

**MAX PLANCK INSTITUTE FOR
SOCIAL ANTHROPOLOGY
WORKING PAPERS**



MAX-PLANCK-GESELLSCHAFT

Working Paper No.21

THOMAS WIDLAK

EQUALITY,
GROUP RIGHTS,
AND CORPORATE
OWNERSHIP OF LAND

Halle / Saale 2001
ISSN 1615-4568

Max Planck Institute for Social Anthropology, P.O. Box 110351,
06107 Halle / Saale, Phone: +49 (0)345 2927-0, Fax: +49 (0)345 2927-402,
<http://www.eth.mpg.de>, e-mail: workingpaper@eth.mpg.de

**Equality, group rights, and corporate ownership of land.
A comparative perspective of indigenous dilemmas in Australia and
Namibia.**

*Thomas Widlok*¹

Abstract

The issue of group rights has undergone a “cultural turn” with discussions now focusing on minority rights, indigenous group rights, and multiculturalism. This comparative analysis looks at the dilemmas faced by indigenous people in Australia and Namibia who in order to protect and defend distinctive principles of their sociality, such as equal access to land, have to violate these very principles as they become incorporated groups. This paper argues that the debate about the possible ways for Australian Aborigines and Namibian San to become incorporated bodies which allow for flexibility and autonomy is potentially relevant for any group of people living in a world that is increasingly dominated by corporate players. The conclusion drawn from comparing these diverse cases is that the question is not which or how many rights a nation state or a civil society based on liberal principles can afford to grant to corporate cultural groups but rather what a civil society would need to look like in order to accommodate open-ended processes of association and disassociation among its individual agents.

¹ Thomas Widlok, Max Planck Institute for Social Anthropology, P. O. Box 110351, 06017 Halle/Saale, Germany, Tel.: +49 (0)345 2927212, Fax +49 (0)345 2927502, email: widlok@eth.mpg.de

Introduction

This paper deals with a set of social dilemmas concerning the formal incorporation of group interests that affect people whose lifeworlds seem to be far apart from one another, namely “Aborigines” in Australia and “Bushman” or “San” in southern Africa.² Moreover, I suggest that permutations of the underlying paradox also concern people in other parts of the world, such as, for instance, post-industrial Europe. Individual persons in the current European context face a dilemma when they attempt to escape the increasing power of corporations, lobbies and other corporate actors (or if they want to organise resistance against these corporations) because typically this requires them to form corporate groups themselves. In Germany, joining forces against corporate interests in civil movements usually involves the establishment of a registered association (a “Verein”) adopting at least some of the organisational principles of the corporate bodies that are being challenged. The same underlying paradox is faced by changing hunter-gatherers of today who in order to protect and defend distinctive principles of their sociality have to violate these very principles. Australian “Aborigines” and Namibian “San” today identify themselves as “indigenous people” on the basis of their special relation to land, namely one that is immediate and direct.³ Since a history of colonialism and the current circumstances make it impossible or at least very difficult to maintain this direct relation to land, the identity of most indigenous persons has to rely on a notion of descent from a group of first occupants of the land who enjoyed a special relationship with the land. That is to say, for most groups of indigenous people, and for (former) hunter-gatherers in particular, the relation is now mediated by preceding generations, or by inheritance, as is typically the case among the non-indigenous societies from which they otherwise distinguish themselves. Similarly, in order to protect the equality that characterises much of the social life within these groups, indigenous peoples often claim special group rights which are intended to institutionalise and legalise a degree of inequality between indigenous and non-indigenous members of the civil society of regions, states or supra-national entities. In this paper I hope to shed more light on the social paradox that underlies

² Research for the larger comparative project of which this paper is a part is funded by the Max Planck Institute for Social Anthropology in Halle (Germany). I am grateful to members of the Institute for comments, especially to John Eidson who has provided insights into the situation of associations in Germany from his own research.

³ In this paper I use the terms “Bushman”, “San”, “Aborigine”, and “indigenous” without quotation marks since all these terms have been used as terms of reference and as autonyms in political discourse at various instances. I do not use these labels as analytic terms. This should not obscure the fact that the terms, as well as membership in the groups they denote, continue to be highly contested domains and therefore of great importance to many people.

these dilemmas by investigating the specific challenges faced by indigenous people in Australia and Namibia in their attempt to secure land ownership.

Corporate rights as group rights

The issue of group rights has undergone a “cultural turn” with discussions now focusing on minority rights, indigenous group rights, and multiculturalism (for a recent critical summary see Barry 2001). The perspective taken is usually that of political administrators, that is those who have the power to design the polities we live in and who seem to be faced with a choice of either adhering to strong principles of liberal individualism or to pursue a policy of diversity, autonomy and group rights. The perspective of the groups concerned, for instance indigenous minorities, seems to be taken for granted since they are the potential beneficiaries of privileged group rights. And to some extent this is justified since many spokespersons of these minorities endorse group rights in one way or another. However, the ethnographic approach pursued in this contribution suggests, first, that potential members of the groups concerned usually do not speak with one voice on the issue of group versus individual rights and, second, that group rights of a sort, namely corporate rights, are deeply entrenched in the liberal framework itself with far-reaching practical consequences not only for indigenous groups but potentially for everybody living in a liberal polity.

This contribution offers a comparative ethnography of two cases where indigenous people are challenged by the fact that they are offered “group rights” in the form of corporate rights. The two cases are contrastive insofar as they deal with two nation states that have had very different historical experiences of group rights. Namibia, which was administered by the Republic of South Africa until 1990, has experienced apartheid politics. Consequently both, the constitution of independent Namibia as well as public sentiment within the country is strongly biased against group rights, in particular against group rights that are based on ethnicity. The Khoisan-speaking “San” or “Bushman” minority in Namibia is not officially recognised as an indigenous group nor is there any affirmative action based on group rights for “San” people. Australia, by contrast, having had a long phase of assimilationist government policy with regard to Aboriginal people (as well as with regard to immigrant groups) seems to be moving towards a self-proclaimed multicultural society. This includes strong tendencies among those concerned with Aboriginal issues not only to recognise Aborigines as privileged indigenous occupants of the land but also to tolerate group-based

rights in various spheres of life, ranging from land holding to welfare distribution. Given these striking contrasts between Namibia and Australia in public opinion and current policy trends, this article shows that, differences notwithstanding, the indigenous people in both countries face similar challenges produced by what may be called “actually existing group rights”, namely in the form of corporate rights.

The notion that the Western liberal political and legal system is based on individualism is now so widely taken for granted that some recent authors think that the situation needs some critical re-assessment, given the growing importance of national and international lobbies and of globally operating companies. Saul (1997) suggests that the self-proclaimed individualism of many liberal polities and economies is in fact undermined by strong corporatist tendencies which he identifies as threats to the rights and opportunities of individuals as well as to the democratic principles of these societies. In a similar vein but at a much earlier point in time, Coleman (1974) has pointed out that the emergence of corporate persons is intricately linked with the emergence of free individual actors in Europe and elsewhere. Historical sociology has pointed out that there is a very long tradition of corporate actors such as guilds or brotherhoods in Europe as well as elsewhere (see Weber 1985[1922]). However, it is the emergence of flexible individuals who are relatively free to join (and leave) associations that has boosted the number and the power of modern corporate bodies (Coleman 1974:25). The aim to hold and protect property seems to have been a major incentive in this process as individuals formed trusts to protect their assets from being appropriated by tax-collecting states and to ensure that property could be held and preserved transgenerationally (Coleman 1974:21). Holding property, and the right to sell it, also played a role in creating corporate actors such as the Crown as a *corporation sole*, that is as a legal person that could be detached from the “natural person” of the king. Against the claim that a king who was still an infant was not fit to hold and transact property, it was argued that he had in fact two bodies, his physical body and the corporate body, and that he could personify both these bodies (Kantorowicz 1957, see Coleman 1974:19). Parish churches as institutions also grew in a historical context in which church property, no longer owned by nobility or by church leaders, had to be held by some entity over time (Coleman 1974:17). These examples show how corporate rights grew out of practical needs that fundamentally had to do with holding and managing property. As Kantorowicz has shown theological ideas about Christ as God-man led mediaeval jurists to a comparison of the inalienability and perpetuity of ecclesial property with that of the fiscal property collected by supra-individual bodies such as empires and kingdoms (Kantorowicz 1957:176-7). Legal forms that were initially developed for the

Crown, the nobility or the church later became accessible to any member of the polity. I will conclude below that there is no reason why this historical process of defining new rights and new legal bodies that hold and manage rights should not continue as new social actors – such as indigenous people - with new requirements enter the scene. What may initially be institutionalised for the situation of indigenous minorities may soon become a useful tool for other member of the polities concerned.

While from the perspective of politics and law indigenous people are new arrivals on the scene, the process is conceived of as the inverse from the perspective of Australian Aborigines and southern African San¹. From their perspective, it is not they but the corporate bodies, originating (mostly) in Europe, which enter the scene and have to be dealt with. This matches the perspective of any individual agent growing up in a world of firmly established corporations and of existing rules of incorporation. While in theory we may worry about how society should deal with individuals and groups that claim special rights, as agents in political practice we worry about how to influence the society we live in so that we can maintain the process of association and disassociation that constitutes our socio-political life. The following excerpt from an Aboriginal children's book may illustrate the point. "Jimmy and Pat meet the Queen" (Lowe 1997) is a fictive story that recounts events surrounding the declaration by Australian judges that Australia was not a *terra nullius* when Europeans settled there and consequently Torres Strait Islanders, and by implication Australian Aborigines, had the right to make native title claims to land. In chapter one of the story a lawyer explains to a group of Walmajarri Aborigines, to which Jimmy and his English wife Pat belong, that they can now – under certain conditions, including not having lost the land permanently to other property holders - make a native title claim. The following dialogue between Jimmy and Pat evolves (Lowe 1997:5):

"'You Walmajarri mob are lucky,' said Pat, who comes from England. 'You should win your claim very easily because nearly all your land is Vacant Crown Land.'

Seeing Jimmy look puzzled, she went on: 'That means it belongs to the Queen.'

'The *Queen*?' said Jimmy, astonished. 'The Queen never bin fuggin walk around here! Bring her here and I'll ask her: "All right, show me all the waterholes!"'

As the story continues, the Queen is in fact invited to come in (natural) person and, of course, she is unable to tell where waterholes are and therefore concludes herself that the Walmajarri, who know their country, should keep it.

What Jimmy does in this little story is to deny the Queen her corporate body, or the right to exclusively own land as “the Crown” without knowing the land as a natural person. This does not, of course, mean that there are no corporate actors in Aboriginal Australia, although the debate continues to what extent the pre-colonial entities of clans or skin-groups in various parts of the continent can be usefully considered corporate groups (see Keen 2000). Certainly in the current context indigenous people in Australia have corporate groups, in fact they are required to form corporate groups when applying for a native title claim as I will explain in more detail below. Again, the difficulties that this entails for indigenous Australians may be illustrated with Jimmy and Pat’s story which ends with Jimmy saying to the Queen “Now you can tell the Australian government: the Walmajarri mob’s the owners for this country.” and with the concluding remark “And so the Walmajarri Republic was born.” (Lowe 1997:29). It is advisable not to over-interpret the linguistic forms of Aboriginal English, but it seems noteworthy that there are tensions built into Jimmy’s statement that “the mob” (plural) “is” (singular) “the owners” (plural) “for” (not “of”) the “country” (not “the land”).

Against this background it should not come as a surprise that very few native title agreements have been reached in Australia so far because the assumptions and requirements of the state and its legal apparatus seem not to match the way that the Aborigines perceive their ownership of the land and their social organisation of whoever is the holder of legal title over land. The main concern of the Australian government seems not to be an emphasis on individualism – given that it insists on corporate native title management - but to maintain the undivided sovereignty of the Australian state, precluding developments such as the creation of a “Walmajarri Republic”. The requirement for Australian Aborigines to form corporate bodies predates the developments around the native title act and goes beyond the question of land tenure. An overview of corporatism in Australia is therefore in order.

Corporatism in Australia

Corporatism is understood here as a practice of organising political life so that it is no longer characterised by the old dichotomy between the liberties of the individual citizen and the authority of the state. Rather, corporatism is the way in which the state restructures relations with its citizens so that only associations and other corporate bodies can take full advantage of state benefits and only they can participate fully in national politics. Only if citizens become members

of such corporate groups, or form new associations that fit the requirements of the state, may they hope to defend their interests, to receive their share of the national revenue and to have a say in national politics.

Corporatism as a political ideology was born in the nineteenth century but has seen various forms of neo-corporatist policies in governments around the world over time, including recent years. Most commonly, corporatism is now a policy in which the national government considers its role to be that of mediator between competing interest groups in the country, shifting legitimacy and power from the individual citizen to groups with more or less set membership (Saul 1997:18).

Relations between indigenous people and the state in countries such as Australia or Canada have been labelled 'welfare colonialism'. In these countries, a strong national administration of indigenous affairs has provided prolonged financial support, but has also curtailed the self-determination of indigenous people. In Australia 'welfare colonialism' can be said to have more recently been succeeded by 'welfare corporatism', because the provision of welfare assistance but also the funding of indigenous organisations is tied to the creation of associations and leaders who agree to be co-opted into state policies. In Australia the establishment of ATSIC (the Aboriginal and Torres Strait Islander Commission) in 1989 can be considered to be an attempt to incorporate the most influential Aboriginal leaders and the influential Land Councils so that they would identify with and support government policies concerning Aborigines (see Morrissey 1998). The federal Department of Aboriginal Affairs has been dissolved and state powers devolved to corporatist bodies in which all Aborigines are supposed to be included. The state not only founded and funded ATSIC but through ATSIC local Aboriginal associations, as interest groups, have been able to gain recognition and funding for transport and for all the infrastructure required to establish outstations, to make land claims, to manage pastoral properties and so on. Australia's welfare corporatism is not a policy that was declared in these terms, and may not even have been implemented consciously as a manifestation of corporatism. In effect, however, the labour government of the 1980s seems to have worked towards a corporatist polity in Australia. Most Aboriginal power holders took on functions in the new framework of indigenous organisations, called Aboriginal corporations in Australia, while those Aborigines who refused to express their interest in the corporatist framework, or who were – for whatever reason – prevented from doing so, were no longer represented. At the same time a notion of Aboriginality was fostered that tended to be exclusive not only because Aboriginal associations and ATSIC elections are predicated on the notion of race (ACA 1976) but also because urban cross-bloods

sometimes feel treated as second-class Aborigines. Thus, the overall non-cooperative attitude towards Aborigines exhibited by the current Australian government is sometimes considered to have re-introduced a certain amount of equality among people of Aboriginal descent (Morrissey 1998:105).

A comparative perspective

It may or may not be possible to trace the historical path of corporatist ideas across the world. In this contribution I want to take a different, a comparative perspective by looking at corporate structures in Australia and Namibia without making any claims about the historical origins of these structures. It seems to me that several different paths are possible along which ideas and practices have spread. Furthermore I believe that it is unlikely that the implications of corporate structures and policies with regard to either Australian Aborigines or Namibian San could be predicted simply on the grounds of a historical reconstruction of the diffusion of corporatist ideas. In order to understand the effects of corporatism in a particular setting, for example that of San people in Namibia, it is useful to look at corporatism not in history but in another country, where corporatism affects policy towards a group of “first” or indigenous people. The situation in Australia has no direct causal link with the situation in Namibia, but I want to show that it can be a source of insight for understanding what happens in Namibia (and vice versa).

But why compare Namibia to Australia? Why not compare it with one of its neighbours, Botswana or Zimbabwe? Or indeed, why not compare it with a European country that has had considerable influence on it such as Germany or Great Britain? Australia is sufficiently distant from Namibia, both geographically as well as politically, that any direct influence between the two cases can be safely neglected. Whatever is observed in the one setting cannot in any substantial way be derived from events in the other setting. This would be different for Namibia's neighbouring countries as well as for former colonial countries such as Germany. It seems that historically separate independent states such as Australia and Namibia may still develop very similar corporatist strategies, shedding light on the fundamental dynamics in the process of an increasing incorporation of social groups and social relationships.

Relations between corporate bodies in Namibia

One way of directing attention to the role of corporatist structures in Namibia is to point to the list of acronyms contained in the Working Group for Indigenous Minorities in Southern Africa's (WIMSA) annual report (Report on Activities 1998).⁴ Acronyms are a particularly striking manifestation of differences between the two cultures of academia, on the one hand, and development work, advocacy and applied work, on the other hand. Those who do applied work generally find the specialised technical terminology of some academics difficult, conversely academics confronted with reports of NGOs are put off by an overuse of jargon and acronyms on the part of consultants and development workers. However, it is worthwhile to take a closer look. What do all these acronyms stand for? They are not the kind of acronyms that one might expect. For example, some acronyms may be expected to stand for laws or bills passed by the government, because often these documents have long and cumbersome titles and are usefully shortened to an acronym. However, none of the acronyms in the WIMSA list is of that sort. Similarly, one would expect acronyms for full names of regions or countries that are long and can easily be shortened. There is only one example of this in the list under consideration here, namely the CKGR (Central Kalahari Game Reserve). Finally, one would expect acronyms for technical terms that are frequently used in a text. The one example in this list is that of EMC, which stands for “educationally marginalised children”. Apart from the aforementioned exceptions, all other acronyms used in WIMSA's 1998 annual report refer to corporate persons or corporate bodies of some sort. It is easy to spot named corporate agents in the list. When spelled out, the names of these corporate bodies start with capital letters like the names of natural persons. There are only a couple that are spelt in lower case, and these refer to corporate groups in general, not to specific corporations. These are, significantly, CBO “community-based organisation” and NGO “non-governmental organisation”. All other acronyms refer to corporate bodies which are either part of a state, quasi-state, inter-state or indeed one of the two agents just mentioned: community-based organisations and non-governmental organisations. If the corporate organisations in this list are classified accordingly, we arrive at the following distribution (see Figure 1).

⁴ Carrying out an ethnographic comparison like the one attempted here entails the practical problem of keeping up with developments in two fields. I am therefore particularly indebted to all individuals and organisations in Namibia that have provided me with newspaper clippings, reports and other forms of information while I was working outside of Africa. I am particularly grateful to WIMSA, an NGO that regularly produces reports on current activities with a large number of San groups in Namibia and its neighbouring countries. It is thus apt that one of their sources of information serves as a starting point for my discussion of corporate bodies in Namibia.

Figure 1: *Types of corporate groups mentioned in WIMSA's annual report (Report on Activities 1998)*

state (governm./intern.)	non-state (NGO/QUANGO)	community-based
31 (24/7)	31 (23/8)	7

I feel justified in classifying all state-based organisations, national as well as international, in one category because even international bodies such as the European Union or the United Nations are based on the authority of nation-states and are ultimately dependent on these states. QUANGOs (quasi- NGOs, e. g. NGOs that are set up specifically by governments to take over government functions using government funds), by contrast, have been classified with NGOs even though their budget may come from state sources. Ultimately this is true for many NGOs which are largely funded through development aid. Therefore, funding cannot be considered the most relevant criterion when comparing corporate groups, and NGOs are appropriately classified with QUANGOs because they are often similar in their internal structure and their relations with other corporate bodies. Although one could argue about the correct classification of some corporate bodies, the distribution seems fairly clear. State-based and non-governmental organisations dominate the scene in equal numbers, while community-based organisations are fewer in number. However, a closer investigation would show that their numbers are increasing. Of course, numbers alone do not indicate the relative power or importance that these institutions may have, but they give an indication of the parties involved in the national politics concerning the Namibian San.

In WIMSA's annual report of 45 pages, there are no less than 69 corporate groups which occur sufficiently frequently for them to appear on this list of acronyms. Assuming that WIMSA is not an extreme example, does this suggest that Namibia has since independence become an increasingly corporatist society? At least with regard to dealings between the Namibian State and its San population, which is what WIMSA's work and annual report are all about, politics seems to revolve to a considerable extent around corporate groups. In Namibia, as in many other African countries, many of these organisations and associations are in fact run by very few people, that is, by very few individual natural persons. Many of these agencies may stand and fall

with the engagement of a single person, and in some cases their relations may be characterised by personal rivalry, animosity or cooperation. In addition, Namibia's national politics, in particular, has a reputation of being "like a village" because it revolves around a very limited group of people. However, it is important to note that for political self-representation, as well as for attracting funding, public attention and support, WIMSA (as well as most NGOs) engages in a corporate mode. They describe their past activities and claim support for their future plans primarily in terms of relations between corporate bodies.

It is not sufficient though, to point to the growing number of corporate groups involved in current San affairs. Two other points are noteworthy. First, on the list of acronyms previously discussed there are a number of what might be called "meta-corporate bodies", that is, organisations that do not have "natural persons" (the legal term for individuals) as their members but only other organisations. This is true for WIMSA itself but also for organisations such as NANGOF (the Namibia Non-Governmental Organisations' Forum), NACOBTA (the Namibia Community-Based Tourism Organisation), and SAHRINGON (the Southern African Human Rights NGO Network). This adds a new quality to the corporate structure because these particular organisations that organise relations between other organisations are typically postcolonial institutions. They are not only the result of an increasing number of corporations, but their existence fosters the emergence of new corporate groups. If you are a San person and want to take part in higher-level politics, then you have to found an association that can then become a member of a meta-corporate body, which (hopefully) has sufficient power to negotiate a "good deal" with other meta-corporate bodies. Ultimately, the corporatist state, made up of regional councils and different ministries and departments, may be considered to be a meta-corporate body itself.

The second important feature is the emergence of community-based organisations. These are not just another type of organisation, and to that extent the juxtaposition in Figure 1 is somewhat misleading. WIMSA, for example, distinguishes between support organisations (mostly overseas lobby groups) and "community-based, indigenous organisations". Only the latter can become full members of WIMSA. The notion of a "community-based organisation" suggests that there is a natural entity called "a community" which leads on "naturally" to an organisation. "Local communities", however vaguely defined, form the backbone of much corporatist discourse and of many corporate bodies in Namibia - governmental and non-governmental. However, the process works both ways. Not only do individuals need to form associations in order to participate fully in politics, but organisations also need to demonstrate their link to "a local

community” to legitimise themselves. They do this by cooperating with and at times by helping to create “community-based associations”. Therefore, natural persons need to find themselves an organisation, while corporate agents (as legal persons) need to find themselves a community (or more than one community). This is often a difficult process, which involves considerable political and adaptive skill. The process may be exemplified by looking at the Namibian San organisation that probably has the longest history: the association of San in the Nyae Nyae area (see Figure 2).

Figure 2: *The association of San people in eastern “Bushmanland” as a non-governmental organisation, splitting into a support organisation and a community-based counterpart organisation over time*

1981	Ju/wa Bushman Development Foundation (JBDF)	
1986	Ju/wa Dev. Foundation	Ju/wa Farmers' Union (JFU)
1993	Nyae Nyae Dev. Foundation of Namibia (NNDFN)	Nyae Nyae Farmers' Co-operative (NNFC)
1996	Nyae Nyae Dev. Foundation	Nyae Nyae Residents' Council
2000	Nyae Nyae Dev. Foundation	Nyae Nyae Conservancy

Probably the oldest surviving San organisation in Namibia, the “Ju/wa Development Foundation” was founded in the 1980s, before Namibian independence. Its status was, for a long time, precarious because it was in opposition to the colonial state. It was created in the only place in Namibia where a geographically defined San organisation could emerge, namely in eastern “Bushmanland”, a spatially recognised unit with a mono-ethnic San population. Although there were attempts to incorporate other Bushmen from other parts of Namibia, the Foundation was successful only where the colonial state could accommodate an ethnically based minority association. Furthermore, in order to gain limited government recognition the Foundation had to ensure that its members fulfilled some key requirements of past and present state policy, namely ownership of livestock and fields (“Farmers”) and a permanent settlement structure (“Residents”). With independence, the Foundation gave up its ethnic designation, which would have made dealings with the new government near impossible, and adopted a geographical designation - the “Nyae Nyae Development Foundation”. Previously the Foundation had already

been split into two corporate bodies, that is, an internationally operating support organisation and a community-based organisation. By separating the Foundation from the “Nyae Nyae Farmers' Cooperative” (previously called the Ju/wa Farmers' Union) the organisation was replicating the new corporate structure of development work in Namibia, which separated externally funded NGOs from community based counterpart organisations while maintaining strong links between the two. In another change of national policies reflected in the change of name, the Cooperative was struggling with a government that refused to accept cooperatives as its counterparts for the granting of land title and state subsidies. Thus, the association changed its name and constitution again to become the “Nyae Nyae Residents' Council”, which - like the permutations before - is not simply a change of name but a change to comply with the demands of the Namibian State because, "the new name allows the group to have legal relationships with the government" (Katz et al 1997:195). Finally, the most recent permutation is the creation of the Nyae Nyae Conservancy which reflects Namibia's current preference for ecologically oriented development programmes. Here is a clear example of how the changing requirements for playing a political role in Namibian politics has not only redrawn membership boundaries between people, but has also influenced the internal make-up of these organisations.

This is a case of an organisation that, as an institution, is the result of a complex process in which the state, together with an NGO, has created and transformed a community-based organisation according to its needs. Any recognised community-based organisation in Namibia requires leaders, chairpersons and delegates. A well-defined community should preferably *not* be based on ethnic criteria but on residence or occupation. If the community does not have these characteristics, there is a problem. Some of the problems that this has brought about, for example with regard to the internal leadership structure of the Ju//hoan, have been documented elsewhere (see Katz et al 1997).

Problems of (non-)corporate land holding in Namibia

It may be argued that a corporatist state is preferable to a totalitarian state or even to other states because it provides for associations to develop and to influence politics. Namibian Bushmen have suffered under various forms of states. The Hai//om of northern Namibia, a group of “San” now represented as a number of community “trusts” that are members of WIMSA, are no exception in this respect. Elsewhere (Widlok 1999) I have described and analysed the many blunt ways in which the various colonial administrations have dispossessed the Hai//om of their

land. This includes the Etosha Park and other areas now occupied by private farms in the Tsumeb and Outjo areas, as well as land which they claim but which was declared part of the communal land of other ethnic groups, primarily in the Owambo and Kavango. However, corporate ties, or the apparent lack of such ties, also played a role in this process. Before independence, the South African administration allocated the Mangetti farms to a quasi-state corporation, namely the First National Development Corporation (FNDC/ENOK), which after independence was renamed the NDC (National Development Corporation) and later was partly dissolved into other corporations such as Meatco and Amcom (Amalgamated Commercial Holdings). It was under this corporation, then still FNDC/ENOK, that the Hai//om were close to obtaining legal title over some land, although it would have been a very small patch of land. Previously, during the South African era, all attempts to create a Hai//om reserve had failed. Then, just prior to independence, the top managers of FNDC/ENOK proposed to rid themselves of “the Bushman problem” on the Mangetti farms by allocating land to Hai//om people. Independence and the exchange of power elites within and outside the corporation put a halt to these plans. At that time, other corporate bodies gained importance in the government's dealings with the northern Hai//om. These were, above all, the Evangelical Lutheran Church in Namibia (ELCIN, which was initially supported by the Lutheran World Federation), the Ministry of Land, Resettlement and Rehabilitation (MLRR), and a private foundation called “Ombili”. The private Ombili Foundation, was tolerated although it was ideologically opposed to the SWAPO-government. Despite this opposition, Ombili in many ways operated very much in the same way as did ELCIN and the MLRR. All three organisations were substitutes for the state because they distributed the only material state benefits, namely foreign aid, that the Hai//om of this area received from the state apart from pensions. Regular distributions of free food aid at administered service points prevented larger groups of Hai//om from leaving these large settlements and from reoccupying the land that they had left as a consequence of the war and of military activities in south-eastern “Owamboland”. All three organisations, politically diverse as they might have been, used non-Hai//om staff to run their everyday business. They relied on foreigners or externally trained elites at the top, and on external but locally trained staff (Owambo, Kavango, and sometimes Damara) to oversee the distribution of food and other benefits. These corporations were not grassroots in any way, but continued a pattern that had prevailed in the colonial period. Just as before independence, individual Hai//om were appointed as spokespersons for the “community”, but were given no real authority, except to convey messages from the power holders to other Hai//om in the settlement. In return, these leaders had to facilitate the distribution of aid and services by helping to prepare lists of households with the number of children in a family and so on. The Hai//om of Mangetti cooperated in that they gave

their names on numerous occasions to representatives of corporate bodies who prepared lists of households that would be eligible for assistance. However, with regard to their crucial demand to gain control over their land, no advance was made in the ten years since independence. Elsewhere (Widlok 1994) I have discussed reasons why the demands for land rights of the Hai//om at Mangetti and other places were not considered by the state. These reasons include prejudices against people ethnically classified as Bushmen, suspicion of a local economy that involves - amongst other things - the use of land to hunt and gather, a bias towards supporting modes of subsistence that exploit land through agriculture or pastoralism and the failure to recognise alternative modes of social organisation and land holding. This last aspect should be emphasised, namely that "the local community" of Hai//om living on Mangetti did not have the formal corporate organisation that government and non-governmental advisors required of it. It is far from certain whether people would have gained legal title over their land, and support to keep that land, had they registered themselves as "the Hai//om Inc." or "the Mangetti Trust". In any case, it is important to point out that even though independence promised civil rights to all Namibian citizens (not to corporations), it seems that without entering into rather specific forms of corporate organisation, San groups such as the Hai//om in northern Namibia stood no chance of having their rights recognised.

In June 1991 a national land conference was held in Namibia which did not have any legal power whatsoever but which - as an event - was nevertheless instrumental in structuring corporate relations concerning the land issue in Namibia. The recommendations of the land conference were the closest that Namibia has seen in terms of group rights for indigenous people because it stated that "the San and the disabled [presumably this includes war veterans and others unable to take up wage labour]" should be privileged in land distribution. But the recommendations were never implemented by the commissions or anyone else that followed the national land conference. The Technical Commission on Commercial Land, for example, simply disregarded the Hai//om of eastern "Owamboland" and declared their land as "unutilized land ... available for resettlement" (Report of the Technical Committee 1992:29). However, it would be grossly misleading to say that this national land conference had no effect apart from creating the impression in the media that the government was tackling the land issue. Rather, the conference was important because it made clear who the corporate players in matters concerning the land issue were, and because it fostered the formation of these corporations. The conference provided the government with an overview of interest groups in the country that it had to deal with, as well as of the non-organised interests in the country that could safely be ignored. A case in point for the latter are the Hai//om of the Etosha Game Reserve who were not represented at the

conference and who were harshly dealt with afterwards when they tried to make their claim to land in another way, namely by blocking the gates to the Etosha Park. Doing things such as blocking gates, they were told, was not the way to register a claim with the government. Writing a position paper at the land conference and forming a registered association was more like it. The Hai//om who took the more drastic course of action were lucky that two corporate players, namely WIMSA and the Legal Assistance Centre (LAC), took up their issue and at least achieved their release from prison as well as winning their case against the harsh treatment they had suffered. However, the people involved still have not succeeded in registering their association and consequently their demands for land have not been settled. The government was only prepared to offer land if the Hai//om were prepared to join a cooperative that was likely to be dominated by other ethnic groups, an offer which the Hai//om declined (Arnold and Gaeses 1998:3).

The Ministry of Lands, Resettlement and Rehabilitation (MLRR) views itself (or is seen by the people who work in it) as subject to conflicting corporate pressures from various sides, but no doubt feels closer to some sides than others. Often when officials in the MLRR are faced with reports of illegal fencing in the communal areas and continual dispossession of San groups, they are likely to shrug their shoulders and to lament that there are so many conflicting demands for land that the ministry cannot keep those with strong demands out in order to protect minorities such as the San. Many decisions in the MLRR and beyond seem to be based on the notion of "there is no alternative", a phrase habitually used by governments that follow strong corporatist practices but which hides the fact that decisions are the result of a lengthy process of bargaining between corporate interest groups. Officials of the MLRR who are confronted with San people complaining about the loss of their land, the fencing of communal land and similar issues seem to take the position of mediators. In these contexts the MLRR presents itself as ultimately bound by the strong interest groups of land owners, of rich cattle owners, of returnees and ultimately of Namibia's non-self-sustaining urban population that request the productive use of land that could not only feed small groups of rural dwellers such as hunter-gatherers but could also feed "the nation" at large.

The land policy that emerges from this short description is a corporatist one, partly in terms of ideology, however implicit, but primarily in terms of practice. Many San individuals who have been dispossessed of their land, or who are in the process of losing it, do not have the corporate support that is necessary to make a land claim, especially if it concerns more than a small individual plot of land for subsistence agriculture. Government agencies do not follow the

programme of affirmative action in favour of groups such as the San, as the national land conference demanded. Even if the MLRR was to pursue such a policy, the Hai//om of the Mangetti farms would probably still not receive any legal title to their land because they are not integrated firmly in the non-governmental or community-based structures that are the prerequisite for playing the national game of corporate interests.

Australian responses to the corporate challenge

Corporate bodies, and corporatism as the policy which fosters the corporate construction of polities, have come to stay. They form the corporate challenge that not only indigenous people but any “natural” person has to deal with. As the comparative analysis of Australia and Namibia shows, the challenge is there, no matter whether governments take steps towards multiculturalism (as in Australia) or against the promotion of diversity and distinct group rights (as in post-apartheid Namibia). In fact it is likely that for some time to come both tendencies will be present in liberal democracies with the one or the other being dominant. I suggest that many issues of corporate organisation now faced by indigenous peoples will eventually have to be faced by anybody who has ties to groupings such as families or local co-residents and who intends to protect the rights of these groupings vis-à-vis privileged groupings of another sort, namely corporations be they incorporated private businesses or other forms of corporations. Household heads in Germany and elsewhere have tried (in vain) to claim income tax reductions on money spent on bringing up children on the same basis as companies whose investments are exempted from tax. Sol Tax’s suggestion that families should get incorporated in order to protect their property and integrity over generations is currently being spread on the internet as one model of how to reform social relations in the future (see <http://www.globalideasbank.org/BOV/BV-66.HTML>). The current debate about possible ways of incorporating Australian Aboriginal groups for the purpose of native title claims is therefore relevant not only for indigenous people elsewhere, for instance for San people in Namibia, but potentially for any group of people living in this world dominated by corporate players. The two issues to be highlighted here concern, firstly, the relation between groups and the corporations that are formed by or on behalf of the members of these groups and, secondly, the possible modes of internal organisation available to individuals wanting to form a corporation.

When the High Court of Australia made its now famous Mabo decision, granting native title land rights to a group of Torres Strait Islanders (the family of Eddi Mabo, belonging to the Meriam

people), it ruled that the “the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands” (quoted in Mantziaris and Martin 2000:77). The court gave no hint as to how the land was to be held communally by a group of people who identified themselves as the Meriam. It is “one of the most striking features [...] of the NTA [The Native Title Act]” that it does not allow individuals or groups to hold and manage their native title directly (Mantziaris and Martin 2000:98). Under the NTA individuals and groups have to create corporations, artificial legal personalities, and more specifically either trust or agent corporations, in order to hold and manage their title. It has been pointed out that these restrictions do not follow logically from the premise that native title is intended to benefit the community as a whole. The government believed that there was a need for a corporate body given that the High Court held that native title rights be “held by a group” which changes over time. The specific restrictions imposed on native titleholders arose under the specific circumstances that guided the legal process in the Australian parliamentary system (Mantziaris and Martin 2000:98). By contrast, another important restriction of native title, namely the fact that it is inalienable, i.e. that shares in corporations designed to hold indigenous land cannot be sold or let, was introduced by the High Court itself (Mantziaris and Martin 2000:50). Exempted from this restriction is only one corporate body, namely the British Crown. As Mantziaris and Martin have noted this is a major drawback for the beneficiaries concerned, since in many instances the native title itself is “the most important asset that the native title group members might possess” but which they are unable to use freely in their economic development under this legislation (2000:50).

Installing a “Prescribed Body Corporate” (PBC) that can register with the National Native Title Registrar and then commence the lengthy process of claiming land rights under the Native Title Act, leaves the problem of how to define the relation between the group of people entitled to land and the corporation that would apply for and manage the claim in practice. The minutes of parliamentary debate on the Native Title Bill in December 1993 show how parliamentary procedures, including the dynamics between incorporated party interests, led to a situation where a discussion of alternatives to corporate organisation (and alternative forms within this framework) was largely replaced by a debate surrounding indigenous group rights. Initially Senator G. Evans (speaking for the Labour government) claimed that “there is no provision that compulsorily requires native title to be vested in a body corporate. It is just an organisational option that is available to a group of native titleholders should it so choose voluntarily that particular form of organisation.” (17 Dec. 1993, 9.58 p.m.). When questioned by opposition senators about the possibilities of individuals being titleholders and succession to their title after

death of the individual⁵, the government suggested that this should be left to subsidiary regulation (Evans, 17 Dec. 1993, 10.05 p.m.) but eventually, amendments to the bill systematically substituted “body corporate” for “holder” (see amendment schedule 75 put forward by Senator Collins 21 Dec. 1993, 10.29 a. m.). A major issue in the debate was whether the new legislation would conflict with the Racial Discrimination Act which puts restrictions on property being managed for Aboriginal people by outsiders (possibly against their interest and will) as was commonly the case in early Australian history. Whereas the opposition compared the proposed corporate land management to that of corporate companies, the government underlined that the body could be governed by different principles, “consultative and consensual in character” (Evans, 21 Dec. 1993, 2.05 p.m.) without, however, specifying in any detail how the consensus principle was to be put into practice.

The debate exhibits a number of different metaphorical ways in which the political decision makers were conceiving the role of corporate bodies in this context. When the question arose whether the corporate body would be allowed to take on any managerial functions, the opposition relying on organic imagery claimed that there was nothing to indicate that Native Title “body corporates are different animals” from any other body (Senator Alston, 17 Dec. 10.43 p. m.) which left the question of how individuals could control the body acting on their behalf. A legal personality was created that could act against the interest of individual members who continued to be legal personalities of their own who were assumed to necessarily have imperfect control over the corporation (see Mantziaris and Martin 2000:117). In its response the government used a technical image to explain that “the transmission belt runs from the native titleholders to the body corporate to do various things – basically, just to hold the title” (Senator G. Evans, 17 Dec. 10.44 p.m.). Towards the end of the debate Senator Evans concluded:

“The body corporate has no independent decision making authority or role to play otherwise than as a vehicle for the will to be exercised of the individual people who make up the native titleholders. How that works in practice will depend from situation to situation. That is why the legislation is fairly flexibly drafted in terms of the kinds of bodies that might have body corporate status.” (Evans 21 Dec. 1993, 2.15 p.m.).

The use of corporations for running indigenous affairs has been well-established in Australian politics as a convenient means of dealing with group rights and it is against this background that

⁵ Cynics may see the mandatory use of corporate bodies that outlive natural persons as warranted given that many of the actual elders who are the principle land owners under the native title act pass away before a native

the government assumed that the corporation would be formed by the sum of all members of a native title group while the opposition feared that powerful bodies would arise that would override individual interests. The individual interests under threat were not only those of individual Aborigines but also, and maybe primarily, those of non-indigenous Australians. Towards the end of the debate an opposition senator made an explicit parallel with gender politics and apartheid policy:

“Aboriginal people [according to the proposed bill] have a right that ordinary Australians do not have – that is, the right to exclude people from their land [...]. There seems to be some sort of curious underlying acceptance by those who come into the category of collectivists that something that is cultural and discriminates against women is okay [...]. That automatically establishes the possibility of women – Australian women citizens – being discriminated against, simply because we have a piece of legislation setting up two sets of laws. [...] This is the beginnings [sic] of apartheid. That is something that I find un-Australian.” (Senator Bishop, 21 Dec. 1993, 9.12 p. m.).

The parliamentary debate (totalling more than 50 hours, the longest debate in the history of the Australian parliament) came to a premature end after a declaration of urgency that allowed the bill to pass before the end of the parliamentary session. The government was not able to resolve the matters concerning the definition of “native title parties” and “body corporates”, and the relation between them, but it left prospective native title groups with a number of options for creating suitable corporations. Initially the trust corporation form was promoted but since it has a specific history in Australia of reserve land being held by local councils, churches etc and was felt to be conflicting with the Racial Discrimination Act, the agent corporation was offered as an alternative. The legal difference between the two choices is that the trust corporation is based on the relation between the corporation as trustee (with set duties) and the group as the beneficiary (who consents to the trustee to act on its behalf) while the agent corporation is based on the relation between “principals” (individual holders of native title rights) and agents (who receive directions and consent from the principles). Each of these two major categories may be further sub-divided according to whether corporate membership is participatory or representative. In the latter case the corporation has a small membership, possibly restricted to the board of the corporation and elected on the basis of different interest groups within the group. In the former case congruence between corporation and group membership is sought. The legal details of these

title agreement has been reached.

design types are explained in detail by Mantziaris and Martin (2000) who also provide the following matrix as a baseline for indigenous groups and their advisors.

Figure 3: *Four Basic Types of Australian Native Title Corporation (after Mantziaris and Martin 2000:332)*

	Agent corporation	Trustee corporation
Participatory membership	Type 1: Agent corporation with participatory membership	Type 3: Trustee corporation with participatory membership
Representative membership	Type 2: Agent corporation with representative membership	Type 4: Trustee corporation with representative membership

The choice of these basic design types is in practice complicated by the fact that the National Registrar of Corporations has the right to reject particulars of a proposed corporation, for instance with regard to the minimum number of members but also with regard to the modalities by which board members are elected, replaced or – if the need arises – removed. This aspect becomes even more relevant when we seek to draw more general lessons from the Australian situation. In every given legal framework the scope for designing corporations according to local needs will be set, at least to a large extent, by the specific legal bodies involved. At a more general level, it is important to note that even a choice from these four basic types presents specific dilemmas to indigenous people insofar as some trade-offs are built into the structures of these types. Types 1 and 2 provide a potentially higher level of allegiance to the corporation, because members may feel that they have a more direct input into the ways in which the corporation is being run. But Type 3 and 4, at least in some respects, can be expected to be more robust and stable than the other types, even though Type 3 is also vulnerable to being misused for instrumental action by factions and the destructive effects of political in-fighting as is Type 1 (the other participatory type). Similarly while transaction costs are usually high for Types 1 and 3 (which put much emphasis on the role of general meetings), Types 1 and 2 have additional costs because the group needs to successfully instruct the agent working on its behalf.

Figure 4: *Some strengths and weaknesses of corporation design types*
(see Mantziaris and Martin 2000)

	Type 1	Type 2	Type 3	Type 4
Capacity (to attract allegiance)	o (variable)	+ (variable, more focused than 1)	- (but higher than in 4)	- (lowest of all)
Simplicity (of structure)	+ (esp. for small groups)	+	- (more complex than 1 & 2)	-
Robustness (less likely to be instrumentalized)	- (esp. for complex groups)	+	- (but more stable than 1 & 2)	+ (but at cost of allegiance)
Efficiency (low transaction costs)	-/ (meetings and instructions)	+/ (instructions required)	- (meetings required)	+

Mantziaris and Martin (2000) provide a differentiated analysis of the particular strengths and weaknesses of each type with regard to various demands, such as simplicity, robustness, certainty etc. There are further criteria to be considered, other than those captured in Figure 4 but the comparison provided by this table already indicates that a simple ranking of design types is not possible unless the demands made on the corporate structure are made more specific. The best choice will depend, amongst other things, on the size of the group and its particular needs and its relations to other groups and other corporations.

The choice of corporate design is not only informed by structural features of the group in question, that is above all its size, internal structure, geographical dispersion, political cohesion, its social and economic goals, but also by the indigenous organisational culture already in place. Mantziaris and Martin (2000) have outlined some of these features for Australia's Aboriginal groups but there are striking similarities between Aboriginal Australia and San Namibia with regard to localism, autonomy, and representation. In both contexts localism, as the tendency to favour local values and interests rather than more encompassing ones, is a marked feature which is, however, paired with a strong interest in regional links. There is also a shared emphasis on autonomy and reluctance to cede control over local affairs. In the design of corporate structures

this may result in a tendency towards participatory, rather than representative models, including large general meetings where debates about the relation between group and corporation are likely to suffer interference from debates about the relations between individuals and sub-groups within the group. The autonomy of individuals to leave (and join) groups over time is another shared feature which is problematic for some corporate structures. The problem may be only indirectly that of the incorporated group, namely as a consequence of difficulties in the administration of these structures through state bureaucrats. At the same time, the option of freely joining and exiting an association are hallmarks of liberal demands with regard to ensuring equality in the context of group rights (see Barry 2001:148). However, localism, regionalism, autonomy, and participation are also important key terms in debates about the future global civil society and therefore attempts to reconcile these cultural values with legal and political requirements for the creation of corporate bodies has relevance beyond Australia, and, for that matter, beyond Namibia.

Conclusion

In Namibia and in Australia, colonialism transported legal ideas across cultural contexts. The emergence of corporate legal bodies is one of the most influential legal notions today with regard to the nature of social relations. European ideas and practices concerning trusts and corporations grew out of specific historical requirements. They entered the general legal framework adopted by nation states today and have to be dealt with by indigenous people who find themselves living in these nation states.

Namibia is usually not classified as a welfare country such as Australia or Canada, but the military administration of parts of the country where the San lived in the 1980s may be understood as “service colonialism” with features similar to that of welfare colonialism. Here the totality of external relations were channelled through one institution (primarily the army), dependency was aggravated by handouts and problems such as an unbalanced diet and alcoholism were introduced. Of course, “service colonialism” was limited to those parts of the Namibian population that served the administration, military or other colonial services (e. g. as game wardens and so on). With Namibian independence this service colonialism was superseded during a period in which the nation-state affirmed itself in ways that can fruitfully be compared with similar processes in other parts of the world. Thus organisations such as WIMSA are registered welfare organisations. Namibia's development is closely intertwined with that of

welfare states even though it has far fewer resources to distribute to its population. The mode of distribution seems to be not all that different. It seems fair to say that in Namibia, as well as in Australia, we are dealing with corporatism in its widest sense, namely as a process in which organisations that represent distinct interests bargain with State agencies and in which the leaders of these interest organisations are co-opted into the implementation of state policy and are expected to ensure the cooperation of individual members (see Cox and O'Sullivan 1988:8).⁶

As one might expect, this process develops slightly differently in different countries, including Australia and Namibia, which both have an indigenous minority that is subject to much national and international attention. However, as has been demonstrated, there is much to be learned about the logic that underlies the general phenomenon by looking at corporatist practices comparatively. The comparison of corporatist policies in two different settings demonstrates that the two state governments have considerable difficulties in reconciling local forms and strategies of social organisation with the specific forms of corporate organisation that they demand from indigenous groups. The comparative perspective that has been developed here highlights that anthropological comparisons, which may complement regional comparisons or historically-oriented perspectives, can contribute to a better understanding of these complex social phenomena by showing how similar dilemmas and contradictions emerge at different times and different places.

Colonialism transported ideas and practices of corporateness across cultural contexts and created corporate challenges for indigenous peoples in different parts of the world. Today the indigenous peoples network provides a means for voluntarily and deliberately spreading ideas and practices that form a response to this challenge across continents, for instance between Australia and Namibia. To the extent that situations differ, not all forms or ideas can be transported usefully from one context to the other. However, to the extent that current social reforms world wide deal with local and global participation and autonomy, there is little doubt that the ways of dealing with the corporate challenge which may have grown in the context of a particular indigenous group in a particular nation state should inform the overall repertoire of legal practices available to non-indigenous groups and indigenous groups alike.

The situation of associations in contexts like post-industrial Europe differs from those I have described in this paper, for instance because there are no prescribed corporate bodies for land

⁶ Cox and Sullivan claim that ultimately the various forms of neo-corporatist theory in fact "fudge" the principle dilemma of modern states, that is the tension between a "limited" (strictly law-based) style of politics and a

ownership. However, there are similarities which need emphasising. In order to enjoy tax benefits in Europe, for instance, any group of individuals with a joint interest is well-advised to form a charitable trust or association (a “gemeinnütziger Verein” in Germany). With regard to the specific situation of post-industrialism, the formation of these associations is often the only way in which former industrial buildings and terrains or other assets (such as vehicles, trains, machinery etc.) that are no longer used by industrial corporations can be received, restored and kept accessible to the public. At the same time, there is a distinct differentiation of corporate bodies into rather low-level associations (such as most *Vereine* in Germany) which resemble community-based organisations and high-level lobbies (*Interessenverbände* in Germany) which structurally resemble meta-corporate bodies such as WIMSA. A comparison of the relations between these different kinds of corporate bodies is beyond the scope of this paper (see Best 1993). While lower level associations seem to have always lamented a decreasing membership, this does not hold for the high-level lobbies which, however, usually only accept other corporate bodies and not individuals as members. As for the latter, increasing flexibility and autonomy may have led to a heightened discrepancy between those who engage in multiple membership pursuing full participation in social life and those who resist membership in any association. Many *Vereine* are designed for life-long membership (in fact often explicitly including support in the event of death of a member) but individuals in the post-industrial situation, young people in particular, seem to begin and terminate their membership more lightly than they did previously. However, the underlying suspicion towards unassociated individuals and “unregulated” associations (such as youth “gangs”) seems not to be a recent phenomenon. In some ways the difficulties of bureaucracies in dealing with the instability of indigenous associations mirrors that of the political leadership in post-industrial societies who fear that an increasing personal flexibility and reluctance to be a long-term member will threaten the network of (registered) associations that are considered to be a constitutive part of civil society. In both situations potential members of the association are suspicious of control exerted over their association, they are also suspicious towards the associations themselves taking over functions that individuals consider to be part of their personal autonomy. The situation in post-industrial civil society, I argue, could benefit if new forms and designs of associations, that indigenous people need to develop in order to account for a high degree of autonomy and flexibility, were to be recognised not as special forms for indigenous people but as organisational tools for anyone who faces comparable dilemmas. This would require a “social turn” rather than a “cultural turn” in the discussion of group rights. The question is not which or how many rights a nation

state or a civil society based on liberal principles can afford to grant to corporate cultural groups but rather what a civil society would need to look like in order to accommodate open-ended processes of association and disassociation among its individual agents.

References

Aboriginal Councils and Associations Act. 1976.

Arnold, J. and E. Gaeses. 1998. Is there hope for the San's land requests?. Paper prepared for the Workshop on "Land and Spirituality", World Council of Churches and Zimbabwe Council of Churches. Zimbabwe, 24-29 May 1998. Windhoek: WIMSA.

Barry, B. 2001. *Culture and Equality An Egalitarian Critique of Multiculturalism*. Cambridge: Polity.

Best, H. (ed.) 1993. *Vereine in Deutschland. Vom Geheimbund zur freien gesellschaftlichen Organisation*. Bonn: Informationszentrum Sozialwissenschaften.

Coleman, J. 1974. *Power and the Structure of Society. Fels lectures on public policy analysis*. New York: Norton.

Cox, A. and N. O'Sullivan (eds). 1988. *The Corporate State: Corporatism and the State Tradition in Western Europe*. Aldershot: Elgar.

Government of the Republic of Namibia. *National Conference on Land Reform and the Land Question, Windhoek, 25 June - 1 July 1991*. Office of the Prime Minister.

Kantorowicz, E. 1957. *The King's Two Bodies. A Study in Mediaeval Political Theology*. Princeton: Princeton University Press.

Katz, R., M. Biesele, V. St Denis. 1997. *Healing makes our hearts happy*. Rochester: Inner Traditions.

Keen, I. 2000. A Bundle of Sticks: The Debate over Yolngu Clans. *Journal of the Royal anthropological Institute (N.S.)* 6:419-436.

Lowe, P. 1997. *Jimmy and Pat meet the Queen*. Broome: Backroom Press.

Mantziaris, C., and D. Martin. 2000. *Native Title Corporations a legal and anthropological analysis*. Leichhardt: Federation Press.

Morrissey, P. 1998. "Aboriginality and Corporatism". *Postcolonial Studies*, Vol. 1, No. 1, pp 101-8. London: Carfax.

Report on Activities: April 1997 to March 1998. 1998. Windhoek: WIMSA.

Report on the Technical Committee on Commercial Farmland. 1992. Windhoek: Office of the Prime Minister.

Saul, J. R. 1997. *The Unconscious Civilization*. Ringwood: Penguin.

Weber, M. 1985. *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie*, First published in 1922 edition. Tübingen: Mohr.

Werner, W. 1997. "Land reform in Namibia: the first seven years". *BAB Working Paper*, Vol 5. Basel: Basler Afrika Bibliographien.

Widlok, T. 1994. *Problems of land rights and land use in Namibia: A case study from the Mangetti area*. SSD Discussion Paper 5. Windhoek: Social Science Division/Multi-Disciplinary Research Centre.

Widlok, T. 1999. *Living on Mangetti. 'Bushman' Autonomy and Namibian Independence*. Oxford: Oxford University Press.
