Economic implications of inalienable and communal native title: the case of Wik forestry

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Economic Implications of Inalienable and Communal Native Title: the Case of Wik Forestry

Wik people on Cape York Peninsula, Queensland, have been granted native title over 18500 km² of customary land. This was seen as a coup by Wik people and it appears that they have a relatively unencumbered right to manage a large proportion of this land, including for commercial timber production. However, economists of the private property rights tradition are of the view that the inalienable and communal nature of native title presents an obstacle to economic development in remote indigenous communities that will preclude the ‘optimal’ level of output being achieved and prevent the land from realising its full market value. In this paper, it is argued that when social and ecological values are included in the analysis, long-term, secure, individualised and alienable rights to natural resources are insufficient conditions for maximising resource use efficiency on indigenous land. For Wik people, factors such as their low Western education and skill levels, complex customary social environment, limited financial resources, the high importance of non-pecuniary land management objectives, and the remoteness and low productive capacity of their land, mean that private property rights to natural resources on customary land are unlikely to be welfare improving or enhance economic development opportunities.

Keywords: property rights, land use and tenure, indigenous
1. Introduction

Relative to other Australians, Wik, Wik-Way and Kugu people (referred to hereafter as Wik people) living in Aurukun Shire, Cape York Peninsula (CYP), are socio-economically disadvantaged. They are largely outside the market economy and financially depend on government programs, including the work-for-welfare Community Development Employment Program (CDEP). Nevertheless, some elders aspire for their people to be economically independent and self-reliant (Venn 2004a). While opinion varies about how to promote economic development in remote indigenous communities, there is an emerging consensus among economists and indigenous leaders that economic development is urgent and necessary to improve the welfare of inhabitants and for the survival of Australian indigenous cultures (Pearson 2000; Ah Mat 2003; Duncan 2003; Altman 2004).

Wik people are poor in terms of financial and (Western) human capital. However, the High Court judgement in *The Wik Peoples v State of Queensland and Others; The Thayorre People v State of Queensland and Others 1996* (the Wik case), the granting in 2000 and 2004 of native title over portions of the Wik land claim by the federal Court, and legislated future changes of land tenure under the Queensland *Aboriginal Land Act 1991*, indicate that Wik people may become relatively rich in natural capital. In the late 1990s, Balkanu Cape York Development Corporation (Balkanu) representatives of Wik people identified commercial utilisation of the Darwin stringybark (*Eucalyptus tetrodonta*) native forest timber resource on customary land as one potential engine with which to drive the elders’ vision of economic independence. Venn (2004a) found that, despite generally low harvestable timber volumes per hectare and long distances to markets, a Wik timber industry could be commercially viable.
Wik forestry opportunities will be shaped by the Wik community’s property rights to utilise native forest timber. Native title determinations have conferred inalienable (except to the Crown) and communal native title to Wik people. Economists of the private property rights tradition assert that alienable, secure and individualised land tenure (held by a single household or firm) is desirable, even essential, for wealth creation, economic efficiency and ecological sustainability (Coase 1960; Hardin 1968). Therefore, it is not surprising that some economists and indigenous leaders have argued that the collective and inalienable nature of Australian native title property rights to land prevent the land from being managed to maximise marketable outputs and from realising its full market value (Williams 1993; Warby 1997; Hughes and Warin 2005; Karvelas 2004; 2005).

This paper examines the economic implications of inalienable and communal rights of Wik people to native forest timber. The following section describes the study area and forest management objectives of Wik people. Next, rights to natural resources conferred by native title and Wik rights to timber are outlined. Natural resource use efficiency under native title rights and private property rights is then discussed. The extent to which native title constitutes a barrier to efficient utilisation of resources is explored in the context of Wik forestry, and several social and cultural obstacles to economic development are summarised.

2. Study area, and Wik customary and contemporary management objectives

Wik people have historical and spiritual connections with land along the west coast of CYP between the towns of Napranum and Pormpuraaw and east to the Great Dividing Range (Dale 1993). Balkanu defined a study area of 841 500 ha for this research (approximately 30 per cent of the Wik native title claim), including Aurukun Shire and part of Mining Lease 7024 in Cook Shire. This area is highlighted in Figure 1 and is hereafter referred to
interchangeably as the ‘Aurukun area’ or ‘study area’. In 2005, the study area consisted of land with four distinct combinations of land tenure and title. Aurukun town (formerly a Mission settlement for Wik people), is the only permanent settlement in the study area and is home for about 900 Wik, who account for 88 per cent of the town’s population (ABS 2002).

Figure 1 near here

The Aurukun area is topographically level to gently undulating and dominated by two major vegetation groupings, namely Darwin stringybark forest and wetlands, with the former covering approximately 70 per cent of the Aurukun area. The high level of interest of Wik people and Balkanu in native forest timber harvesting is partly due to the fact that 230 000 ha of commercially valuable Darwin stringybark forest in the Aurukun area grow over valuable bauxite deposits and are situated on current and potential future mining leases (Venn 2004a). The Queensland government has publicised its intention to call for new expressions of interest in the bauxite resource on former Mining Lease 7032 and has declared that the resource will be developed irrespective of the views of Wik people (Fraser 2004). Presently, land on CYP is prepared for open-cut bauxite mining by clearing vegetation with bulldozers and chains, windrowing woody debris and then burning.

Wik people have managed Darwin stringybark forests with regular burning to provide many valuable economic and cultural goods and services, including: native (and in recent history, exotic) plant and animal foods; customary tools, arts and crafts; classrooms for passing on indigenous knowledge to children; settings for important Dreamtime stories; and venues for customary ceremonies. According to Sutton (1988, cited in Martin 1993), for Wik people ‘there is no wilderness’. Western natural resource extraction practices that can be modified to be culturally appropriate, including selective logging, are considered by Wik
people to be consistent with their customary way of life, land management objectives and conservation ethic (Venn 2004b).

Wik elders have multiple objectives for a timber industry operating on customary land (Venn 2004a; 2004b). Employment generation that fosters technical and entrepreneurial skill development is their highest priority forestry objective, particularly generation of on country (outside town) employment to encourage population decentralisation, reduce social problems in Aurukun town and facilitate better connection of young people with country

1, not profit maximisation. As the Wik envisage ecotourism becoming a major economic activity in the future, another non-pecuniary objective is to limit logging in forests outside mining leases, especially within the catchments of wetlands.

3. Wik rights to timber in the Aurukun area

The Mabo and Others v State of Queensland (No. 2) 1992 and Wik High Court cases, and the Native Title Act 1993 and Native Title Amendment Act 1998 have been central to defining Australian native title, establishing a framework for the application for native title, determining the exclusive existence or co-existence of native title on particular land tenures, protecting native title, and specifying procedures for negotiating future land uses that may affect native title. There are two key characteristics of native title rights. First, native title holders and claimants may surrender their native title to government in exchange for (Western) title issued by the mainstream tenure system under an agreement with the federal or a state or territory government, but native title cannot be directly transferred to someone outside the clan, group or community. Second, native title rights are defined as the communal, group or individual rights and interests possessed under the

1 When used by or in the context of Australian indigenous people, the term country refers to more than a geographic area. It encompasses all the land, sea, rivers, estuaries and other natural resources, sacred sites, stories, and rights and cultural obligations associated with that geographic area.
traditional laws acknowledged and the traditional customs observed by the native title holders.

No Act or court ruling has specified exactly what rights to land and other natural resources are conferred by native title. Instead, the details of rights are determined on a case-by-case basis, depending on the local law and custom of each indigenous community claiming native title. Meyers (2000) and Pearson (2003) observed that where native title in Australia includes the right of occupation, this creates an interest in land or possessory native title. They have argued that possessory native title should confer a generally unencumbered right upon native title holders to manage and determine uses of the land to support their economic and cultural development. To date, possessory native title determinations have generally excluded rights to commercial utilisation of minerals, petroleum, water and fish. However, rights to utilise other natural resources have typically included statements to the effect that they must be managed in a manner consistent with the traditional customs and laws of title holders to land. The interpretation of consistent is paramount.

In 1993, the Wik lodged a native title claim over 27 000 km² of their traditional land. For the purposes of native title determination, the claim area was split into two parts: Part A, approximately 6000 km² confined to areas that have only ever been unallocated State land or land under forms of title granted for the benefit of Aboriginal people; and Part B, the remaining 21 000 km² that incorporates seven pastoral leases and four mining titles. In 2000 and 2004, the Federal Court granted Wik people native title over all of Part A and 12 500 km² of Part B, respectively (Federal Court of Australia 2000; 2004). Negotiation is continuing over the remaining Part B Wik claim area, including Mining Lease 7024 on which Wik people presently have no rights to natural resources.
Justice Drummond conferred upon Wik people the right to possess, occupy, use and enjoy the Part A determination area, including rights to: engage in a way of life consistent with the traditional connection of the native title holders to the determination area; and take, use and enjoy the natural resources, including timber, from the determination area for the purposes of manufacturing artefacts, objects and other products, and disposing of those natural resources and manufactured items, by trade, exchange or gift (Federal Court of Australia 2000, Order 3 parts e and f). Rights to natural resources in all Part B determination areas within the Aurukun area are identical to the Part A determination, except that rights to produce and sell goods manufactured from natural resources are not specified.

Section 45 of the *Forestry Act 1959* (Qld) includes a provision that forest products are the absolute property of the Crown ‘unless and until the contrary is proved’. In granting possessory native title rights to timber resources, the Wik native title judgements have proved the contrary. Selective logging of timber appears to be consistent with the customary utilitarian connection of Wik people to their land. Forestry activities on native title lands would be subject to legislation, policies and codes of practice that apply to forestry operations on freehold land in Queensland. However, with the exception of the Federal Government *World Heritage Properties Conservation Act 1983*, these regulations can only affect how and where forestry operations are conducted in the Aurukun area, not prohibit selective logging in native forest (Venn 2004a). Nevertheless, the rights of Wik people to natural resources are fluid and are likely to change with anticipated future native title rulings, the issuing of a new mining lease over former Mining Lease 7032 and the transfer of Aurukun Shire lease land to Aboriginal freehold tenure under the *Aboriginal Lands Act 1991* (Qld).
4. Resource use efficiency under native title and private property rights regimes

Economists of the private property rights tradition have argued that the inalienable and communal nature of native title prevents natural resources from being put to their ‘optimal’ use and realizing their full market value (Williams 1993; Warby 1997; Duncan 2003; Hughes and Warin 2005). This is particularly because inalienability prevents land from being managed by people who most value the productive potential of the land and limits the capacity of native title holders to raise capital by mortgaging land. Communal property rights reduce incentives for individual effort to improve land (increase the stream of income generated by the land) and manage land in an ecologically sustainable manner. In addition, communal rights are likely to increase transaction costs relative to a private rights regime, thereby reducing the number of wealth generating exchanges that will take place.

In the absence of market failure, the proposition that alienable and individualised property rights to natural resources constitute the most efficient method of organizing the allocation of resources, has proved resistant to economic analysis. However, the assertion that communal and inalienable native title rights to natural resources on customary indigenous land will promote an economically inefficient allocation of resources relative to a private property rights regime depends on which and whose costs and benefits are included in the analysis. In the neoclassical economics framework, the resource allocation that maximises profit and the market value of land is equivalent to the resource allocation that maximises economic efficiency. This is a narrow concept of economic efficiency, however, and a sustainable development framework appears to be more relevant for policy analysis in remote Australia, especially with regard to cultural and natural capital. Under sustainable development, the economically efficient resource allocation maximises the flow of cultural, ecological and pecuniary outputs from land, subject to constraints on human, natural and
produced capital stock levels. That is, the economic value of land is maximised, not its market value.

4.1 Inefficient resource use under private property rights regimes due to ignorance of customary economies

The traditional optimistic story about the emergence of private property rights is that they arise in response to changing transaction costs, technologies or exogenous prices. But, there is also a less optimistic explanation where private property rights emerge to serve the self-interested rent-seeking behaviour of rulers or organized interest groups (Levmore 2002). Both stories appear to apply to the development of Australia. When settler families took up large agricultural landholdings, they displaced indigenous clans that derived subsistence, cultural and spiritual values from the land. It is arguable that private property rights regimes have not always led to Kaldor-Hicks efficient outcomes when the welfare of indigenous Australians is considered.

Altman (2001) described the economies of remote Australian indigenous communities as hybrid economies with customary, market and state sectors. Customary activity such as hunting, fishing and gathering, constitutes a substantial part of the hybrid economy (Asafu-Adjaye 1996, Altman 2003). Management of the customary economy is part of the wider phenomenon of engagement of indigenous people in natural resource management through formal and informal activities under caring for country and community ranger programs. These schemes are predominantly funded by the CDEP and generate high levels of social benefits at the regional, national and international level. Customary and contemporary land management by indigenous Australians provides a cost effective conservation strategy in remote parts of Australia (Whitehead 2002). Social benefits arising from the customary sector of the economy have been overlooked in analyses of economic benefits of
indigenous land rights and so have the opportunities for this sector to be resourced to increase the level of benefits generated (Altman 2004).

Australian High Court judges appear to have favoured restriction on alienability of native title because one of the laws and customs observed by indigenous Australians is inalienability - *country* is managed for ancestors, those alive today and for those yet to come. For many indigenous people, belonging to a clan with customary communal rights and obligations to an estate is critical to their identity and is part of the reason why they choose to continue to live in remote settlements (Manning 1997). Large communal landholdings may better facilitate cultural activities, including subsistence hunting, fishing and gathering, art and craft manufacture, customary land management and ceremonial business, since these activities are spread over large areas that may alternatively include several private landholdings.

In considering the problem of accommodating indigenous cultural heritage values in resource assessment and valuation, Venn and Quiggin (2005) asserted that total economic valuation of Australian indigenous cultural heritage is unlikely to be feasible. Therefore, it is unclear how the socio-economic implications of privatising rights to natural resources on traditional indigenous land could be quantitatively evaluated. Throsby (2001) argued that cultural capital, such as the knowledge and skills of customary hunting, and the association of a clan’s creation story with landscapes, has zero substitutability. The precautionary principle applying to natural capital in strong sustainability development theory appears pertinent to human culture. That is, a high level of care needs to be taken with regards to economic organisation and activity that may diminish the stock of cultural capital. None of these issues have been afforded sufficient attention in the debate about the efficiency of inalienable and communal indigenous land tenure, and it is not clear that indigenous
cultural heritage values can be maintained as efficiently under individualised and alienable tenure systems.

4.2 Inefficient resource use under private property rights regimes due to environmental externalities and imperfect information

By definition, positive and negative environmental externalities associated with natural resource management are incompletely internalised. The resulting divergence between private and social costs and benefits lead to socially inefficient utilisation of natural resources. For example, pastoral enterprises dominate land use in remote Australia, but graziers cannot completely capture the non-market indigenous cultural heritage and biodiversity values associated with the outback. Consequently, stock numbers, particularly during droughts, may be higher than the socially efficient level. Overgrazing when feed is temporarily inadequate may have long-term implications for land productivity and non-market values, which over time could lead to impoverishment of all graziers and members of society who enjoy the Australian outback.

Episodes of rapid land degradation have occurred when the holders of individualised and alienable property rights to land have managed land for private wealth maximisation. Explanations have typically focused on differences between private and social discount rates or other market failures, rather than the property rights regime. Quiggin (1992) extended the winner’s curse analysis from auction theory to argue that if there is considerable uncertainty about productive capacity, market forces will allocate natural resources to those with the most optimistic expectations about their productive capacity. In carrying out the optimal program derived from those expectations they will generate excessive land degradation. Thus, under private property rights, the process of pioneering
has a systematic tendency to produce adverse outcomes involving high rates of land
degradation - the pioneer’s curse.

History demonstrates that private property rights in land have not always promoted
ecologically sustainable and economically efficient utilisation of natural resources in
Australia (Pannell 2001; Quiggin 2001). Much of the Australian indigenous land estate has
high conservation value (Australian State of the Environment Committee 2001). Freshwater
and estuarine wetlands in the Aurukun area have been identified by conservation groups as
ecosystems that may prove to be equivalent in biological diversity and conservation
significance to Kakadu National Park (Smyth 1993). Agriculture in northern Australia is
still in a pioneering phase. From a sustainable development perspective, the assertion that
private property rights to natural resources on customary indigenous land will maximise
social welfare cannot be justified.

5. Compatibility of inalienable and communal native title with forestry-based
   economic development for Wik people

Economists typically argue about whether forms of property rights will promote the
economically optimum allocation and use of natural resources, not whether a particular
form of rights could be compatible with some sub-optimal level of economic output.
Private property rights will encourage activities that maximise market values of natural
resources. But, in the case of economic development on remote indigenous land where
many complex non-market values exist, it is doubtful whether analysts can be confident
that alienable and individualised property rights will maximise the economic (market and
non-market) value of natural resources to society. This suggests that private property rights
may not be the only economic foundation for a market economy. Indeed, modern market
economies are not solely built upon private property rights held by individuals, for example
infrastructure supplied by government, strata title in townhouse developments and joint-stock and not-for-profit firms (Godden 1997).

Private and native title rights to natural resources constitute impediments to economically efficient resource use – the former particularly in terms of non-marketed outputs and the latter particularly with regard to marketed outputs. Attempting to evaluate the relative magnitudes of market failure is probably an exercise in futility. However, with reference to Wik forestry, it can be reasoned that resource use inefficiencies associated with native title are unlikely to be as severe as asserted by advocates of private property rights.

Indigenous Australians have long been displaced (and their native title rights extinguished) from parts of Australia that are attractive for economic development, so that almost by definition, most land that has been or potentially could be conferred as possessory native title is unattractive for development. Therefore, the argument that the inalienable and communal nature of native title prevents land being put to its most economically efficient use is likely to have limited relevance to most of the continent where native title survives. In the Aurukun area, remoteness, poor soils and low cattle carrying capacity (CYRAG 1997) suggest that the opportunity cost of private agricultural production foregone as a result of pursuing communal enterprises, including small-scale native forest logging, is small.

The criticism that inalienability precludes native title holders from raising finance to drive economic development through mortgaging land is simplistic. Certainly, if potential borrowers do not have the necessary collateral for a loan, for example alienable land, it is highly unlikely that financial lenders will view favourably an application for a loan (except where a government or philanthropic investor is guarantor) and, therefore, the borrowers are unlikely to have a loan performance history. However, the criticism fails to recognise
the high importance of non-pecuniary objectives in indigenous enterprise development and the fact that, in determining creditworthiness, financial lenders not only consider an applicant’s collateral, but also their ability to repay the loan.

Wik elders envisage establishing a timber industry that maximises on country employment generation and fosters technical and entrepreneurial skill development, not an enterprise that maximises profits. A feature of many Australian indigenous cultures, including the Wik culture, is the obligation to share resources among extended families, which presents an obstacle in a market economy to individual accumulation of capital and hence to obtaining and servicing a bank loan. For these reasons, a Wik forestry industry will be judged as a high-risk venture by private financial lenders irrespective of whether Wik rights to land are alienable.

With consensus among the communal native title rights holders, the Native Title Act 1993 permits native title land to be ceded to government (extinguished forever) in exchange for another form of rights to natural resources, including individualised and alienable rights to land under private freehold title. However, the high importance of connection with country for the social, cultural and spiritual well-being of indigenous Australians raises ethical and practical issues surrounding the alienability of native title land. Suppose Wik people were granted freehold title and defaulted on repayments of a mortgage over their traditional land. Presumably the lender would wish to sell the property to recover the debt, but what would happen to the Wik? Eviction would be politically intolerable. Even if Wik native title land became alienable, government or philanthropic investors would be required as guarantor on a private loan or as a source of ‘seed’ funding to facilitate economic development.

There are alternatives to using rights in individually held and alienable land as collateral for commercial credit. Altman and Cochrane (2003) and Duncan (2003) have highlighted the
potential for long-term leases conferring rights to particular natural resources on native title land (as distinct from interests in the land) to be accepted by banks as security for loans. First Nations people in Canada with inalienable rights to land have used rental income from leases on their land as collateral for loans from private banks (Nagy 1996). Wik people could potentially raise finance using long-term leases to timber resources as collateral. If native title holders default on a loan with a particular resource as collateral, only rights to that particular natural resource would be lost, not rights to the land. However, this is contingent upon native title conferring tradeable rights in valuable natural resources. Determinations to date have excluded rights to particularly valuable natural resources, such as minerals and fisheries.

Presently, Wik people do not have the financial resources, entrepreneurial skills and knowledge to put land to its most profitable use. Consequently, they are unlikely to value the wealth generating capacity of their land as highly as a non-indigenous entrepreneur. In a free market for leases to land and other marketable natural resources, the lease rights will most likely be captured by non-indigenous people. It is not clear that collecting rents from non-indigenous entrepreneurs will address problems of welfare dependency (Wik people would still effectively receive ‘something for nothing’) and social dysfunction. Therefore, while leases over natural resources present opportunities for indigenous economic development, prudent management will be necessary to ensure issuing of leases to natural resources is social welfare improving. At a minimum, lease conditions must include provisions for indigenous employment, training, and continuing involvement in management and monitoring of country.

Where real and perceived risks and transaction costs associated with native title have led to inefficient levels of private financial support for indigenous enterprises, the creation of new lending institutions could be pursued. Altman and Dillon (2004) proposed an innovative
investment scheme, called the Indigenous Profit Related Investment Program, which would be jointly contributed to by government and the private sector to underwrite commercial development projects on indigenous land.

Since all benefits from sound enterprise management cannot be exclusively captured by those contributing to the production effort in a communal enterprise, it has been argued that there are reduced incentives to manage natural resources to maximise the flow of future benefits from the land. That is, there are likely to be ‘free-riders’ and ‘easy riders’. However, examples do exist of communal natural resource management regimes that are economically more efficient than either private or government managed systems (Mahendrarajah 1986; Sneath 1998; Ostrom et al. 1999; Dietz et al. 2003). According to Ostrom (1990), self-governed commons can be managed efficiently when robust institutional arrangements are defined, modified, monitored and sustained by the users. Although Australian native title rights in natural resources are communal, they are exercised individually or by groups smaller than the title-holding group (Williams 1999). The customary communal land management institutions of Wik people could provide a sound basis for contemporary land management institutions.

Native title can be consistent with both economic and ecological sustainability (Altman 2004). Various primary industry enterprises require minimum landholdings below which the operation will not be economically sustainable. For example, cattle stations in Queensland average 20 000 ha (ABARE 2003) and on CYP they are typically ten times that size owing to low carrying capacity. A single communal native title land holding may be able to capture scale economies that several smaller private pastoral properties cannot.

In the case of Wik forestry around Aurukun, the relatively low harvestable volume of timber per hectare indicates it is unlikely that several private land holdings carved from the
communal estate would include sufficient timber volume to supply a moderate-sized milling operation over a time period that would justify investment in necessary plant and equipment (Venn 2004a). On the other hand, establishing a forestry industry with access to a large communal timber resource would, while also facilitating a high degree of operational flexibility (e.g. providing areas for wet weather harvesting and the ability to meet orders for less common species).

No single broad type of property rights to natural resources – government, private or communal – has uniformly succeeded or failed to prevent resource degradation (Dietz et al. 2003). When alternative policies for natural resource management include maintaining a large native title estate and dividing the communal estate into private holdings, collective decision-making associated with the large communal holding may better internalise production externalities and thereby contribute to more ecologically sustainable outcomes. Collectively, Wik people have aspirations for a timber industry that will have limited detrimental effects on other potential economic development opportunities, including ecotourism in wetlands and forests outside of mining leases. Presently, various pieces of legislation and operational prescriptions restrict how and where timber harvesting can be undertaken on native title and freehold land, but do not prohibit logging. A profit maximising individual landholder in the upper catchment of a wetland area would not have any economic incentive to refrain from harvesting timber and will not account for the cost of increases in sediment loads in watercourses and subsequent damage to the ecology and ecotourism potential of wetlands on other landholdings downstream. In contrast, collective resource management on communal native title land may lead to a more socio-economically efficient outcome for Wik people, because all members of the native title claimant group can share in the benefits and costs of logging and conservation in particular areas.
Conferring rights to land and other natural resources to particular clan groups within a native title claimant group on the basis of customary clan estate boundaries may appear uncontroversial. Some economists and indigenous leaders have even argued for granting rights to individuals within claimant groups. However, indigenous clan boundaries are highly contested at the margin and devolution of rights from the whole community to clans or individuals will lead to unequal distribution of natural capital between and within clans respectively. Sutton (1999) expressed concern about how the spatial distribution of resource development in the Northern Territory has led to an inequitable distribution of wealth among indigenous clans within particular communities and for the Territory as a whole, and how this has led to political dominance of clans and exacerbated tensions among Aboriginal people.

The indigenous population of the Aurukun area is not a cohesive group of people, but a complex of 23 allied and competing clans with several distinct cultures, languages and dialects, territorial affiliations, and variable status, power and authority (Dale 1993). Inter-clan cultural differences have periodically contributed to social disorder (Leveridge and Lea 1993; Voss 2000). Economic opportunities available to Wik people with customary connection and possessory native title rights to forestland on mining leases will vary substantially from those opportunities available to Wik people with rights to wetlands of conservation significance or non-exclusive native title determination areas2. In the culturally diverse and historically troubled social environment of Aurukun town where, relative to non-indigenous Australians, the indigenous inhabitants have collectively been poverty-stricken for generations, a sudden and unequal influx of natural capital to particular clans may be socially undesirable.

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2 Outside the study area, the Wik native title Part B determination granted Wik people non-exclusive (non-possessory) native title to customary land, which precludes Wik people from engaging in a way of life consistent with their customary connection to the land, living or erecting residences on the land, and controlling access to or use of the land.
Common property institutions tend to yield more equal distributions of wealth than private property alternatives (Quiggin 1993). To reduce the prospect that an economic development project will be seen as favouring particular clans or families over others, government or philanthropic economic development assistance is likely to be best directed towards collective projects in which all clans in the Aurukun area have a stake. Communal title is likely to better facilitate such an approach.

6. Social and cultural obstacles to economic development in remote indigenous communities

In the Aurukun area, a plethora of economic development projects have been implemented from the earliest days of Mission activity, all of which failed after the community-based brokers who initiated them became dispirited or departed (Dale 1993; Venn 2004b). Dale (1993) highlighted several reasons for project failure, but principally the limited support and interest of Wik people in the projects, and a lack of participatory and technical planning. In recent years, CYP indigenous leaders have argued that lack of reconciliation of social and cultural considerations with private enterprise is the main obstacle to economic development faced by indigenous people (Pearson 2000; Ah Mat 2003), an issue that has received little research attention.

For the Wik and many other Australian indigenous people, cultural differences and low Western education and skill levels have left them outside the market economy labour force. With the partial exception of the CDEP, government assistance for CYP indigenous communities since the 1970s, coupled with low land productivity and distance from markets, has typically led to the creation of a passive welfare economy, where personal sustenance is received without the recipient being required to work or provide anything in return. This regime coupled with alcohol and other drug addictions has corrupted
indigenous social relationships, values, expectations and aspirations (Dale 1993; Leveridge and Lea 1993; Pearson 2000), making management of the transition from welfare to a market economy a formidable challenge.

Custom requires Wik people to fulfill obligations such as social engagements (e.g. participation in mortuary rituals) and customary management responsibilities within clan estates (e.g. hunting and fire management). It is sometimes impractical for these activities to be postponed until the end of the working week. For an industry to have a chance of success in Aurukun, employment opportunities must be developed that have work hour and leave flexibility benefits similar to those already available to many Australian workers, including Queensland Government employees, to accommodate family and social activities. They must also recognise the inappropriateness of a 40-hour working week for a large proportion of the population, and the relatively low labour productivity of people with no market economy work experience and limited Western education and skills training. Arguments similar to those used to justify tariff protection for particular industries are relevant to infant indigenous industries (John Quiggin, pers. comm., 20053). Subsidising the high effective labour costs in the study area, perhaps by extending the CDEP to community-based commercial enterprises, is one policy option that could be explored.

7. Concluding comments

Given the nature of customary Wik forest management, the selective logging regime envisaged by Wik elders appears consistent with their traditional connection to land. On possessory native title land in the Aurukun area, Wik people have a relatively unencumbered right to manage and determine land uses, including commercial utilisation of timber, subject only to policies, legislation and codes of practice relating to such

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activities on freehold land. While untested, it would appear that native forest logging is one economic development opportunity for Wik people that is compatible with their native title property rights to natural resources.

From a neoclassical perspective, natural resource use is most efficient when the value of marketable outputs from land is maximised. Individualised and alienable property rights in natural resources are more likely to facilitate this outcome than communal and inalienable rights. However, the nature of those areas of Australia where native title has not been extinguished – remote with high indigenous cultural heritage values, high biodiversity values, and low and somewhat uncertain agricultural potential – suggests that the sustainable development paradigm provides a more sensible criterion for efficiency than the narrower neoclassical concept. Social welfare generated by management of customary land will be optimised by the resource allocation that maximises the total flow of cultural, ecological and marketable benefits. Native title rights to natural resources are likely to more efficiently maintain non-market values than private rights. From a sustainable development viewpoint, long-term, secure, alienable and individualised rights to natural resources are insufficient conditions for maximising resource-use efficiency on indigenous land.

Resource use inefficiencies associated with native title are unlikely to be as severe as asserted by some proponents of private property rights. For Wik people aspiring to a native forest-based timber industry on customary land, the inalienable and communal characteristics of native title are not major obstacles to economic development. Indeed, owing to the presence of critical social and cultural impediments, it is unlikely that economic development in the Aurukun area would become less challenging in the event that Wik native title land became alienable and individualised.
While native title rights and interests are determined on a case by case basis, many of the arguments employed to illustrate the low importance of native title as an obstacle for economic development in the Aurukun area are likely to be broadly applicable to other indigenous communities with possessory native title rights to natural resources. Strengthening communal property rights to natural resources is likely to be more beneficial to the well-being of the Wik and other remote Australian indigenous communities than privatisation of property rights.

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Withheld

References


Figure 1. The study area and surrounding land tenure on central CYP

Notes: AS is Aurukun Shire Special Lease land; NT is native title; and ML is mining lease. Only native title land within the study area is illustrated. The Part A and Part B determination areas include land outside the study area.

Source: Generated by the author using ArcView geographic information system software. Spatial data were provided by the Queensland Department of Natural Resources, Mines and Energy in 2000.