ASYMMETRY OF RECOGNITION: LAW, SOCIETY, AND CUSTOMARY LAND TENURE IN AUSTRALIA

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In Australia, successive High Court judgments relating to native title claims have affected the interpretation and application of the *Native Title Act* 1993 (Cth) legislation. The *Yorta Yorta* (2002) decision drew a direct link between the notion of a "society" and its "laws" (and the continuity of both) that has been applied to subsequent native title cases. We problematize the equivalence that is seemingly drawn between a "society" and its laws, and question what *recognition* really means in this context. We argue that *recognition* here is the consequence of "*re-cognizing*" Indigenous forms of customary tenure as framed by what are already 'acceptable' social forms. Recognition is in this context grounded on two problematic aspects. Firstly, it is reframing the real world into preexisting models. Secondly but simultaneously, the concept of recognition is itself based on a "necessarily" unequal power relationship between those who recognize and those who are recognized.

Introduction: The Asymmetry of Recognition

In Australia, the High Court's decision in the *Mabo* case[1] in 1992 had far-reaching consequences. Despite colonization and an assumed appropriation of land by the Australian nation-state, the High Court found that the Meriam people of the Torres Strait Island of Mer retained a customary property right to their land: a *sui generis* title, a form of indigenous title called native title that existed within the common law of Australia. This

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High Court decision had repercussions for the recognition of indigenous rights to land, and potentially to sea, throughout Australia. Native title legislation passed in 1993 further elaborated and established the legal basis on which it could be recognized. As many have argued (e.g., Glaskin 2003; Wootten 2003), a significant aspect of the legislation is that it sought to codify and contain the contexts in which the legal recognition of native title could occur.

In this paper, we would like to reconsider this notion of recognition against its ontological and philosophical background. In doing so, we draw on Ricœur (2004) to shed some light on the complex processes that are occurring during the act of recognition, and we will consider its particular reference to the relationship between law and society in native title jurisprudence. Ricœur's discussion precludes little if any reference to cross-cultural contexts and legal pluralism that might have some analogies to the legal context of native title in Australia that we discuss here. His argument and conclusions are, however, of primeval importance for understanding the generic relationship that is at stake between the nation-state and cultural minorities in general and for native title recognition in Australia in particular.

Ricœur's "investigation" into the notion of recognition, as he terms it (2004, 11), was provoked by his perplexity with regard to the semantic status of the word recognition itself within the philosophical debate. There are, he says, philosophical theories of "knowledge" (the French word *connaissance*) but none with respect to "recognition" (French *reconnaissance*). "To explain it in one word," he continues, "the dynamic that steers the investigation lies in the reversal at the level of the grammar of the verb 'recognition' from a usage with an active voice to a usage with a passive voice; I can actively recognize something, people, myself; but I ask to be recognized by others" (Ricœur 2004, 13, our translation).

Thus, in his study of the meaning and processes of recognition, Ricœur (2004) argues that any sort of recognition is necessarily based on two types of asymmetrical relationships. The first is the unequal relationship between those who claim the capacity to act (to recognize) and those who expect or hope to be acted upon (to be recognized) by the other(s). The former Ricœur calls the active voice, the latter the passive voice. We immediately note, though, that Ricœur's understanding of what is a "passive voice" has no direct relationship with the capacity to act of those who adopt the passive voice but is a grammatical structure derived from the double semantics of the verb "recognition," even though this structure describes a theoretical (and as we will see practical) inequality:

> The potential philosophical usages of the verb "to recognize" can be organized according to a trajectory starting from its usage at the active voice and ending at its usage at the passive voice. This reversal at the grammatical level carries the trace of a reversal of similar amplitude at the philosophical level. To recognize as an act expresses a pretention, a claim ["claim" is in English in the original quote], to exert an intellectual mastery of the domains of signification, it expresses significant assertions. At the opposite pole of the trajectory, the demand for recognition expresses an expectation that can only be satisfied in terms of a mutual recognition; it requires procedures and institutions that elevate recognition to the political level (Ricœur 2004, 39; our translation).

The second type of relationship lies within the capacity to recognize, and is derived from what he calls "mutual recognition" in the above quote, where recognition (reconnaissance) detaches itself from knowledge (connaissance) (2004, 43). Recognition is not a process in which one recognizes a thing as whole, Ricœur claims (2004,126 ff), it is not a "one to one" relationship but rather identifies particular elements within the thing to be recognized and from which the (or a) whole can or cannot be extrapolated and reconstructed. This inequality can be further illustrated in referring to Husserl's (1985) famous example of the recognition of a table (which Ricœur himself interestingly does not quote), where it is explained that one is never able to observe a table from all its sides at the same time, whereas one is nevertheless able (or believes to be able) to recognize the thing as a table, and while the concept table refers to a thing in its unobservable entirety. It may, however, well be that the particular thing recognized as a table is in fact something completely different if one had the occasion to observe it from another perspective. Recognition is, thus, an asymmetrical process in which the one who has the capacity or power to recognize attempts to identify particular signs within the other that recall elements of his or her own truth or existence and from which he/she then extrapolates to reconstruct an entirety of the wanting-to-be-recognized other.

Ricœur's examination of the idea of recognition was Eurocentric (in philosophical, etymological, and historical terms); he made hardly any attempt to consider the applicability of his arguments in culturally differentiated or cross-cultural contexts. Despite this, what is interesting is that Ricœur starts his philosophical analysis of the notion of recognition by underlining that it is in the first place a problem of a formal and legal nature. "First of all," he writes, "we need to tackle the enigma of the concept of authority that is implicit in the process of recognition in the sense of 'formally and legally recognizing,' to officially admit a legal existence of

something. . . . This will be our major hardship in the attempt to compose a *Begriffssystem* [a system of understanding . . .] of the idea of recognition" (Ricœur 2004, 35, our translation).

To translate this into the context of native title, we can summarize the application of Ricœur's ideas as suggesting that Aboriginal groups are occupying the passive role (insofar as they expect or hope to be recognized through this process), whereas the law and its actors have the capacity to be in the active role. Moreover, Ricœur's ideas would suggest that those occupying the active role (the law and its actors) will recognize the group as a "society" if they can observe signs that recall their own existence and structure and from which they can extrapolate to reconstruct the entirety of the indigenous "society." Another way of framing this would be to say that those with the capacity to recognize have a specific schema about society that frames what it is they recognize as part of that schema (see Strauss and Quinn 1997). There is no need for a one-to-one relationship between the group and the society; but there is no "society" at all if there are no signs that can be extrapolated from the group, signs that recall the actors' own preconceptions about how society, and its laws, are structured.

The basis of the recognition of what constitutes a society then is the re-cognizing (re = repetition; cognizing = understanding) of a part of that thing that is being recognized according to one's own knowledge and truth (for example, such as a system of land tenure) and the extrapolation of that to a whole (a larger society). In Australia, from the earliest days of colonization, the British settlers extended their concepts of property to the new situation they encountered. They considered Australia a "settled" rather than a conquered land, thereby denying the presence of indigenous Australians, their systems of law, their land tenure systems (which they were unable to recognize), and hence their property rights (Keen 2010, 42). Although this was the overarching legal framework validating colonial settlement, a closer examination of early records shows that many settlers did recognize indigenous Australians as having property in various forms (see Keen 2010). Where such recognition did occur, though, it was through the projection of "English social structure onto Aboriginal social relations," such that "Aboriginal society—at least in its dimension of 'property'—is depicted through the nineteenth and early twentieth centuries as a primitive form of English society" (Keen 2010, 54, 55). This "projection," we argue, has continued into the native title context, with ramifications for indigenous Australian groups claiming native title—most particularly for those groups whose land tenure systems are very different from those land tenure systems more readily understood by the Western legal system. Thus,

the recognition of native title in contexts that do not recall understandable signs for those who have the authority to recognize, such as in the Australian Western Desert where land tenure is based on a complex accumulation of various criteria, may prove elusive (Dousset and Glaskin 2007). The issue of society and how it is recognized (or not), reconstructed from palpable signs (or not), is of particular importance in native title claims in Australia.

Lost in Translation?

As anthropologists working in native title know, there are a number of terms that constitute potential difficulties in translation, whether that be from indigenous languages into English, or from anthropology to law, or vice versa. Society is one such term. It is also a term that has its own checkered anthropological baggage. Thus, it is possible for Ingold to refer to "the specific sense of a 'society' that has long been dominant in social anthropology, namely as a bounded totality or whole that is formed of the sum of its parts" (Ingold 1996: 57–58), on the one hand, and also to say that "no term is more pivotal to the identity of social anthropology than that of 'society' itself, yet none is more contestable" (1996, 57). Ingold makes these comments in the context of introducing a "key debate" in social anthropology: a 1989 debate set up by the motion that "the concept of society is theoretically obsolete" (Ingold 1996, 55). We return to this debate later. For the moment, we note that the idea of society as some kind of bounded totality is one that is not far at all from the ways that native title law has seemingly approached it. Palmer (2009, 6) notes that the term society has been used by anthropologists in different ways, and in ways that are not always or constantly defined, but that these days, in general terms, "a 'society' for an anthropologist is not a 'thing' but comprises sets of relationships." The contrast he draws here is that for law, society is a thing that can be objectified, entified, recognized, and codified, a contrast which parallels what Ingold calls the distinction between relational and entity thinking (Ingold 1996, 87). Strathern has argued that:

> to think of a society as a thing is to think of it as a discrete entity. The theoretical task then becomes one of elucidating the relationship between it and other entities. This is a mathematic, if you will, that sees the world as inherently divided into units. The significant corollary of this view is that relationships appear as extrinsic to such units: they appear as secondary ways of connecting things up (Strathern 1996:61).

If we think about the way in which the concept of society is used in native title jurisprudence, we think we can see something of the mathematics that Strathern refers to here. One of the requirements of demonstrating native title is that claimants have to demonstrate that their contemporary society is fundamentally the same society as that which existed at the time of colonization. This is because the native title rights and interests that are ultimately recognized are those that are said to flow from the laws and customs of the society associated with the claim area at the time of colonization. Strathern's mathematics, then, are exemplified in the *Sampi* case,[2] a native title claim to land, sea, and islands in the northwest Kimberley brought on behalf of two language-named groups, Bardi and Jawi. In 2005, the trial judge found that Bardi and Jawi had been two societies at the time of colonization but that they were one society now, that Jawi society had been amalgamated into Bardi society, with the legal effect that native title could only be found over Bardi country, not over Jawi country. In the judge's view, Jawi had ceased to exist as a separate society. This decision was subsequently appealed to the Full Federal Court of Australia. The primary issue on appeal was the legal question about whether Bardi and Jawi were one or two societies at the time of colonization and whether they were one or two societies now. In 2010, the Full Federal Court found that Bardi and Jawi were one society at the time of colonization and one society now.[3] This meant that native title was found to exist over Jawi country within the claim area, as well as over Bardi country.

In his paper, Palmer (2009) looks at society as being a kind of social group that he compares with other kinds of larger social groupings, such as nations or cultural blocs that have been referred to in anthropological and linguistic literature of past and present. Here, we are not so much concerned with terms or groupings but rather with what appears to be a question of some long provenance, namely, with the relationship between a society and its laws. Of course, in this discussion, much depends on what is understood by a society and quite a bit by what is understood by laws, and a closer look at these two terms and their relationship is an important aspect of this paper. Although we refer here to law, in native title, the phrase "laws and customs" is more commonly used. Just what might differentiate a law from a custom has not been adjudicated on in Australia (but this does not preclude the possibility of this occurring in the context of future native title litigation).

Philosophers, legal theorists, sociologists, and anthropologists have debated the question of what law is and what it does. These debates have a long theoretical history, which we do not attempt to attend to here. We do briefly mention, though, that foundational thinkers in political philosophy—such as John Locke and Thomas Hobbes—argued that the transition

from humans being in a "state of nature" to being in a state of "civilization" was to do with the creation of law to "structure social institutions in order to prevent and settle disputes," such that "law and society bring each other into existence simultaneously" (Donovan 2008, xvi). In this view, neither society nor law appears to precede the other but rather emerge through the interactions that are constitutive of each. It also means that rather than seeing law as only being found in codified "rules" of some kind, the norms and customs that regulate human behavior are an important aspect of this dialectic and arguably include those that are implicit, because they are taken to be "self-evident," in Bourdieu's (1977) terms, as well as those that are explicit. Thus, Donovan describes law as being that which "helps to bind elements of society together" and argues that "law is not all there is to the study of society and culture, but without law there would be no culture or society to study" (Donovan 2008, xvi).

Pospisil's (1967) approach to the relationship between law and society was to contest the idea that there was a simple correlation between them. He argued that the anthropology of law had neglected "societal structure," which he defined as the "segmentation of society into subgroups," and he took the view that human societies do not "possess a single legal system, but as many systems as there are subgroups" (1967, 2, 3). This idea contrasts with what he called the "traditional" conception that law is "the property of society as a whole," such that "a given society is thought to have only one legal system that controlled the behaviour of all its members" (1967, 3). The point here is that how one understands what law is will also affect how one understands its relationship to society. This is an apt point to return to the term "society."

Law and Society in Native Title

Following the High Court of Australia's decision in the *Yorta Yorta* native title case,[4] the term society took on particular significance in native title cases in Australia. In that decision, the judges said that:

> to speak of rights and interests possessed under an identified body of laws and customs, is, therefore, to speak of rights and interests that are the creatures of the laws and customs of a particular society that exists as a group which acknowledges and observes those laws and customs (*Members of the Yorta Yorta Aboriginal Community v State of Victoria* [2002] HCA 58, para 50).

Just what is meant by the term society has been pivotal in native title determinations since. In the *Alyawarr* native title case, it was said that the term society did not "require arcane construction," since:

> it is not a word which appears in the NT [Native Title] Act. It is a conceptual tool for use in its application. It does not introduce, into the judgments required by the NT Act, technical, jurisprudential or social scientific criteria for the classification of groups or aggregations of people as "societies."[5]

This is apparently meant to simplify things, taking a kind of commonsense approach to the notion of society that appears on the surface of it to be fairly self-evident but, perhaps like the "reasonable man" test, is subject to similar kinds of problems concerning the cultural vantage point from which one judges what that may be (also see Epstein 1973).

Yet there are evident premises that do exist in the use and application of the term, and these concern the relationship between a society and its laws. So where "the concept of a 'society' in existence since sovereignty" is seen "as the repository of traditional laws and customs in existence since that time,"[6] this clearly underlines a premise about the equivalence made between a society and its laws and customs. In this scenario, it is the laws and customs that define the extent of a society, and this is one way that native title jurisprudence has approached this issue. In an unpublished paper, barrister Graham Hiley argues that the laws and customs that define the relevant society for native title purposes are not just any laws and customs that might be acknowledged and observed but those that specifically give rise to rights and interests in land and waters, what he calls the "rights and interests qualifier" (Hiley 2008, 1). It is these, he argues, that define the relevant society for native title purposes. This is despite him also citing a passage from *Northern Territory v Alyawarr* in which the *Shorter Oxford Dictionary*'s definition of society as "a body of people forming a community or living under the same government" is said to be "the *relevant* ordinary meaning of society" for native title purposes.[7] By this ordinary dictionary definition, there are indeed many "levels" at which the relevant society of native title holders could be found, and yet it is not evident that these are really the subject of legal contemplation. The "laws and customs" that are decisively drawn upon here, the signs that are relevant for constructing the entirety to be recognized, are likely to be those laws and customs that are readily identifiable as being distinctive and, thus, those that appear to lend themselves readily to codification. Examples of these include the Western Desert cultural bloc, where land tenure is not reliant on descent but is socially and biographically constituted through what has been called "multiple pathways" model, accumulated over the course of an individual's life (see Dousset and Glaskin 2007); the Wanjina-Wungurr cultural complex used in the *Neowarra* case (the cultural bloc being distinguished in part by

the cosmologically significant and nationally iconic[8] mouthless Wanjina ancestral figure);[9] or those groups sharing a particular law, though perhaps not sharing others. There is, we suggest, a positivist application of the idea of law being used in these instances, in which aspects of culture are objectified as codifiable social facts used to distinguish various societies from one another. This positivism is something, too, that we can relate back to Ricœur's notion of what is occurring in acts of recognition, since those aspects that are to be integrated at the basis of legal codification are those that are relevant and recognizable in the social system in which those who have the authority to recognize stand themselves. For example, if an Indigenous society applies a system of transmission of ownership that includes aspects of genealogical inheritance alongside other and equally important principles, the genealogical aspect, since it is normative in the West as well, is likely to become the only aspect relevant during codification.

In his synopsis of the ways in which native title jurisprudence has approached this concept of society, Palmer says that:

> in summary there is a consistent legal view that a community has to be recognisable, because the laws and customs (the normative system) of its constituents unite members through joint or common observance. While it is not stated, it would be a reasonable assumption that those people who did not share these laws and customs but observed others, would constitute a different society or community (2009, 5).

This in turn potentially conflates language-named groups with societies, because such groupings can appear as "things," capable of bounded demarcation: entities that can be "recognized."

Societies and Their Recognition

The question of whether all peoples have a concept equivalent to the English term "society" or a term that might encompass what we might call an indigenous society for native title purposes is also of significance here. For example, in the *Neowarra* case,[10] there was no language equivalent for what was determined to be the relevant "society" for native title purposes —the Wanjina-Wungurr cultural bloc.[11] Nor is there an indigenous term that would encompass what is being called the Western Desert society, to take just two examples. This is not to argue for or against the proposition that these are the relevant "societies" as far as native title goes in these

cases; rather, it is to point out that the self-conscious construction of "societies" for the purposes of native title, even if they do have a legitimate cultural basis, may not be something that is readily conceptualized as such by native title claimants themselves (although a group identity may come to be articulated, perhaps even subjectively understood this way, over the long course of a native title claim; for example, see Glaskin's (2007) discussion of an identification as "Bardi-Jawi" during the Bardi and Jawi native title claim). In the *Rubibi* native title case in the Broome region of northwest Australia, claimants were involved in two regional ritual traditions connecting them with other groups to their north and south.[12] In other words, they shared a significant law (and hence, associated cosmology regarding the ancestral figure concerned) with groups to their north, and a different law, with a different cosmology, with groups to their south. Other groups in the region were not similarly connected to both sets of laws simultaneously. Thus, it is possible for a "society," or shall we say group, to become distinctive by virtue of those things that it shares with others, which are perhaps not shared in the same way by other groups. This would seem to go against the "simple equivalence" model, in which a language-named group, or a language-identified group, is assumed to equate with a society. In the absence of other clearly defined demarcations, sociolinguistic identifications can become the default categorization that marks what constitutes a society.

Another important consideration here is Sutton's distinction between underlying and proximate titles. Underlying titles are "maintained by the wider regional cultural and customary-legal system of the social networks" of "living holders of specific traditional land interests," who hold proximate title to particular country (Sutton 2003, 116). Whether these broader social networks can be neatly shepherded into a single society with one set of laws and customs that gives rise to native title rights and interests is a question we would raise for discussion here. For example, Austin-Broos describes how in the Palm Valley Land Claim, in which there were two contesting parties, the Land Commissioner found that, although both "groups held 'the same traditions and spiritual affiliations,'" only one of them had "'primary spiritual responsibility'" over the area concerned and hence, under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth), were recognized as traditional owners (Austin-Broos 2009, 197).

This question of the relationship between law and society is clearly an important one in native title jurisprudence, and it is one that would seem to be worthy of greater analytical attention. Thus, for example, whether it can be said that a society is bound by one set of laws, or whether it is possible that different laws apply to different parts of what might be

considered a broader society, or whether it is the case that there are different societies within broader social groupings to whom the same laws apply, and who might have their own laws as well, is all grist to the mill here.[13]

The equivalence made between a corporate society and its laws and customs in the native title context reflects the Western legal system's own view of the relationship between law and society, which is of course already implicit in the asymetrical power relationships that underlie acts of recognition. This implicit understanding, which underpins explicit acts of recognition and is drawn upon by the Western legal system, is one that has developed over considerable time. The term society dates back to 1531, and in its early forms meant "friendly association with others," whereas the meaning of a "group of people living together in an ordered community" can be dated to 1639.[14] Jonathan Spencer points out that "the original Oxford English Dictionary entry for 'society' divides its sense into four primary groups with thirty or so sub-senses" (1996, 77). According to Spencer, too, the earliest uses of the word society "incline more to the sense of companionship—which is the main sense of its Latin etymon *societas*—or association" (1996, 78). Thus, drawing upon "ordinary" dictionary definitions of the term "society" in judicial decision making—if this really is what is done, about which we are dubious—is hardly likely to smooth over the difficulties created by the application of the concept, which contains specific cultural ideas. The problem is that the common usage of the term society, as outlined above, can be understood in many ways and is, thus, far from prescriptive. In the legal context, however, this ordinary dictionary definition can be applied in fairly narrow ways, as evidenced in the *Sampi* appeal discussed earlier, in which there were legal questions about how many societies Bardi and Jawi people constituted at sovereignty and in the present.

Conclusion

In his Huxley Memorial Lecture of 2008, Godelier distinguished culture from society and argued that a society embeds people who, at some stage of their local history, reproduce themselves as a people in time and space. Society is about identifying oneself to and with others. Culture, on the other hand, is a set of norms, values, and beliefs—what native title calls laws and customs—that are not necessarily coextensive with the notion of society. "But people," as he writes, "do not limit themselves to living in society. They produce new forms of social existence, and thus societies, in order to live" (Godelier 2009, 10). This strongly contrasts with what many

judges think about and determine societies to be and the laws and customs that are said to define those societies.[15] For judges, culture and society are coextensive, and they look to the applicant and ethnographic evidence with the aim to identify the particular coextension in this regard.

The point of our contribution here is not to provide "arcane" definitions of the terms law and society but rather to remind us that, as Spencer has said, "the ways in which people actually use the *idea* of society create what that society comes to look like in the long run" (1996, 85, emphasis added). Native title claimants frequently speak of having to "jump through hoops" to get their native title recognized; of having to put their claim to country "whitefella way"; of the irony of having the Western legal system test and determine their rights in country. In the early days of native title, especially—before boundaries between native title claimant groups became consolidated through the long years associated with native title claim processes—indigenous Australians commonly speculated about how best to draw boundaries around themselves as groups, because these would, invariably "cut out" persons with whom they considered themselves kin. The particular idea of society looked for in native title is not one that is in a constant process of re-creation; it is not one people enact to live socially, as Godelier says; rather, it is one that already exists within the minds of those with the power to give native title recognition and reflects the asymmetry involved in the process of recognition. In this regard, and drawing on Ricœur, we suggest that what is being recognized in these processes are those aspects of so-called societies that most closely resemble—or can be assimilated toward resembling—the cognitive, legal, social, and cultural frameworks that those who are doing the recognizing unconsciously or consciously apply. Recognition, as he said, is a process grounded in two asymmetrical relationships. One is between the active and the passive voice and role: one has the authority to recognize; the other does not. The other asymmetry lies in the relationship between those particular and individual signs that are recognized and from which the entirety of the other is reconstructed and codified. The particular signs that are at the basis of recognition lie within oneself rather than within otherness; and otherness is, thus, recognized as an alternative reconstruction of oneself.

NOTES

1. *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

2. *Sampi v State of Western Australia* [2005] FCA 777.

3. *Sampi v State of Western Australia* [2010] FCAFC 26.

4. *Members of the Yorta Yorta Aboriginal Community v State of Victoria* [2002] HCA 58.

5. *Northern Territory v Alyawarr* (2005) 145 FCR 135, 78, quoted in *Griffiths v Northern Territory of Australia* [2006] FCA 903, para 513.

6. *Northern Territory v Alyawarr* (2005) 145 FCR 135, 78, quoted in *Griffiths v Northern Territory of Australia* [2006] FCA 903, para 513l; and see Hiley (2009, 1).

7. *Northern Territory v Alyawarr* (2005) 145 FCR 135, 78, quoted in *Griffiths v Northern Territory of Australia* [2006] FCA 903, para 513.

8. Wanjina figures were used in the Sydney Olympics.

9. *Neowarra v Western Australia* [2003] FCA 1402.

10. *Neowarra v Western Australia* [2003] FCA 1402.

11. The distinguishing features of this cultural bloc are summarized in *Neowarra v Western Australia* [2003] FCA 1402 at para 332). In this case, anthropologist Alan Rumsey referred to the most inclusive level of connection with country as being at "the level of the Wanjina-Wungurr region as a whole," but within which are "lower-level identifications" with language identities, estate groups and *wungurr* places (at para 79), perhaps reminiscent of Pospisil's (1967) view of societal segmentation.

12. *Rubibi Community (No.5) v Western Australia* [2005] FCA 1025.

13. The Northern Territory National Emergency Response Act 2007 (Cth), which applies only to remote indigenous communities, is an example of this within broader Australian society.

14. The Etymology Dictionary, available from http://www.etymonline.com/index.php?term=society (accessed November 27, 2009).

15. A significant (recent) exception is the view taken by Justice Finn in *Akiba v State of Queensland (No 2)* [2010] FCA 643 (known as the Torres Strait sea claim). In this case, Justice Finn stated "the answer to the question of native title rights and interests in the waters of Torres Strait . . . would in all probability have been largely, if not exactly, the same whether my conclusion had been one, or four, or thirteen, societies" (at paragraph 13).

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