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Culture and Native title: The view from social psychology

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Abstract

In this paper, I put forward the argument that deliberations by Australian courts on matters involving and affecting indigenous Native Title Claims have been made with a limited view of culture - a concept that is central to any consideration of native title. At issue is the fact that in order to make a native title determination the courts are 'compelled' by the Native Title Act (Australia, 1994) to make comparisons between traditional and contemporary expressions of the customs and laws, or culture, of a claimant group. Yet, such comparisons can be shown to be incomplete when one considers the type of evidence the court has relied upon to ascertain the expression of culture. The following analysis considers culture from the view of social psychology, which is then applied with due respect to the court's deliberations on the native title claim made by members of the Yorta Yorta Aboriginal community.

Keywords: Native Title, Indigenous Australians, Cultural worldviews.

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On 12th December, 2002, the High Court of Australia delivered its determination on the case put by members of the Yorta Yorta Aboriginal community to exercise rights under the Native Title Act over public lands and waterways that straddle the Victoria and New South Wales borders (Yorta Yorta v. Victoria, 2002). Simply put, for a native title claim to succeed, the claimants must demonstrate

1. that they currently observe traditional customs and laws that are connected to those that were observed at the time of sovereign acquisition of the land and waterways, and
2. that such observance has been continuous in the ensuing time period.

Or, as the High Court puts it “The key question is whether the law and custom can still be seen to be traditional law and traditional custom” (Yorta Yorta v. Victoria, 2002, para. 83).

There was also acknowledgement by the court that a claim may be nonetheless successful even if there have been significant adaptations to laws and customs (see para. 44), because change is to be expected, *to a certain degree*, over time. As a result, the court sought to determine if

the change or adaptation ...[is]...of such a kind that it can no longer be said that the rights or interests asserted are possessed under the traditional laws acknowledged and the traditional customs observed by the relevant peoples when that expression is in the sense earlier identified? (para. 83).

To identify the customs and laws *earlier identified*, that is, those that were practised at the time of acquisition of sovereignty, the court relied on what was considered the “most credible source of information concerning the traditional laws and customs of the area” [Yorta Yorta v. Victoria, 2002, para. 62], namely the observations of Edward Curr. Curr squatted on the claimed land during the 1840s, when the area was virtually uninhabited by Europeans. His writings include certain observations of the day to day practices of the claimants’ forbears, including their practices relating to food collection and consumption, the use of land, and community relations. These observations were recalled some thirty or more years later for publication in such texts as *Recollections of Squatting in Victoria* [Curr, 1956].

On the basis of such evidence, the court concluded that the earlier cultural practices had been interrupted to the extent that the claimants could no longer demonstrate their character as a traditional Aboriginal community (see para. 169). Thus the native title claim made by the Yorta Yorta over rights to their traditional lands was subsequently dismissed. Yet, the observations of Curr used by the court to establish the character of the culture of the claimant group at the time of acquisition (see para. 155-156) is open to question.

The court quoted liberally from Curr on the cultural practices of the claimants forbears, including their system of social, legal, hunting, and funerary practices. While these may in fact be reliable observations of traditional cultural practices at the time, evidence based on observation of cultural practices alone (such as anthropological evidence) fails to apprehend Aboriginal customs and laws, or Aboriginal culture, in its

entirety. Current knowledge about culture suggests that the court's determination relied on a limited interpretation of culture.

Culture and Social Psychology

Traditional practices of indigenous Australians are but one element of their culture, or indeed of any culture. Culture more accurately defined is the collective values, beliefs, and attitudes or cultural worldviews that coexist with the practices of a group of people who possess a shared identity (Fiske, Kitayama, Markus, & Nisbett, 1998; Kashima, 2001). Until recent times, however, knowledge about culture was almost exclusively confined to knowledge about cultural practices. This is not surprising, given that the principal researchers studying culture until the 1970s were anthropologists. Since then, researchers in social psychological behaviour have made significant advances in our knowledge of culture and cultural worldviews.

Social psychological research on culture is significant for its distinct method and conceptual focus. Researchers have been able to identify and measure the nature and strength of discrete values, beliefs, and attitudes held by different cultural groups throughout the world (e.g., Schwartz, 1996; Triandis, 1994), including those of non-indigenous and indigenous Australians (e.g., Fogarty & White, 1994; Halloran & Kashima, 2004). Social psychology has also clarified the emotional significance of culture by showing that a coherent set of cultural values, beliefs, and attitudes are essential to the good health and emotional stability of a society and its people, because of the meaning, certainty, and value they give to life (see Greenberg, Pyszczynski, & Solomon, 1997). The emotional significance of a coherent cultural worldview is also

demonstrated by the fact that people defend their culture when it is threatened, and become emotionally unstable when it is undermined (Atkinson, 2002; Greenberg et al., 1997).

Comparing traditional and contemporary Indigenous culture

Social psychology research shows that certain characteristics of contemporary indigenous cultural worldview can be seen as traditional. Research shows for example that Aboriginal Australians report holding beliefs, value, attitudes, and practices that emphasise interdependence between people, and between people and the physical and spiritual worlds (Callan & St. John, 1984; Christie, 1988; Davidson & Reser, 1996). Aboriginal people see themselves as intimately interconnected with others, relative to European Australians who place a stronger emphasis on individual autonomy. Aboriginal people are strongly embedded in their social networks, particularly with their extended kin. As Edwards (1988) claims, “in Aboriginal society there is a greater emphasis on social identity and the obligations placed on the individual to conform to the expectations of others” (p. 42).

The stronger emphasis on interdependence in Aboriginal society compared to European Australians is seen also in numerous contemporary social practices. For example, Aboriginal people place a relatively strong emphasis on reciprocal social relationships, where resources are more readily and widely shared amongst relationship partners (e.g., James, 1994). Aboriginal people also avoid ‘standing out in a crowd’; often reporting a sense of ‘shame’ if they do so (e.g., Duncan, 1994). Furthermore, Aboriginal people engage in a wider circle of interpersonal relationships and are more inclined to

communicate about their social networks in face to face interactions (e.g., Coombs, Brandl, & Snowdon, 1983; Hill, 1989).

While the contemporary cultural worldviews and practices that reflect interdependence are certainly distinct to those of European Australians, they also bear a striking resemblance to those of traditional Aboriginal culture. For one thing, historical observers agree that traditional Indigenous cultures were strongly interdependent (Bates, 1906; Elkin, 1943; Radcliffe-Brown, 1931). Yet, the most telling evidence relevant to the Yorta Yorta claim is in the writings of Curr (1956), who clearly observed that traditional Indigenous cultures were strongly and distinctly interdependent. For example, Curr observed that “it always seemed to me that the bonds of friendship between blood relations were stronger, as a rule, with savages than amongst ourselves” (pp. 128-129). He also recounted that tribal members “invariably addressed each other by a term of relationship” (p. 125). According to Curr, a noticeable feature of the tribe was the “harmonious way in which the individuals composing the tribe lived together” (p. 123). Together, these observations evince the traditional emphasis on an interdependent cultural worldview and correspond to the strong and distinct emphasis on interdependence in the cultural worldviews and practices of contemporary Indigenous societies. On this point, it can be argued that the culture of contemporary indigenous people has its origins in the past traditions and customs (see *Yorta Yorta v. Victoria*, para. 114).

It can also be argued that contemporary Indigenous culture retains its past emotional significance. In the past, Curr (1956) observed a people who identified emotionally with their distinct worldview. The fact that they were able to practice this

worldview undisturbed is clearly implicated in their emotional stability, good health, and longevity that Curr also notes (see p. 111). Similarly, it is still the case that contemporary Indigenous people emotionally distinguish a distinct identity and culture which has been maintained and successfully defended over a period of 200 years of threat. Yet, few contemporary Indigenous Australians enjoy undisturbed practice of their cultural worldview. This is seen as a causal factor (see Ober, Peters, Archer, & Kelly, 2000; Salzman & Halloran, 2004) in the marked display of emotional instability amongst Aboriginal people, as evidenced by the disturbingly higher reported proportions of Indigenous incarceration, infant mortality, suicide, drug dependence and substance abuse, and general medical conditions, as well as lower Indigenous life expectancies (see ABS, 2003; Hogg, 1994; Hunter, 1995; Perkins, Sanson-Fisher, Blunden, & Lunnay, 1994; Swann & Raphael, 1995). The outcomes of cultural disturbance carried by contemporary Indigenous Australians further attest to the emotional significance of their past culture.

Knowledge about the nature and emotional significance of culture gathered by social psychologists allows us to make a more a refined and complete comparison between contemporary and past customs and laws observed by the indigenous Australians. Although the court hearing the Yorta Yorta native title claim inferred the relevance of this type of knowledge in stating “that they do occupy the land in a psychological sense” (Yorta Yorta v. Victoria, 2002, para. 22], this view was not developed to any extent in their judgement. Nonetheless, knowledge about culture from the view of social psychology can demonstrate that

1. The nature or characteristics of indigenous culture can still be seen as traditional,
and

2. Traditional culture can still be seen to be emotionally significant to contemporary Indigenous people.

Given such a demonstration, one may argue that the court erred when it concluded that the Yorta Yorta lost their character as a traditional Aboriginal community (see para. 169)

Implications and conclusion

The basis of this argument and indeed this paper can be summarised as follows. Native Title determinations, like that made on the claim by the Yorta Yorta community, rely heavily on evidence that compares traditional and contemporary Aboriginal customs and laws, or culture, of the claimants and their forbears. Yet, the concept of culture employed by the court is a limited view because it focuses on comparing cultural practices alone, and does not apprehend the cultural worldviews (i.e., cultural values, attitudes and beliefs) of the claimants and their forbears that are integral to any consideration of their culture. The implication here is that decisions made by the courts are based on limited evidence, and are thus questionable.

To address this problem, it is necessary to introduce a more complete understanding of the nature and significance of Aboriginal culture into Native title determinations. This course of action will provide the grounds to make a more comprehensive comparison between traditional and contemporary indigenous cultures. With the aid of social psychology concepts and research, the characteristics and emotional significance of contemporary Aboriginal culture and identity can be demonstrated to have a strong and distinct link with their past customs and traditions. That is, important aspects of

contemporary indigenous culture can be shown to “find their origin in pre-sovereignty law and custom” (*Yorta Yorta v. Victoria*, 2002, para. 44). When such a demonstration can be made by a native title claimant, it may strengthen their argument to have retained their character as a traditional Aboriginal community. What remains to be seen is whether or not this argument and supporting evidence can survive legal scrutiny and directly contribute to deliberations made on native title claims.

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