

The social, cultural and economic costs and benefits of land rights: an assessment of the Reeves analysis

by

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1. The pivotal role of social and economic arguments

1.1. Because the initial primary purpose of the Aboriginal Land Rights (Northern Territory) Act to grant land to Aboriginal people and to recognise traditional Aboriginal interests in land is viewed by Reeves as having been largely accomplished (Reeves 1998: 65), the Review turns its focus towards areas of the Act which it considers have been less effective to date. These it proposes as imperatives or new purposes of a new era of land rights – to obtain better outcomes for the next generation of Aboriginal people in terms of what it describes as economic and social advancement (Reeves 1998: 74). Thus, it is recommended that a preamble and purposes clause be inserted in the Act expressing the future purposes of the Act *inter alia* to provide opportunities for the social and economic advancement of Aboriginal peoples in the Northern Territory (Reeves 1998: 77).

1.2. It is argued that these opportunities can only be provided by reforming the institutional arrangements surrounding the Act. This conclusion is based on an implicit assertion of linkage between the operation of the Act to date and poor social and economic outcomes for Aboriginal people in the Northern Territory. Thus, enhancement of social and economic status, so the argument goes, requires significant departures from the way things have been done so far in terms of controlling and directing the flow of monies generated by the Act.

1.3. While the HORSCATSIA terms of reference do not explicitly identify Reeves' assessment of the impact of the legislation in terms of social, cultural and economic costs and benefits (his second term of reference), an essential interest in this is implied by the pivotal role that social and economic arguments play in rationalising the proposals for radical institutional change. This being so, the purpose of this paper is to draw the Committee's attention to methodological flaws in the Reeves' assessment of social and economic impacts. These detract from Reeves' capacity to adequately address the second term of reference and no doubt go some way to explaining why the Review itself concluded that it was unable to establish the role played by the Land Rights Act in the continuing relative economic disadvantage of Aboriginal people in the Northern Territory (Reeves 1998: 91). Just on the basis of this alone – a failure to establish any link between the operations of the Act and socioeconomic outcomes - it is difficult to see how a case for radical restructuring of institutional arrangements as the panacea for social and economic disadvantage can be mounted, let alone sustained.

2. Methodological flaws in the Reeves analysis

2.1. The most basic methodological flaw in Reeves' assessment of his second term of reference is the lack of any conceptual framework to explain at the outset why an association between the institutional arrangements surrounding the Land Rights Act and social, cultural and economic outcomes for Aboriginal people in the Territory should be expected. To the extent that this might be demonstrated, the specific form and character of any such association should have been specified together with the means by which the impact of land rights institutional arrangements might be isolated and measured separately from any other factors that may have had a bearing on social, cultural and economic outcomes. If the keystone of the Reeves recommendations is the need for institutional change in order to enhance socioeconomic outcomes, it is essential that the precise linkage involved be established – this is not done.

2.2. Reeves' organising framework for addressing issues of social and economic impacts appears contradictory and leaves one confused as to intent. For example, harking back to Woodward (1974: 138) who foreshadowed that there would be no immediate and dramatic change in living standards as a consequence of the legislation and that the road to social and economic equality would be long, Reeves indicates that he also was guided by a long-term (decades?) perspective on benefits from the Act (Reeves 1998: 11). He then goes on to express a personal view that improving the economic lot of Aboriginal people was, indeed, not an initial purpose of the Act (Reeves 1998: 544). Despite this, the primary hypothesis advanced in response to the Review's second term of reference is that because the Northern Territory stands out as having gone farthest in terms of granting land to Aboriginal people then they may also be expected to stand out as relatively socioeconomically advantaged compared with their less land-endowed counterparts in the rest of Australia (Reeves 1998: 78). Implicit in this hypothesis is an understanding that the legislation would (should) have served to enhance social and economic outcomes for Aboriginal people. While these contrary positions leave one confused as to Reeves' expectations of the impact of Act, his use of social indicators data to infer that land rights have not impacted on socioeconomic disadvantage is telling – institutional arrangements have failed Aboriginal people, therefore they must change (Reeves 1998: ii-iii).

2.3. Whether by design, or whether in acknowledgement of Justice Gray's comments regarding a lack of necessary and appropriate information upon which to develop a response to the second term of reference (Reeves 1998: 543), the Review relies heavily on analyses of cross-sectional social indicators data to draw conclusions, by way of inference, about the impact of the legislation. At best, and especially in the absence of baseline data, this provides only an indirect measure of impacts and, at worst, no measure at all. There are several reasons for this:

Lack of a statistical baseline

2.4. A simple, but crucial, methodological failing is the absence of a social, cultural and economic baseline for Aboriginal people in the Northern Territory against which to measure change in these factors post-land rights. Because of this it is difficult to see how the impact of land rights can be properly assessed. For example, it could be that despite

having relatively low socioeconomic status according to current social indicators, the Aboriginal population in the Northern Territory is now much better off than in the 1970s. Indeed, a number of specific case studies of conditions on Aboriginal land prior to and following the granting of land rights are presented in the CLC submission to the Review (but not cited) and these suggest that such improvement did indeed occur (CLC 1998: 51-9).

Timeframes for measuring impact

2.5. It is implied with observations such as, “owning over 40 per cent of the Northern Territory does not seem to have done much for Aboriginal Territorians in terms of health, housing, education and workforce skills” (Reeves 1998: 81), that the social, cultural and economic impacts sought by the Review were in respect of the full 42 per cent of the land mass of the Northern Territory as held at the time of the Review. This is notwithstanding a recognition by Reeves (1998: 61) that only 19 per cent of the land mass has been in Aboriginal ownership for the full 20 years while the remaining 23 per cent has been allocated progressively up to the present. This highlights the lack of another conceptual foundation for the analysis of impacts which echoes Woodward – what length of time might reasonably be required for impacts to emerge? Without such a frame of reference how can the effectiveness of the legislation in this regard be adequately tested? There is an added complication here to do with the issue of in-migration to the Northern Territory over the past 20 years as well as to and from Aboriginal lands and the fact that populations have been augmented over time to varying degrees and at varying rates. How does this affect the analysis of impacts – in short, impacts on who? This is not considered.

The role of the Act in socioeconomic development

2.6. Another inconsistency in the Reeves assessment of social and economic impact is evident in the discussion on the effectiveness of the Act in achieving its purposes to date. These purposes are interpreted and summarised by Reeves (1998: 60) as follows: to grant traditional Aboriginal land to, and for the benefit of, Aboriginals; to recognise traditional Aboriginal interests in, and relationships to, land; and to provide Aboriginal people with effective control over activities on the land so granted. This is what Reeves conceptualises as the first generation of land rights in which the acquisition of land and other rights and entitlements was paramount. To emphasise this focus in the purpose of the Act to date, Reeves also expresses a personal view that improving the economic lot of Aboriginal people was not an initial purpose of the Act (Reeves 1998: 544).

2.7. Using this interpretation of the purpose of the Act, it is therefore not surprising to observe that the use of funds generated by the Act has so far been devoted largely to administering the claims process, to legally defending land claims against opposition and to acquiring land through purchase for the purpose of subsequent claim. That is, the use of monies for economic and social advancement has, quite legitimately in terms of Reeves’ own assessment of the overriding purpose of the Act to date, been of secondary concern. In seeking to emphasise this, Reeves concludes that Aboriginal land rights in the Northern Territory are now about to pass into a new era – one focussed on social and economic advancement via institutional change (Reeves 1998: 75-6). But, to advance this

case for institutional change on an implicit argument that land rights has so far failed to enhance social and economic status (Reeves 1998: 81) is, on Reeves' own logic, to base it on something that was not primarily intended, nor wholly attempted.

2.8. Even if one were to argue that Ss. 64(4) monies have been available for the social and economic betterment of Aboriginal people generally in the Northern Territory, it is questionable whether the funds available in this way were ever sufficient to effect a transformation in economic status, as was pointed out in the 1984 review of the ABTA (Altman 1985: 158). Given the theoretical maximum 30 per cent share of ABR monies under Ss. 64(4) of the Act, a limit on potential impacts of such monies has always been in place, especially when considered against growth in the Aboriginal population from a count of 23,751 in 1976 to an estimate of 51,876 in 1996. Surely, in a public policy context, if one were really concerned to uncover the root causes of on-going Aboriginal socioeconomic disadvantage, the focus would, perforce, be much more on the role of those agencies, viz. the Northern Territory government, ATSIC and other Commonwealth departments, that have specific policies, responsibilities and capacities to overcome such disadvantage, and not on the institutions of the Land Rights Act which have had far less intent and carriage in this area.

Socioeconomic disadvantage – the national context

2.9. The analysis in Chapter 5 of the Reeves Review comparing the socioeconomic status of Aboriginal people in the Northern Territory with that of their counterparts in the rest of the country is conducted ahistorically. If Aboriginal people in the Northern Territory are found to be currently socioeconomically disadvantaged vis-a-vis the rest of the country, how is this to be attributed to land rights alone in the absence of any analysis of other, and arguably far more influential factors, in affecting such relativities. At the very least, this comparison should have included an assessment of the much more extensive and historically longer articulation of Aboriginal people into the mainstream economy in areas outside of the Northern Territory including their greater access over time to education, training, health services and mainstream employment opportunities. This is aside from the sheer weight of geography that clearly favours the rest of Australia in socioeconomic terms against Aboriginal lands in the Northern Territory which are some of the remotest parts of the continent and, up to the commencement of the granting of land rights, were universally among the least developed with an enormous backlog of social and economic infrastructure. In short, there is every reason to expect that Aboriginal people in the Northern Territory would be declared socioeconomically disadvantaged in the national context, with or without land rights.

Remote location –disadvantage or advantage?

2.10. Turning to his analysis of Territory-specific social indicators, there is no argument with the observation that against mainstream measures Aboriginal people in remote rural parts of the Northern Territory show up as clearly disadvantaged. To explain this, Reeves focuses mostly on the constraints imposed by locational disadvantage which is also acknowledged. However, this focus overlooks the extent to which human capital deficits are independent of location and simply reflect lifestyle choices made by Aboriginal people, choices that have been legitimately enabled (in Reeves own view) by land rights.

2.11. This is not just a point about cultural invigoration, not least because social, cultural and economic factors are difficult to separate as the NLC submission to the Review points out (Reeves 1998: 545). It is also because there is a very real sense in which economic activity has been stimulated by land rights but in ways that are not amenable to measurement by mainstream social indicators. Examples of this abound in the literature and include subsistence activities (hunting, fishing and gathering) activities, art and craft manufacture, land management and ceremonial duties (Altman 1987, 1989; Altman and Taylor 1989; Altman and Allen 1992a, 1992b; Altman, Bek and Roach 1996; Bomford and Caughley 1996). To underline the economic importance of this informal activity, one study has estimated that by Australian standards, Aboriginal people on some Aboriginal lands are fully employed in the informal sector (Altman and Allen 1992:142).

2.12. Reeves' conclusion that living on Aboriginal land has an adverse impact on economic and social standing (Reeves 1998: 91) is disingenuous. On the one hand, living in a rural area need not compromise formal employment prospects – after all 11,000+ non-indigenous people in rural parts of the Northern Territory have officially defined jobs as do 5,000+ indigenous people. One study, not cited by Reeves, also shows that the ABS industry classification masks a good deal of diversity in economic activity in CDEP schemes (Taylor 1995). At the same time, the fact that mainstream measures of work and income do not accommodate particular lifestyle priorities of individuals living in different places is as important in understanding socioeconomic differentials as any constraints imposed by geography. It also reflects a conundrum for those advocating simple solutions to on-going disadvantage – land rights bestow a legitimate interest in remote residence but access to the mainstream is considered the key to better outcomes. Thus, in the Miller Report we have the following observation:

“The option [of salaried employment] is not ... open to them [many Aboriginal people] and ... many of them reject it. In the more remote areas which were not colonised to the extent of others and where Aboriginal custom and law remain strong, people have removed themselves from the enforced change of life-style encompassed by a western-style economy ... and have chosen to maintain a life-style compatible with their traditional culture using a mix of components from their own traditional hunter-gatherer subsistence economy together with components of the wider market-based economy ... Not all Aboriginal people have the same concept of the mix of traditional Aboriginal and non-Aboriginal components in their life-style. Many of them who have chosen, or have felt compelled to live in an urban context, accept the employment for wage or salary basis for their livelihood to a greater extent than those who have remained in an isolated rural environment (Miller 1985: 5-6)”.

2.13. The negative consequences of locational disadvantage for Australians generally living in non-metropolitan regions has been of growing policy concern over the past 20 years or so (Logan et. al. 1975; Holmes 1988a, 1998b). From this macro perspective, the populations resident on Aboriginal lands in the Northern Territory have been and still are manifestly among the most locationally disadvantaged in Australia (Faulkner and French,

1983). Not only do they fall firmly within the definition of remote Australia as determined by the Commonwealth Grants Commission, they are physically detached even within this area. On any objective statistical measure of accessibility these localities would excel in their detachment from employment and training opportunities and from social infrastructure. They are poorly connected to transport networks and often distant from even the smallest rural service centres. They are widely dispersed and small in size providing, individually at least, a limited market demand for goods and services. From the experience of market economies generally they are regarded as economically depressed and are typified by outmigration (particularly of the young and most able), chronic undercapitalisation and economic stagnation (Friedman 1966). This is the view of Aboriginal lands clearly adopted by the Reeves Review.

2.14. However, notwithstanding their manifest isolation (some might argue because of it), the evidence of the past twenty years or so of land rights paints another more positive scenario – one that is reflected in a growing population (one recent estimate of the population resident at outstations in North Australia (Altman, Gillespie and Palmer 1998: 58) puts the figure at around 20,000) and associated increase in the number of settlements (Taylor 1993), much greater access to private and public monies, the development of Aboriginal and non-Aboriginal organisational and governmental structures, expanding provision of infrastructure and a growth in the level and range of economic activity. Far from representing the stagnant economic areas of conventional economic theory, it would appear that since the establishment of land rights the remotest areas of the Northern Territory have been characterised by an internal dynamism revitalised by the growing influence of Aboriginal self-determination based on legal access to traditional lands. Figure 1 provides a visual manifestation of this.

2.15. From the bureaucratic perspective of those seeking to provide services and achieve social and economic equity and efficiency goals, such a focus by Aboriginal people on utilising and residing on Aboriginal lands may be construed as a retrograde step on the grounds that it serves to reinforce the locational disadvantage of an already severely disadvantaged group. From a more cultural perspective, however, remoteness is very much in the eye of the beholder. To extend Reeves' reference to the work of Sen (Reeves 1998: 586-7), a person's capability to achieve functionings that he or she has reason to value does not just refer to elementary and utilitarian ones, such as income, but includes more sophisticated achievements such as having self-respect and the capacity to participate in community life (Sen 1992: 4-5).

2.16. To the extent that such achievements are attainable only by virtue of remote residence on traditional lands, the continuing presence of Aboriginal people on Aboriginal lands and the ongoing dispersion of population across these may be seen as a manifestation of Aboriginal perceptions of locational advantage. As such, this represents the spatial optimum in a locational trade-off which is aimed at balancing a range of cultural, economic, social and political considerations. Such a trade-off involves reduced access to urban-based mainstream labour markets, opportunities for education, training and income generation as well as to better housing and other social facilities. In so far as these are perceived as losses, they are set against the not insignificant social, cultural and

economic gains acquired from residence on Aboriginal lands that are alluded to in academic literature and in many of the submissions to the Review. Along with the mere importance of living on one's own country, which is acknowledged by Reeves (1998: 575), and the associated capacity to fulfill cultural obligations and assume a degree of autonomous existence in an Aboriginal domain, land rights has enabled the formation of smaller more socially and politically viable residential units with the associated prospect of productive activity and in-kind income enhanced through traditional pursuits (Altman 1985, 1987; Altman and Taylor 1989). One positive social impact of this population dispersion has been an improvement in health outcomes (Morice 1976; Eastwell 1979; O'Dea, White and Sinclair 1988).

Social and economic outcomes – where is the balance sheet?

2.17. Reeves provides some analysis of income flows from land rights but no tangible assessment of the social, cultural and economic outcomes of expenditures. As indicated above, in assessing outcomes there is a heavy reliance on inferences drawn from cross-sectional social indicators data. At best, and especially in the absence of any baseline data, this provides only an indirect measure of impacts and, at worst, no measure at all. A far more useful and direct approach to assessing the impacts of land rights legislation would have been to catalogue actual economic activities and social infrastructure that have derived from the use of statutory and other monies. While Section D of the Review provides an aggregate picture of cash flows generated by the Act as well as some measure of the manner of cash disbursement, we really still don't know what physical infrastructure and assets are now available to Aboriginal people in the Northern Territory as a consequence of land rights, nor do we know what employment has been generated or what enterprises are now supported. Admittedly, Reeves claims to have been thwarted to some extent by land councils and royalty associations in his search for such information (Reeves 1998: 337), and while it is generally acknowledged that these issues are difficult to research there is, nonetheless, sufficient material in submissions from the NLC (1997: 40-75), CLC (1997: 41-50) and Jawoyn Association (1997) as well as in the general literature on Aboriginal economic development (Altman 1985, 1989a, 1988, 1989b; Marshall 1994; O'Faircheallaigh 1986) to establish something of a balance sheet of actual outcomes against expenditures.

Why should NTAC make a difference?

2.18. This failure to detail the social and economic benefits of land rights leaves one with no indication of the strategic place of land rights monies in, for want of a better term, the Aboriginal economy of the Northern Territory. Notwithstanding this, Reeves is confident in his assertion that by declaring all Aboriginal Benefit Reserve (ABR) monies as public and by centralising control of these under a proposed Northern Territory Aboriginal Council (NTAC), a faster rate of social and economic advancement for Aboriginal Territorians will be ensured (Reeves 1998: 604). But, how can this be determined if we don't know what the impacts of ABR monies to date have been? This introduces the key unresolved economic issue left hanging by the Review – on what basis can Reeves confidently claim that by altering the institutional control over \$18m of ABR monies - the amount he estimates could be available for social and economic advancement (Reeves 1998: 612) – more rapid social and economic progress will be generated when, on his

own estimation, the annual allocation of some \$413m-\$703m of dedicated ATSIC and NT government spending on social and economic programs for Aboriginal people has manifestly failed to achieve this?

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Figure 1. Distribution of Aboriginal settlement in the Northern Territory, 1970 and 1989

Source: Taylor 1993: 57