

Pressure immediately grew on the developer of the Argyle mine, Argyle Diamonds Ltd (ADM), to expand to scope of benefits beyond the Glen Hill Agreement. This pressure emanated from BJ himself, motivated by criticism from the wider traditional owner group; from other senior traditional owners; and from leaders of communities affected by the mine, including Warmun and another small adjacent community, Doon Doon (Dixon 1990, 86). In July 1981 ADM agreed to establish what it called a Good Neighbour Programme (GNP) to include annual payments to Warmun ($100,000) and Doon Doon ($40,000). By 1985 total GNP payments had risen to $330,000. A change of government in Western Australia led to the establishment, in that year, of a joint ADM – WA government Aboriginal Social Impact Group to address social impacts arising from the Argyle mine, and an increase in ADM's annual expenditure to some $500,000 per annum for the next five years. However control of expenditure and priorities still remained with ADM and the state government (Dillon 1990, 144-45)

More generally over the two decades after 1980 senior traditional owners and leaders of affected communities engaged in an ongoing process of (often informal) engagement and negotiation with ADM, aimed at both extending the scope of benefits generated by the company and gaining greater Aboriginal control over their use. Their proximity to the mine site, their involvement as employees at the mine, and ADM's creation of a 'community affairs' section to manage its relations with the local Aboriginal communities all provided opportunities to engage with company officials. This led, over time, to an incremental increase in the benefits flowing from the project and a gradual increase in the ability of the Aboriginal groups to determine their own priorities in allocating funds. For instance individual communities succeeded at times in negotiating an annual allocation greater than their entitlement under the GNP, while senior traditional owners negotiated support for outstations at which they resided or personal benefits such as the payment of fines or loans to help purchase vehicles or equipment. Traditional owners also negotiated to gain access to employment at Argyle, and to provide cultural heritage training and other paid services to ADM. In 1997 the company agreed, on the basis of representations to one of its community relations managers by certain traditional owners, to make an annual cash payment of $100,000 to be used at the discretion of the signatories to the Glen Hill Agreement. However as this group excluded a sibling of BJ's of who had not travelled to Perth and also excluded many other people with an interest in Argyle, the arrangement failed to address (and indeed served to increase) tensions engendered by the original Glen Hill agreement. Senior traditional owners also pressed ADM to protect other sites affected by its operations, and to do so through a systematic site identifcation and protection regime rather than on an ad hoc basis.

By 2002 the total flow of financial benefits to communities and signatories had reached $850,000. However this still represented only a tiny fraction (less than 0.15 per cent) of the revenues now being generated by sales of diamonds from Argyle. In addition apart from the original Glen Hill Agreement, ADM had declined to enter into legally binding agreements, so that maintenance of its various 'community relations' expenditures was at its discretion. Further,

the necessity for the traditional owners and communities to engage in an ongoing and ad hoc process of negotiation to obtain benefits allowed ADM's community relations staff to adopt a highly interventionist and often paternalistic approach in their relations with Aboriginal people.

The Argyle Diamonds Agreement, 2004

By this time a number of circumstances surrounding the Argyle diamond mine had changed. CRA Ltd had merged with Rio Tinto in 1995, making Rio Tinto the major shareholder in Argyle, and in 2001 Argyle became a wholly owned subsidiary of Rio. As mentioned earlier, Rio had determined in 1995 that it would seek to establish positive relationships with Aboriginal communities affected by its mines. Argyle was due to exhaust the ore that was accessible by open pit mining by about 2007 and it had been assumed that mining would then cease, but in 1999 Rio decided that ADM should investigate the possibility of moving its operations underground and continue mining, possibly until 2020. In either case, Rio would want an agreement with the Aboriginal traditional owners of Argyle, as a foundation on which to build a continuing relationship with them or, in the event of closure, as the basis for an 'exit strategy' that would resolve outstanding issues and so protect Rio's reputation.

In 2001 Argyle approached the KLC and asked for its participation in establishing a negotiation process with traditional owners that would lead to a comprehensive agreement between them and the company. The KLC was established by Kimberley traditional owners in 1979 as a regional, grass roots regional political organisation to assist them oppose developments threatening their cultural heritage sites and traditional lands and win recognition of their Aboriginal rights. The KLC had also, in 1995, been recognised by the federal government as the Native Title Representative Body (NTRB) for the region, and as such performed a number of statutory roles under the as *NTA*, including assisting traditional owners to lodge and pursue native title claims and certifying agreements between Aboriginal landowners and developers. The KLC's day-to-day operations were managed by an executive director, and in 2001 a young

Aboriginal man was appointed to this position who had been born and brought up in the Kimberley, worked for Aboriginal organisations there, and had then completed a law degree and worked with a major commercial law firm in Perth.

In September 2001 the KLC and ADM signed a Memorandum of Understanding that set out ADM's intention to negotiate a comprehensive agreement with traditional owners and the basis on which the KLC would assist traditional owners in the negotiations; and dealt with a range of practical matters including funding for the negotiation, which would be provided by ADM. At this stage it was envisaged that the negotiation process would be concluded by June 2003. In April 2002 the KLC started preparing for negotiations, retaining specialist anthropological, legal and financial consultants and seeking, in conjunction with ADM, to establish a committee that could oversee the negotiation process and ensure it generated a favourable outcome for traditional owners. Initially a negotiation committee was proposed composed primarily of office holders from local Aboriginal organisations such as community councils. However the KLC and ADM quickly concluded that this body would not be properly representative of, or be regarded as legitimate by, the traditional owners. They also concluded that substantial ethnographic work was required to establish the composition of the traditional owner group and to and appropriate decision making processes based on Aboriginal law and custom. In addition, the history of Argyle over the previous two decades, and especially the exclusion of key Aboriginal people from decision making and from benefits created by the project, had caused considerable distrust and conflict among traditional owners and between the KLC and traditional owners. The KLC therefore spent a considerable amount of time documenting decision-making processes; fully identifying traditional owner groups; bringing traditional owners together, helping them to work through their differences and building trust between them and the KLC; and establishing a structure that could oversee the negotiations.

A second Negotiation Committee was established that included all of the traditional owner groups with an interest in the Argyle lease area, with more substantial representation

afforded the groups with immediate and primary interests (Argyle Diamond Mines and Kimberley Land Council 2003). This Committee consisted of a mix of senior traditional owners, who were knowledgeable about affected lands and Aboriginal law and custom but who had little formal education and whose knowledge of English and experience of formal negotiations was limited; and younger traditional owners who were less authoritative in matters of land, law and custom but had more formal education and experience of working in non-Aboriginal contexts. The Committee also included senior Aboriginal people who, while not traditional owners for Argyle, were connected to the area through dreaming tracks and stories. These individuals would monitor the agreement making process and their presence would add to its legitimacy and the legitimacy of any outcomes from it. In contrast, a feature of the earlier engagement between BJ's family group and CRA Exploration had been a failure to involve senior law people in key decisions regarding the Argyle site (Christensen 1990, 38). A further 'Framework Agreement' was signed in June 2003 between the KLC and ADM extending the time frame for the negotiations and providing additional funding to support it.

The senior traditional owner who had originally led the opposition to Argyle and his immediate family refused to participate in the negotiation process, and refused to be represented by the KLC. BJ was reportedly still bitter regarding what he saw as his abandonment by the other traditional owners and the KLC after the signing of the Glen Hill Agreement, and concerned that the benefits he had managed to negotiate would be diluted under a new agreement. He insisted that ADM should maintain the existing arrangements in relation to community and individual payments and that any new agreement would have to include a settlement negotiated between ADM and him.[4] During 2003-2004 both ADM and senior traditional owners and law people, supported by KLC staff, made repeated attempts to persuade him to join the Negotiating Committee, but without success.

Critical to the negotiation process was the development of what were called 'Traditional Owner (TO) Rules', referring to key negotiating positions to be put to the company by the

traditional owners. The 'TO Rules' emerged from an extensive dialogue, particularly in two three day meetings conducted on traditional owners' country, between the Negotiating Committee, the KLC's Executive Director, and KLC staff and specialist consultants. Negotiating Committee members would articulate their aspirations, concerns and priorities. Consultants would provide information in relation to Rio Tinto policies and to other agreements that it had negotiated; to ADM's existing and planned operations; and regarding negotiation options in relation to specific issues such as financial compensation, protection of Aboriginal cultural heritage and promotion of Aboriginal employment and business development. All involved would engage in analysis of ADM's motivations and strategies and regarding effective negotiation strategies. From this dialogue emerged what were generally very short documents (usually less than one page), written in plain English, setting out the Negotiating Committee's position on each issue.

To take one very significant example, the first 'TO Rule' in relation to protection of Aboriginal cultural heritage was 'No means No'. As mentioned above, under Western Australia's cultural heritage legislation, if Aboriginal traditional owners opposed mining of a particular site (in other words if they said 'No'), a mining company could, as Argyle did in 1979, request the relevant Government minister to give it permission to damage or destroy the site. The traditional owners were saying to Argyle that it should make a legally binding commitment to them not to exercise its right to request that the Minister allow it to damage or destroy a site unless the traditional owners first approved such a course of action. In other words, if they took the position that exploration or mining should not take place in a specific place because of the damage it would cause to cultural heritage sites, Argyle would accept their decision – thus, 'No means No'.

The development of the TO Rules were critical because they expressed, in simple English words that were understood by all the traditional owners and by the company, core negotiating principles and positions. When negotiations were under way, the traditional owners could use the TO Rules in evaluating and responding to company positions and to ensure that the discussion remained focused on issues that were of primary importance to the traditional owners.

The negotiations were at times protracted and difficult, continuing throughout 2003 and into 2004. At times the Negotiating Committee felt under considerable pressure to accept the company's offers, in part because there was no guarantee that the underground mine would proceed. If it did not, only limited time would remain in which to secure benefits for the traditional owners from ADM's operations, and the longer the negotiations took, the less time would be available. Senior traditional owners and law people played a critical role in maintaining the cohesion of the Negotiating Committee and in insisting that ADM accept the core 'TO Rules'. The senior law people played a particularly important role in ensuring that individuals who had only minor or indirect interests in the Argyle lease did not attempt to highjack the discussions or claim for themselves greater influence than they were entitled to under Aboriginal law and custom.

Older Negotiation Committee members, lacking confidence in their ability to express themselves in English and in some cases reluctant to criticise white people, were sometimes hesitant to express positions forcefully to company representatives or to criticise negotiating positions put by ADM. As a result younger traditional owners with more formal education played an important role at the interface with the company, as they were much less hesitant about putting positions assertively and criticising the company. However final decisions were taken by the senior traditional owners, as required by Aboriginal law and custom.

By mid 2004 agreement had been achieved on a majority of issues, but a few key matters were still outstanding and the Negotiating Committee was, with the support of the KLC's Executive Director, holding a strong position on these. At this critical juncture BJ intervened, writing to ADM and stating that he would not accept the legitimacy of any agreement negotiated in his absence. This weakened the ability of the Negotiating Committee and the KLC to hold firm, as did the fact that funding for the negotiations would soon expire and there was no guarantee that ADM would renew it. An agreement was finalised in mid 2004 and signed in September 2004.

The traditional owners achieved a number of their key objectives. In particular, they secured the 'No means No' rule in relation to cultural heritage, meaning that ADM will not seek government approval to damage or destroy a cultural heritage site without the consent of traditional owners. Given the history of the Argyle project, this outcome was of profound significance to the traditional owners. In addition, the Negotiating Committee secured, for the first time, substantial financial compensation for the traditional owner groups, and extension of individual payments to previously-excluded senior traditional owners. A significant proportion of compensation payments is allocated to long-term investment, with the result that when Argyle closes (now expected to be in 2018) the traditional owners will have a significant capital base that can continue to generate an income for them into the future. Funds are also allocated to support mens' and womens' cultural activities; education, business and community development initiatives by individual traditional owner groups; and health, housing and other initiatives in conjunction with government or private sector partners (Galganyem Trust and Kilkaya Trust 2006). All payments to traditional owners groups and to communities now result from a legally-binding contract, rather than from ad hoc discretionary arrangements. In addition, measures were agreed:

- to avoid inadvertent damage to cultural heritage sites and to manage sites already affected by ADM's operations;
- that require ADM to consult traditional owners in relation to environmental management of, and closure planning for, the Argyle project;
- to promote Aboriginal business development and maximise Aboriginal employment at Argyle;
- ensure that resources are available to support effective implementation of the agreement (Argyle Diamonds Ltd et al 2004).[5]

Traditional owners and the KLC were disappointed in some aspects of the agreement, including the fact that financial benefits for traditional owners are based on gross profits, and so are more unstable and less certain than benefits based on ADM's revenues, the preferred alternative for traditional owners; and that ADM's commitment in relation to environmental

management is only to consult the traditional owners and not to afford them a role in decision making.[6]

Conclusion and Analysis

Aboriginal leadership has been in evidence throughout the history of the Argyle project. Senior traditional owners and community leaders sought to use the very limited means available to them to prevent damage to their sacred sites from exploration at Argyle. When this failed and they were faced with the inevitability of a major mine on their traditional lands they sought, over two decades and in the face of a company possessed of overwhelming power and resources, to minimise damage to their sites and to use any available means to secure for themselves a share of the benefits generated by mining. In this they achieved some success. However the benefits they secured constituted only a tiny proportion of the wealth taken from their country, and this fact combined with the manner in which the original Glen Hill Agreement was signed and the exclusion of many traditional owners from a share in the benefits led to bitterness and disunity. This situation partly reflected the decisions of BJ to focus on securing benefits for his immediate family group. This decision is understandable given the poor living conditions and limited economic opportunities facing Aboriginal people in Australia. However it left him unable to draw on the leadership potential represented by other traditional owners for Argyle and by influential law people from the wider region.

After 2001 the involvement of another level of Aboriginal leadership in the form of the Kimberley Land Council and its executive director allowed the traditional owners to take advantage of changes in company policy and the status of the Argyle project to greatly expand the benefits flowing to traditional owners. With financial support from ADM, the KLC and traditional owners worked hard to build a strong negotiating platform, and in the process to overcome the fissures that had developed among traditional owners and between them and the KLC over the previous two decades. Both older and younger traditional owners on the

Committee played key roles in pursuing negotiation goals and securing a favourable outcome, and they were supported in doing so by specialist consultants recruited by the KLC. Twenty years earlier the absence of such specialised technical advice had left the senior traditional owners isolated and vulnerable in dealing with a powerful multinational mining company. Thus the interaction of Aboriginal leadership at different levels was crucial, at the local level in the form of traditional owners deriving their authority from Aboriginal law and custom, and at a much broader regional level in the form of an Aboriginal organization deriving part of its authority and resources from the mainstream legal and political system.

The decision of one senior traditional owner to stand outside the negotiation process militated against an even more favourable outcome. As discussed earlier, traditional Aboriginal society was characterised by a high degree of group autonomy, but also by a substantial capacity to enforce discipline and cohesion within groups through the control by senior individuals of mundane and sacred knowledge, both essential to survival. Contact with European society and the arrival of a cash economy, has served to weaken the ability of the wider group to control the behaviour of individuals and families within the group. The result in the case of the Argyle negotiations was an inability of the wider group, which had agreed to jointly pursue a common goal, either to forcefully incorporate, or to marginalise, an individual whose actions had the potential to undermine the collective effort. Such limits on coercion represent an important constraint on contemporary Aboriginal leadership.

Much of the leadership displayed by Aboriginal people was neither charismatic in nature, associated with holding of formal offices, or particularly evident to a casual observer. The incremental winning of increased benefits over the period 1981-2002 was achieved through a series of low-key, direct engagements between traditional owners and company officials. The most vocal participants on behalf of traditional owners in meetings between the Negotiating Committee and ADM were younger Aboriginal people and KLC consultants, yet without the leadership of older traditional owners the Committee could not have been effective or indeed

even functioned. An uninformed observer would probably not even notice the senior law people sitting quietly at the back of negotiation meetings. Yet their interventions were crucial in ensuring that the power of senior traditional owners was not usurped, thus allowing unity to develop and the Negotiating Committee to perform effectively, and helping to confer legitimacy on the outcome of negotiations.

The role of younger Aboriginal people who have benefited from greater access to educational opportunities, including the KLC's Executive Director, was equally important, highlighting the key place of education in pursuing social justice. Looking to the future, social justice can only be achieved for Australia's Aborigines if many more Aboriginal people across Australia's resource-rich regions complete high school and university, and obtain the skills necessary to negotiate with mining companies and governments and to take up positions of influence within these institutions. An important initiative in this regard is under way in Cape York in northern Queensland. The Cape York Institute for Policy and Leadership was established in 2004 through a partnership involving Cape York Aboriginal leaders, Griffith University and the Queensland and Australian governments. One of its key aims is to develop the leadership capacity of young Cape York Aboriginal people, and it has established a number of programs designed to support them in gaining entry to university, completing their courses, and developing their careers. For example the Institute's Higher Expectations Program (Tertiary) targets talented Cape York young people aged 17 - 30 with high achievement and leadership potential, and provides them with long-term support to undertake a successful tertiary career and maximise their opportunities for educational achievement, career development and effective leadership within their communities. To overcome the multiple disadvantages faced by students from Cape York, the Program provides a specialised and comprehensive support program. The Institute not only offer practical material assistance through scholarships, it also strengthens students' academic, social and emotional capacities, and for the duration of their studies participants receive a

combination of holistic case management, leadership training and professional mentoring. The Program places strong family support and community identity at its core, and upholds as a core value that each participant should in time contribute to their homeland of Cape York (Cape York Institute for Policy and Leadership 2008).

The establishment of similar initiatives across Australia would greatly assist in ensuring that Aboriginal peoples achieve an equitable share of Australia's wealth and the opportunities associated with it, and in ending the social injustice currently experienced by so many Aboriginal Australians.

Notes

1. There is considerable debate regarding the nature of politics and of political leadership in classical Aboriginal society, reflecting the absence of any written record created by Aboriginal people themselves, a general lack of interest and understanding among early non-Aboriginal observers, and in many cases the self-interest of settlers in suggesting that the people they displaced lacked any coherent system of property rights or governance. In addition the diversity that characterised Aboriginal requires caution in offering generalisations. However a number of broad points can be made about pre-contact society and politics that continue to have considerable relevance to contemporary Aboriginal Australia and so to Aboriginal leadership. This is the context for the discussion here.

2. The Dreaming refers to the time long ago when creation figures moved across the landscape and created not only the forms the land now takes, but also the law that governs peoples' interactions with the land and each other and the languages and ceremonies that constitute key elements of their culture. See Rose, 1996: 22-33 for a fuller discussion of Aboriginal concepts of the Dreaming.

3. The term 'traditional owner' is used in Australia to refer to those people who, under Aboriginal law and custom, hold rights in particular areas of land.

4. Authors' notes, Argyle Diamonds negotiations, March 2003 - September 2004.

5. Unlike many comparable agreements the Argyle diamonds agreement is not confidential, except for its financial clauses. The text is available at http://www.atns.net.au/agreement.asp?EntityID=2591

6. Authors' notes, Argyle Diamonds negotiations, March 2003 – September 2004.

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