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## Extractive industries and Indigenous peoples: A changing dynamic?

Ciaran O'Faircheallaigh\*

*School of Government and International Relations, Griffith University, Nathan, Queensland 4116, Australia*

## A B S T R A C T

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Indigenous peoples and other rural or remote populations often bear the social and environmental cost of extractive industries while obtaining little of the wealth they generate. Recent developments including national and international recognition of Indigenous rights, and the growth of 'corporate social responsibility' initiatives among mining corporations, offers the prospect that for Indigenous peoples at least their former economic and social marginalisation may be reduced. A case study of Liquefied Natural Gas (LNG) development in a remote region of Western Australia shows that these changes are indeed creating opportunities to shape the local impacts of extractive industries. It also illustrates that effective political mobilization by Indigenous peoples is essential if they are to grasp these opportunities, especially as growing pressures to expand extractive industries across the globe increase demands for access to Indigenous lands. Recent Indigenous experience holds implications for theory on the regional political economy of extractive industries and lessons for other rural and remote populations.

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## 1. Introduction

The economic and social marginalisation of residents of many remote and rural areas affected by extractive industries is well documented. Local people obtain few of the benefits created by mining, and the environmental, social and economic effects of extractive industries can threaten existing, viable livelihoods (Cademartori, 2002; Freudenburg, 1992). Indigenous peoples have been especially susceptible to marginalisation and the destruction of livelihoods, because they rely heavily on land and resources that are susceptible to environmental damage from resource extraction; are vulnerable to the impact of immigrant populations; and lack political influence because of their small numbers combined with discrimination and social disadvantage. Indigenous peoples frequently live in poverty adjacent to mining complexes that generate enormous wealth for their owners and for sub-national and national governments (Langton and Mazel, 2008; Sawyer and Gomez, 2012).

Growing national and international recognition of Indigenous rights, changes in corporate policy and greater Indigenous political capacity are changing the legal and political context for extractive industries. Australia, Canada, Colombia, Nicaragua and the Philippines are among a number of countries that have granted or expanded legal recognition of Indigenous rights (see for example

Bartlett, 2004; Holden, 2005). Pressure by international Indigenous organisations and their allies has resulted in the enactment of a series of international declarations and conventions recognising Indigenous rights, including the 2007 United Nations Declaration on the Rights of Indigenous Peoples (Muehlebach, 2003; Pitty and Smith, 2011). In South America, the Inter-American Court of Human Rights, established by the American Convention on Human Rights, has handed down a number of decisions requiring national governments to abide by human rights principles set out in the Convention in their dealings with their Indigenous populations. The Court found against Nicaragua, for instance, in a case brought against it by the Awis Tingi community, after Nicaragua had granted forestry leases over Awis Tingi ancestral lands without seeking their consent and in doing so had 'violated the rights of the Mayagna Awis Tingi Community to use and enjoyment of their property ...' (cited in Bankes, 2004, p. 3).

International financial institutions have also increasingly recognised Indigenous rights. For example in 1998 the Inter-American Development Bank adopted a policy requiring prior informed consent in the case of indigenous people possibly affected by involuntary resettlement as part of a Bank-financed projects (Deruyttere, 2004). The International Finance Corporation (IFC), the arm of the World Bank that provides funding for private enterprise development in developing countries, has for some time required that projects the IFC invests in must avoid, or 'minimize, mitigate or compensate for', impacts on Indigenous communities, and engage in a process of consultation and 'informed participation' (IFC, 2007). The IFC substantially expanded this latter requirement in revised

\* Tel.: +61 7 3735 7736; fax: +61 7 3735 7737.

E-mail address: [ciaran.ofaircheallaigh@griffith.edu.au](mailto:ciaran.ofaircheallaigh@griffith.edu.au).

Performance Standards introduced in January 2012. It now requires clients to obtain the free prior informed consent of affected Indigenous communities for projects that affect Indigenous lands, natural resources or critical cultural heritage, or which require the relocation of Indigenous people (IFC, 2012, pp. 48–50).

Significant changes have occurred in corporate policies towards Indigenous peoples. Many mining and oil and gas companies now proclaim their respect for Indigenous rights and seek to enter agreements with Indigenous peoples before operating on their traditional lands (ICMM, 2010; O'Faircheallaigh and Ali, 2008). Some at least have declined to proceed with developments approved by state authorities in the face of Indigenous opposition (Rio Tinto, 2005).

The increased willingness of states, international institutions and corporations to acknowledge Indigenous rights reflects in part growing Indigenous political capacity, and in particular the ability of Indigenous landowners to disrupt, delay and in some cases force the abandonment of planned projects or operating mines (Denoon, 2000; Trebeck, 2007).

Will this changing legal and political context end the historical marginalisation of Indigenous peoples, allowing them to assert control over, and benefit from, extractive industries on their ancestral lands? What implications, if any, does the experience of Indigenous people have for non-Indigenous residents of rural and remote regions affected by extractive industries? The next section establishes a foundation for considering these questions by outlining a range of theoretical perspectives on extractive industries in rural and remote regions. The discussion is not limited to theories focussing specifically on Indigenous peoples, reflecting the reality that they share some of the characteristics and experiences of other residents of remote and rural areas affected by mining. In certain respects the situation and experiences of Indigenous peoples are different. These differences may actually heighten the relevance of general theories, for instance those focussing on the ecological effects of resources extraction, though additional and specific theoretical insights are sometimes required.

The following sections use a case study of a proposed Liquefied Natural Gas (LNG) project in a remote region of Western Australia to explore in more detail the possibilities opening up for Indigenous peoples, and the constraints they continue to face. It illustrates that while the changes mentioned above are certainly creating opportunities for greater Indigenous participation and control, extensive and sustained political mobilisation is required if those opportunities are to be exploited. The article concludes by considering the theoretical implications of the discussion and its relevance for non-Indigenous rural populations affected by extractive industries.

## 2. Theoretical perspectives

Liberal economic theory is an appropriate starting point for the discussion. It provides the foundation for the efforts of national and sub-national governments in many parts of the globe, and of international financial institutions, to promote extractive industries as a foundation for development in rural and remote regions, including in the traditional territories of Indigenous peoples (Campbell, 1999; Sawyer and Gomez, 2012).

In liberal economic theory, the development of extractive industries in rural and remote regions reflects a growing comparative advantage they enjoy as resources closer to major industrial centres are depleted. Local populations will benefit from this situation because the market ensures that extractive industries pay higher wages (or wages significantly in excess of unemployment benefits) to bid labour away from its existing uses. Extractive industries generate additional incomes by creating opportunities for employment and profit in industries supplying inputs to

extractive activities, in processing minerals, and in meeting growing needs for consumer goods and public services (Ahammad and Clements, 1999; Aragon and Rud, 2009, pp.11–14; Crowson, 2009).

Liberal economic theory wins empirical support from the historical role of mining in promoting industrial development in what are now advanced economies (Davis, 1995, p. 1767); and from contemporary research showing that regions with a high reliance on mining tend to have above-average and/or rising incomes (Aragon and Rud, 2009, pp. 24–26; Stedman et al., 2004).

Liberal economic theory has been criticised on a number of grounds. Empirical research shows that at least in some rural and remote regions extractive industries are associated with persistent poverty rather than rising incomes, that they can undermine existing economic activity, and often fail to generate significant input-supplying or processing industries (Gaventa, 1980; Richardson and Denniss, 2011; Zarsky and Stanley, 2011). Some analysts attribute these limited or negative outcomes to the unstable nature of international mineral markets and prices; to the absence in remote regions of complementary resources and facilities, for example energy and transport infrastructure, that were present close to mining activities in earlier historical periods; and to changes in transport and other technologies that allow labour and material inputs to be sourced from metropolitan centres (Freudenburg, 1992; Radetzki, 1982). Others propose a more radical critique.

For example a number of writers, drawing on dependency theory and world system theory, argue that the perceived failure of mining to promote broadly-based development in rural and remote areas reflects fundamental, structural features of extractive industries and their position within national and global economies. In the Canadian context Bradbury (1979) has stressed that extractive industries and towns associated with them are dominated by large, vertically-integrated capitalist firms which are multinational in the scope of their operations and in their approach to allocating resources. They aim to maximise capital accumulation in their operations as a whole. Individual resource towns or regions are developed because *at a particular point in time* relative cost and other considerations render it advantageous for firms to do so, but if circumstances change and the dictates of successful capital accumulation demand it, production will be switched to other regions or countries and the inhabitants of the original centres of production left to bear the burden. This situation creates structural conditions which place resource communities in a vulnerable position, highly dependent on a single economic activity which may cease at the dictate of an international corporate bureaucracy whose primary loyalty is to the firm rather than to any particular resource producing region or country. The role of the state, and of domestic political elites which control it, tends to be a cooperative and supportive one, to 'assist with accumulation and to legitimize the relations of production and the class relations within the private sector' (1979: 151).

The other major thrust of Bradbury's argument is that the relationship between regions and towns dominated by extractive industries and the industrial centres they serve is essentially exploitative. Human, physical and capital resources flow from the former to the latter, underdeveloping the resource region, distorting its economy and leading to patterns of growth which are highly uneven in spatial, sectoral and temporal terms, while permitting accumulation of capital at, and enriching, the industrial centre (Bradbury, 1979). Similar analyses are offered by Newton (1979) for Australia and Peluso et al. (1994) for the United States.

Bunker (1984), in his work on resource extraction and development in the Amazon, adds a specifically ecological dimension to the analysis. He argues that extractive industries represent

a transfer of energy/materials, a 'net flow of matter and energy' and of environmental and human value, from peripheral regions and nations to the 'centre', where value is added to them and appropriated, and that this process is inevitably in the latter's favour:

... exchange inequalities [are] inherent in extractive industries, in which value in nature is appropriated in one region and labour value incorporated in another ... we must consider the exploitation of labour and the exploitation of entire ecosystems as separate but complementary phenomena (Bunker, 1984, p. 1018, 1053).

Bunker argues that extractive materials embody little labour or capital relative to their value, with much of this value reflecting the inherent worth of the materials themselves and of the environment and people 'consumed' in their production. In addition, the destructive impact of extraction on previously sustainable plant, fish and animal populations limit the possibilities open at future stages of development (Bunker, 1984).

Bunker's arguments have particular relevance to Indigenous peoples in rural and remote regions, as they tend to rely heavily on their traditional land and sea territories and the resources they contain not only for their economic survival but also for their social and cultural identity and wellbeing. If extractive industries involve the appropriation of environmental and human values and the destruction of ecosystems, this represents not just the risk of impoverishment but also a threat to their survival as peoples. Whether such an outcome is inevitable as suggested by Bunker is a major focus of this paper, but the adverse impact of extractive industries on Indigenous territories has certainly been documented in a wide variety of contexts (Bebbington et al., 2008; MPRI/IDRC, 2003; Yakovleva, 2011).

Extractive industries can also have social and cultural effects that particularly affect Indigenous people. The arrival of migrant workers can result in pressure on wildlife resources, greater availability of alcohol and drugs, and exclusion of Indigenous language and cultural practices from schools and work places (Angell and Perkins, 2011; Goodland, 2009).

Development and operation of extractive industries can also undermine Indigenous social and cultural values and Indigenous self-esteem because of the denial by company staff of the validity and worth of Indigenous cultural practices and cultural and ecological knowledge. Indigenous people may assume that the arrival of miners signals the commencement of a relationship that involves the exercise of rights and the acceptance of commensurate economic and social obligations by both parties. Mining company staff, operating on the basis of 'mainstream' legal systems and without appropriate cultural understanding, may fail to recognise the need to observe cultural protocols, to accept obligations in return for gaining access to Indigenous land, or indeed to establish any relationship with Indigenous people (Doohan, 2008; Goodland, 2009).

Returning to the broader issue of impacts of extractive industries on rural and remote regions, if impacts are indeed strongly negative, why would local populations accept them? In some cases they do not, as for example on Bougainville Island in Papua New Guinea where in 1989 landowners, incensed at the massive impact of mine pollution on their livelihoods and the absence of appropriate compensation, launched a rebellion which closed one of the world's largest copper mines (Denoon, 2000; see also Oxfam America, 2009). However such cases represent the exception, as indicated by the ongoing expansion of mining into almost every corner of the globe.

Their cyclical nature and the possibility of an 'upturn' this entails may persuade some workers and communities to tolerate extractive industries and indeed offer concessions to retain them. More

broadly, extractive industries and state authorities that support them can bring extensive economic and political resources to bear in seeking to protect their interests. In his analysis of a coal mining region in Appalachia, Gaventa (1980) draws on Steven Lukes analysis of power (Lukes, 1974) to show how coal mining companies were able to mobilise power at different levels and in different ways to ensure their continued profitability and the quiescence of coal miners and affected communities in the face of their own poverty and exploitation. In a more recent analysis of the same region, Bell and York (2010) draw on neo-Marxist theory that focuses on the role of ideology and legitimation in maintaining elite rule. They show how mining companies, to maintain their power in the face of rising unemployment and environmental despoliation, have appropriated cultural icons in order to maintain the image that West Virginia's economy and cultural identity continue to be centred on coal production.

The construction of ideas, culture, history and knowledge has certainly played, and continues to play, an important role in the political marginalization of Indigenous people. For example Prout and Howitt (2009) show how images of the Australian frontier and rural landscapes are constructed so as to ignore or erase the persistence of Indigenous presence and possession in rural Australia. By 'rendering Indigenous people always out of place', these constructions of the frontier 'foster continuing erasure of Indigenous rights, lived experiences and opportunities' (2009, 397). Nadasdy (2003) documents how officials in regulatory agencies in British Columbia undermine the validity of Aboriginal ecological knowledge, values and worldviews, and so maintain their control over land management.

A key dimension of power relationships involves the role of state agencies in rural and remote regions. A number of studies in the United States have shown how federal and state agencies have used their control over regulatory regimes and disposition of state resources to favour commercial users of natural resources over local producers and subsistence users, including Indigenous peoples (Gaventa, 1980; West, 1994). State agencies both in industrialised and developing countries have often ignored Indigenous interests and been complicit in repressing Indigenous opposition so as to facilitate the access of extractive industries to Indigenous lands (Blaser et al., 2004; Holden, 2005; Sawyer and Gomez, 2012).

This review of theoretical literature is hardly encouraging in terms of the prospects for a fundamental change in the fortunes of rural and remote populations affected by extractive industries, since much of it suggests that the factors resulting in their marginalisation reflect fundamental imbalances in the distribution of power. But while the historical record in relation to the impact of extractive industries on Indigenous peoples provides little grounds for rejecting such a conclusion, as noted earlier the context in which Indigenous people, at least, deal with extractive industries has changed in recent years. Much of the literature reviewed here predates or does not address these changes. In particular it does not acknowledge the potential of agreement making between Indigenous peoples and developers and state authorities to change the conditions under which development occurs and its impact on local Indigenous populations.

More broadly West (1994), for instance, highlights the danger of assuming that because domination of marginalised populations by powerful economic interests and state bureaucracies aligned with them persists over long periods of time, such domination is permanent or inevitable. In his view domination 'is neither monolithic, nor ... is it forever and unchangeable; it can crumble and be undermined' (1994, p. 424). Marginalised groups can challenge the dominance of major economic interests and the bureaucracies that generally support them as a result of 'some structural conditions, substantive issue or historical constellation of

forces' (1994, p. 417). Significantly in the current context, one of the two examples West provides<sup>1</sup> to illustrate his argument involves the ability of Native Americans to use treaty law victories in the courts to challenge decisions of natural resource agencies dominated by economic interests (1994, pp. 421–422). But West notes (1994, p. 424) that the capacity to alter systems of domination depends 'on strategic use of current structural possibilities and limitations and upon will, determination and mobilization'.

The case study which follows provides an opportunity to test the validity of these alternative theoretical perspectives. In particular it explores whether and under what circumstances changes in the legal and political context for resource extraction on Indigenous lands may result in a shift in underlying power relations and in the distribution of costs and benefits created by extractive industries.

### 3. LNG development in Australia's Kimberley region

#### 3.1. Rationale for the case study

The Kimberley region constitutes an apt case study to use in considering whether the dynamic between Indigenous people and extractive industries is changing. The region displays many of the characteristics of rural and remote areas discussed in the literature (see following sections). These include a population marginalised in economic and social terms; a history of extractive industry activity that has imposed cultural and social costs on Indigenous people but generated few benefits for them; and state agencies and policies that have been strongly supportive of industry. Its Indigenous people and their regional organisation, the Kimberley Land Council (KLC), have for a decade been attempting to utilise growing recognition of Indigenous rights to gain greater control over development. If their attempts have been successful then, given the Kimberley's characteristics and history, this would represent a strong indication of a growing potential for Indigenous peoples to shape the impact of extractive industries.

In addition, a proposal to establish a Liquefied Natural Gas (LNG) Precinct on the Kimberley coast to process offshore gas provides a very current and concrete opportunity to assess whether the relationship between extractive industries and local populations is changing in fundamental ways. The commercial and other agreements that will govern development of the Precinct, concluded in 2011, are not, as is commonly the case, confidential. Their content and the processes leading to their conclusion, also documented in public sources, provide a rich body of empirical data.

#### 3.2. The Kimberley region and its Aboriginal people

The Kimberley region occupies 424,000 sq km in the north west of Western Australia, making it similar in size to the State of California. Its population is about 41,000, some one-third of which is Aboriginal. As in other parts of Australia, Aboriginal people in this region suffered seriously from the impact of white settlement, with disease and settler violence decimating the population and with Aboriginal land being resumed by the Crown or alienated for commercial purposes, especially cattle production on large pastoral stations. However the relatively late arrival of settlers, the key role of Aboriginal labour in the pastoral industry, and the limited commercial opportunities associated with remoteness and a harsh climate meant that most Kimberley Aboriginal people maintained

their connections to their 'country' and that Aboriginal cultural and social values and practices remain vibrant.

Like many Indigenous peoples, Kimberley Aboriginal people suffer serious economic and social disadvantage. Opportunities for wage employment are scarce; incomes are well below the national average; and access to education, health, housing and other services is limited. As a result there is a high incidence of chronic disease and low life expectancy, and the region suffers from social problems such as substance abuse and youth suicide. On the other hand many people are still able to obtain a large part of their food from their traditional lands; social relationships are extensive, complex and strong; and cultural and spiritual beliefs and practices are an important source of personal strength and social cohesion for many Aboriginal people (KLC, 2010a: 46–50).

The Kimberley began to experience large-scale mineral development in the late 1970s. At this time there was no legal recognition of Aboriginal land rights in Western Australia (WA), and the State Government of Western Australia ('the State') had no interest in ensuring that Aboriginal people shared in the benefits of development or in protecting them from its impacts. Kimberley Aboriginal people established the KLC in 1978 to provide a regional political platform from which they could oppose uncontrolled development. Its early attempts in this regard were only partially successful. Resource development was in some cases forced on landowners by the State, involving serious damage to important cultural sites and generating few benefits for local Aboriginal people (Dixon and Dillon, 1990; Hawke and Gallagher, 1989). However the KLC did succeed in establishing itself as a regional grassroots Indigenous organisation with a significant national profile (KLC, 2011a).

In 1992 Australia's High Court, in its *Mabo* decision, recognised the existence of inherent Indigenous rights in land predating white settlement in 1788, and the possibility that such rights can survive (as 'native title') where they have not been extinguished by valid grants of interests in land and where the Indigenous owners have maintained their connection with their traditional estates. *Mabo* was given legislative effect by the Federal *Native Title Act 1993 (NTA)* which created a system through which eligible Indigenous people could claim native title, and established processes for judicial determination of claims. The KLC and the Aboriginal Traditional Owners<sup>2</sup> it represents have enjoyed considerable success in establishing native title in the Kimberley, despite the fact that Conservative Liberal – National Party Governments in WA have been overtly hostile to native title and have fought many claims in the courts. Over half of the Kimberley is now recognised as native title land, and additional claims are at an advanced stage (KLC, 2011b).

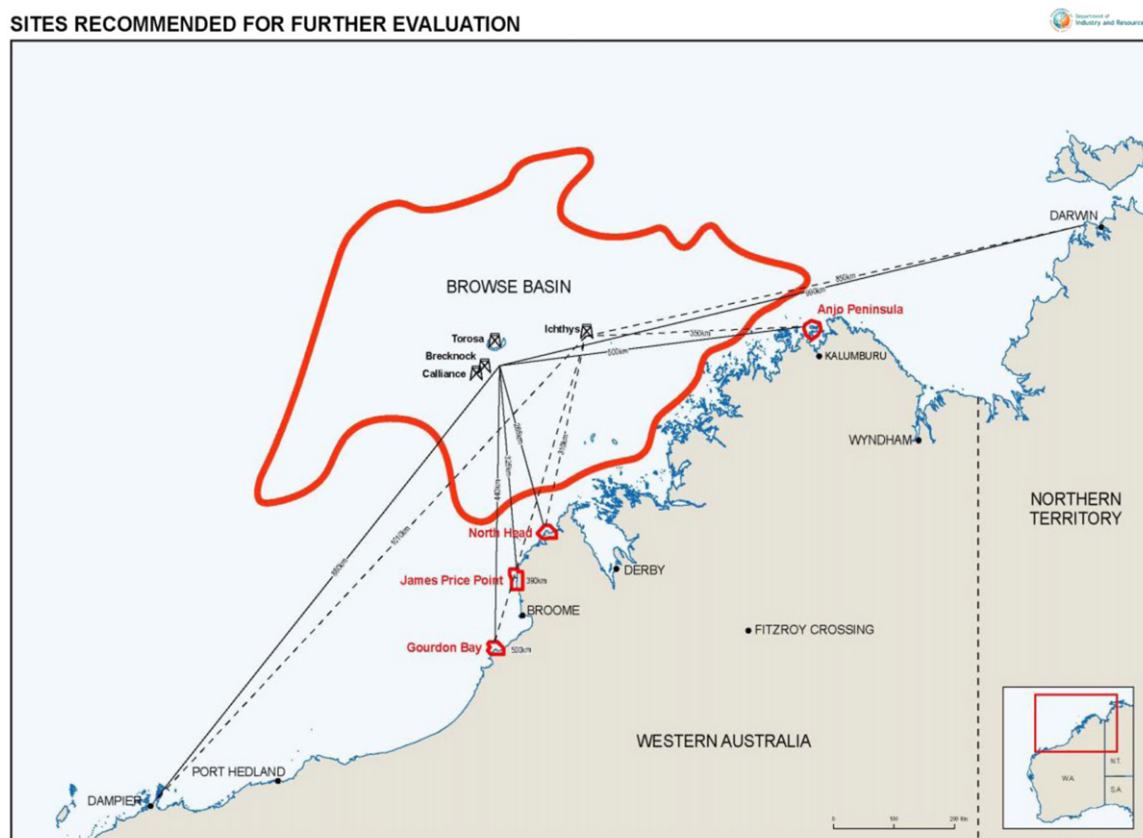
Recognition of native title does not give Aboriginal landowners a veto over development as would, for example, a requirement for Indigenous free prior informed consent before development could proceed. Rather it confers on them a 'Right to Negotiate' with developers and/or the state authorities in relation to proposed commercial development on their lands. Agreements negotiated under the *Native Title Act* can provide for sharing of project revenues; employment and business development programs to benefit Aboriginal people; and measures to protect cultural heritage and the environment.

The KLC has in the last decade supported Traditional Owners in negotiating a series of agreements for mining, agricultural and other projects (KLC, 2011c). These agreements provide substantial

<sup>1</sup> The other example relates to the ability of poor farmers in the United States to challenge the policies of state resource agencies in the specific circumstances of the New Deal (West, 1994, p. 417).

<sup>2</sup> The term 'traditional owners' is used in Australia to describe those Indigenous people who have primary affiliations with, and responsibility for, areas of land and water and the cultural and spiritual sites they contain.

## SITES RECOMMENDED FOR FURTHER EVALUATION



Map 1. Short list of potential sites for Kimberley LNG precinct. Source: Department of Industry and Resources, Western Australia.

economic benefits for landowners and give them a significant say in management of environmental, cultural and social impacts. The capacity of Indigenous groups to negotiate such agreements signals the emergence of leverage points that were not available during earlier phases of resource development.

Turning to the specific context for the case study, the Browse Basin is an extensive marine trough which lies between 250 and 500 km off the Kimberley coast (see Fig. 1). Starting in the 1970s natural gas was located in the Basin by Australian and multinational companies, including Woodside Energy Ltd ('Woodside'), Shell, Chevron, BP, and Inpex. It is estimated that the Browse Basin holds about 25 per cent of Australia's recoverable reserves of natural gas. By 2005 rising energy prices and improvements in offshore technology had enhanced the commercial viability of the Browse gas fields. The gas would have to be piped ashore for processing into LNG and by-product LPG and condensate for export to Asia. A consortium led by Woodside identified Wilson Point north of the tourist town of Broome (see Fig. 1) as a possible location for processing gas from three offshore fields. Inpex was also seeking a site to process gas from its Ichthys field.

### 3.3. The site selection process and the Traditional Owner Taskforce

In 2006 the (Labor) State Government decided that, rather than have individual proponents identify and develop their own sites for LNG plants along the Kimberley coast, the Government would seek a single location for an industrial precinct where processing of all gas from the Browse Basin would occur ('LNG Precinct'). This approach was expected to minimise the environmental and cultural impacts of gas processing, by identifying the site that was least sensitive to such impacts, and preventing proliferation of LNG

plants along the Kimberley coast. The Government stated that an LNG Precinct would not be established in the Kimberley unless it created significant economic and social benefits for Aboriginal people and had the 'fully informed consent' of Traditional Owners (ABC, 2008; Carpenter, 2006). This represented a significant departure for a State that had traditionally been strongly supportive of extractive industry and dismissive of Indigenous interests (Dixon and Dillon, 1990).

In 2007 the State established a Northern Development Taskforce (NDT) to conduct the site selection process for an LNG Precinct. The State agreed to a KLC request for funding to support a Traditional Owner consultation and decision making process that would give practical effect to the State's requirement for Indigenous informed consent.<sup>3</sup> In mid-December 2007, the KLC convened a meeting of senior Aboriginal men and women from coastal regions, as well as senior 'cultural bosses' from elsewhere in the Kimberley to direct the KLC on how to proceed. The meeting discussed LNG development and its likely impacts in the Kimberley over two days. A State representative outlined the State's preliminary ideas about LNG development, including the membership and role of the State's NDT. In response to this information the senior Aboriginal men and women present at the meeting outlined a consultation process and culturally appropriate representative structures, and drafted

<sup>3</sup> This section of the paper draws on relevant parts of a KLC Aboriginal Social Impact Assessment Report, which is publicly available (KLC, 2010a). That Report drew, in turn, on a confidential report to the KLC regarding Traditional Owner involvement in the LNG Precinct site selection process, KLC, 'Hydrocarbon Processing in the Kimberley Region: Laying the Foundations for an Aboriginal Social Impact Assessment', Broome, December 2008. Any confidential information contained in relevant sections of this latter report are not included here.

a timetable to consider the Government's proposal for an LNG Precinct. They decided that there should be a Traditional Owner Taskforce (TOTF) representing all native title claims groups along the Kimberley coast, as an equivalent representative and administrative body to the State's NDT. Following this meeting the KLC established a Senior Leadership Group to advise and assist Traditional Owners of the Kimberley coastal regions and the KLC in their deliberations about the complex matters that had to be considered in making decisions about LNG development. Over the wet season (December–February), Traditional Owners began to consider the potential impacts of LNG development and how they could effectively engage with industry and government to achieve positive outcomes for Aboriginal people in the Kimberley.

On 6 February 2008 the State and Australian Governments signed an Agreement providing for the two Governments to jointly conduct strategic assessments of the proposed LNG Precinct under relevant environmental legislation. The Terms of Reference (ToR) for the Strategic Assessments (KLC, 2010a, Appendix 1) broke new ground in that, unlike previous environmental assessments conducted under State and Australian legislation, they required a major focus on impacts on Indigenous peoples and culture, and on how these impacts would be managed. The Strategic Assessment Report that would provide the basis for Ministerial decisions on the proposed Precinct would have to include 'a comprehensive analysis of the potential impacts of the Plan [for the LNG Precinct] on Indigenous people', and details of 'the specific measures intended to avoid, minimise and mitigate for the potential environmental and Indigenous impacts of the Plan' (ToR Clauses 7 and 9). The signing of this Agreement provides a further example of a shift in potential Indigenous leverage in comparison to the historical context.

In mid-February 2008 another meeting of senior Aboriginal men and women, including cultural bosses from across the Kimberley, was held in Broome. The KLC's Senior Leadership Group was confirmed in its role on the basis of appropriate cultural practices, including separate men's and women's meetings and consensus decision making, while some more senior men and women were added. The Senior Leadership Group would provide advice and leadership to the KLC's consultation process, and attend meetings with coastal native title claim groups. The KLC was instructed to undertake a consultative process with all Traditional Owners with native title claims along the Kimberley coast; facilitate selection of representatives for a TOTF equivalent to the State's NDT; and gain as much information from as many sources as possible concerning proposed LNG development in the Kimberley.

The area of the Kimberley Coast within which the State was seeking a single suitable location for an LNG Precinct encompasses parts of the traditional country of fifteen different native title claim groups. Senior Aboriginal men and women took the position that all those groups had to be consulted, for two reasons. They recognised that the proposed LNG development is a massive long life project, and that its impacts, positive and negative would be felt widely and have intergenerational effects. The second reason arose from the bonds and commitments inherent in the cultural and social form that pervades the Kimberley, the *wunan* (also termed *wirnan* or *unan*). The *wunan* can be viewed as a 'foundational cultural basis' and an overarching practice of local and regional Aboriginal governance, ordained during the creative period of the Dreaming and constituting a complex and integral element of Aboriginal peoples' secular and ritual lives. It incorporates exchange systems that involve mundane and sacred objects as well as ideas and values. It joins together large numbers of people over extensive areas of land and 'is the expression of the relationships among people, between people and country, and between people, the country and the Dreaming' (Doohan, 2007, 211). It creates

obligations of reciprocity between individuals and groups, and 'reproduces an ethical of egalitarianism in terms of material wealth' (Doohan, 2007, 215).<sup>4</sup>

The *wunan* was often called on during the process of forming the TOTF and during TOTF meetings, as a mediating and re-affirming practice considered to be greater than local groups, or even larger native title groups, and to encompass 'the Kimberley'. To be consistent with the principles of reciprocity and inter-dependence central to the *wunan*, decision-making in relation to LNG development would have to be inclusive and involve mutual support between all the native title groups involved. To be consistent with those principles and the emphasis on egalitarianism, benefits arising from any development would have to be distributed widely among connected groups rather than confined to a single group that might ultimately end up with an LNG Precinct on its traditional land.

The KLC commenced coastal native title claim group meetings during which the idea of LNG development on the Kimberley coast was introduced, the NDT process was explained, the KLC consultation process was outlined and the limited information about LNG development then at hand was delivered. The KLC sought advice, suggestions, questions and direction from Traditional Owners and information on what was important to them. Each native title claim group was invited to consider the selection of four representatives to form the TOTF, how the TOTF should function, and how it should report back to group members. The TOTF was established in May 2008, following a further series of meetings which brought together clusters of related native title groups. The KLC provided Traditional Owners with details of the possible locations being considered for development. Further information was also provided regarding natural gas processing and its likely cultural, social, economic and environmental impacts, and regarding some of the potential benefits of development, including employment and training, education and business opportunities and equity participation.

The roles and rules of the TOTF were discussed, clarified and endorsed. Of critical importance and consistent with traditional decision-making practices, the TOTF members could not make decisions on behalf of their native title groups about whether to agree to locating an LNG hub in the Kimberley or on their traditional land and sea country. Such decisions would have to go back to the whole native title claim groups. TOTF members would make decisions about consultation processes; ensure the integrity of the information delivered by the TOTF and the KLC; and act as a conduit for the flow of information to and from the larger native title claim groups. The TOTF would also provide a mechanism through which the native title groups would support each other, whatever decision individual groups made about LNG development on their traditional country. At the meetings each native title claim group selected four representatives to participate in the TOTF.

The establishment and management of the TOTF process re-affirmed Kimberley Aboriginal people's cultural practices, and their right to make decisions about their country, in the context of contemporary large-scale resource development. It constituted a significant departure from a historical pattern where Aboriginal cultural values were entirely ignored in appraisal and approval of resource projects (O'Faircheallaigh, 2002; Dixon and Dillon, 1990).

<sup>4</sup> Both in its conceptualisation and practice the *wunan* is multifaceted and complex, qualities I cannot do justice to in this paper. The interested reader is referred to Kim Doohan's detailed discussion of the treatment of the concept in the anthropological literature, and of its practice in the contemporary context: Doohan 2007, Chapter 7, particularly pp. 210–222.

The TOTF met monthly until September 2008. During the meetings the TOTF engaged in exchanges with government, non-government organization (NGO) and industry visitors, who presented information concerning the proposed LNG development and sought to answer questions raised during the meetings. At each meeting an agenda was set, minutes were recorded, key issues and tasks to be undertaken were highlighted, and questions unanswered or requiring further elaboration were noted. These records were used to prepare TOTF newsletters that provided a basis for discussion within families and the wider native title claim groups.

In July and August 2008 the KLC met with native title claim groups to facilitate discussions regarding which of the 11 potential Precinct locations identified by the NDT could remain in the site selection process. Traditional Owners for these proposed locations also participated in scientific and engineering studies in collaboration with the NDT. As the process unfolded a number of Traditional Owner groups withdrew their land and sea country from consideration as potential sites, though these decisions were not made public until the four remaining locations were made known on 10 September 2008 (see below). Traditional Owners withdrew sites in some cases because multiple potential sites existed on their country and they only wished a single site to be considered. In other cases they withdrew sites because of their serious concerns about the potential impact of a Precinct on the environment and on their cultural and economic lives. The NDT also removed some of these same sites from consideration due to environmental and/or technical factors.

In July 2008 a State election was called and held six weeks later. This was a period of uncertainty for the TOTF and the members of the native title groups, as it was unclear whether the NDT process and the TOTF would continue and, if it did not, what would replace it. Nonetheless the KLC and TOTF continued to meet and progress the consultations and decision making about LNG development and possible Precinct locations. The TOTF also continued, despite the uncertainty, to engage with the four native title claim groups that had decided to leave the locations within their traditional country for further consideration.

By early September 2008 and before the results of the State Government elections were finalised the TOTF formally announced the remaining four locations still being considered by Traditional Owners: Anjo Peninsula, North Head, Quondong to James Price Point and Gourdon Bay (see Fig. 1). As a consequence of these decisions on potential sites, the TOTF doubled the representation of the remaining four groups to recognise their increased responsibility. Following the establishment of the Liberal/National State Government on 13 September 2008 and the lack of certainty or engagement with the new Government, the KLC and the TOTF were confronted with very serious financial and political considerations. In an effort to retain the TOTF process in some form, the TOTF and the KLC decided to reduce the active participation of TOTF members to those involved with the remaining four potential locations (the 'TOTF (4)').

The new Premier Colin Barnett stated on 15 October 2008 that it was unacceptable for government to, in his words, give 'a right of veto to local Aboriginal people, expressed in the following terms that projects would not go ahead unless there was informed consent by Aboriginal people' (Government of Western Australia, 2008a). The State Government indicated that while it would consult with Traditional Owners regarding measures for impact mitigation and community benefits, the existing site selection process would be discontinued.

Existing funding was sufficient to allow the KLC and the TOTF (4) to continue to conduct meetings in November and early December. Failure to secure further funding jeopardised any future TOTF or native title claim group meetings after Karajarri Traditional Owners

met on 16 December 2008 and decided to remove the Gourdon Bay location from consideration, following their interpretation of newly released NDT environmental survey results and their own body of ecological knowledge.

#### 3.4. Compulsory acquisition and the LNG precinct 'Heads of Agreement'

In December 2008 the State, after receiving advice on the short-listed sites from the WA Environmental Protection Agency, announced James Price Point as its preferred site for the LNG Precinct. The Premier indicated that compulsory acquisition powers under the WA *Public Works Act 1902* would be used to acquire the land needed if Traditional Owners failed to reach agreement with the State for location of the Precinct at James Price Point. The Premier indicated that he would allow a period of three months ending on 31 March 2009 for the negotiation of a Heads of Agreement between the State, Traditional Owners and Woodside, that would provide Traditional Owner consent for the LNG Precinct to proceed. If this was not achieved the process of compulsory acquisition would be initiated (O'Brien, 2008; Government of Western Australia, 2008b). James Price Point was subject to a native title claim combining Goolarabooloo and Jabirr Jabirr people. It was this combined group ('the GJJ') whose consent would be required.

The change in the State's position on Indigenous consent altered the basis of Aboriginal participation in relation to the proposed LNG Precinct. Previously participation in the process was centred on the question of whether or not an LNG Precinct site could be found that met engineering, technical and environmental requirements and whose selection also had the support of Traditional Owners for the area concerned. Now the central issue was how negative impacts associated with a choice of site made by the State without Aboriginal consent could be minimised, while allowing affected Aboriginal people to share in the benefits of development.

Another basic change resulted from the imposition of very tight time frames on the negotiation process. The three months nominally allowed by the Premier for negotiation of a Heads of Agreement contrasts with the several years taken to reach an equivalent point in similar negotiations for less complex projects.<sup>5</sup> As a result the KLC and GJJ would negotiate under enormous pressure. In addition, the KLC was seriously hampered in preparing for negotiations by the absence of any agreed framework for engaging with the State and Woodside or any funding to support negotiations. (A formal funding agreement with the State was not finalised until 11 March 2009). Partly for this reason the first formal negotiations did not occur until 26 February 2009. This left only five weeks (later extended by the Premier to seven weeks) for the KLC and the GJJ to negotiate a Heads of Agreement for one of the largest industrial projects in Australia.<sup>6</sup>

On 19 and 20 February 2009 the GJJ native title claim group authorized the KLC to act on its behalf and nominated members of a Traditional Owner Negotiating Committee (TONC) to represent the GJJ in negotiations with the State and Woodside. Over the following weeks the TONC and the KLC participated in a series of negotiations with the State and Woodside, both of which presented general positions across a range of relevant issues, but did not present fully developed proposals until towards the end of the

<sup>5</sup> Cases where it required several years to reach key terms agreement in ILUA negotiations include the Argyle Diamonds Ltd ILUA (Western Australia) and the Western Cape Communities Co-existence Agreement (Queensland).

<sup>6</sup> This account of events leading to the KLC's signing of the LNG Precinct 'Heads of Agreement' is based on KLC 2010c.



seven-week period. The TONC and KLC put forward counter-proposals to positions put by the State and Woodside, and in addition made repeated representations to both that the State should not threaten them with, or resort to, compulsory acquisition.

On 14 and 15 April 2009 the KLC held a meeting of the GJJ to consider the current proposals of the State and Woodside. The GJJ had to decide whether to accept the offers, sign a Heads of Agreement providing consent to the location of an LNG Precinct in the area of James Price Point, and continue negotiations towards a comprehensive Indigenous Land Use Agreement (ILUA) under the *Native Title Act* that would give final legal form to the offers and the GJJ consent. The alternative was to refuse the offers and face the threat of compulsory acquisition. At the end of the second day the GJJ made a decision that the KLC should, on their behalf, enter into the Heads of Agreement with the State and Woodside in relation to the LNG Precinct. Members of an extended family associated with the Goolarabooloo group left the meeting before a decision was taken, and subsequently expressed their opposition to the outcome.

The Heads of Agreement is confidential, but in general terms it provides for agreement on the area within which the proposed LNG Precinct will be located; a prohibition on any further LNG development along the Kimberley coast; financial benefits to be provided by Woodside both to the GJJ and to a Kimberley regional fund; substantial financial commitments by the State; broad principles and key commitments on Indigenous training, employment, and business development; and participation of Traditional Owners in environmental and cultural heritage management.

The GJJ were not successful in achieving some outcomes from the negotiations, and very strongly opposed in principle to the State's use of the threat of compulsory acquisition (KLC, 2010c). However, they decided that the agreement they negotiated was the best that could be achieved under the circumstances, and that it was preferable to the outcomes likely to eventuate if the State proceeded with compulsory acquisition. One important consideration in this regard was that the Heads of Agreement guaranteed the GJJ a major role in the selection of a specific site for the LNG Precinct within the James Price Point area, in determining the location of Precinct components within that site, and in the ongoing management of the Precinct. For the Traditional Owners, such a role was essential if they were to fulfil their obligations to look after their land and sea country, including cultural sites. There was no certainty they would have any significant role in project design or management if compulsory acquisition occurred (KLC, 2010c).

Over the following two years the KLC and the GJJ undertook extensive negotiations with Woodside and the State to develop comprehensive legal agreements giving effect to the Heads of Agreement. At the same time the KLC and Kimberley Traditional Owners also sought to use the Strategic Assessment process, discussed earlier, to influence outcomes in relation to LNG development. In particular, the KLC negotiated with the State that the KLC would manage the studies required to address the Indigenous components of the Terms of Reference for the Strategic Assessment. It prepared a six-volume *Indigenous Impacts Report*, which documents in detail the expected cultural, social, and economic impact of an LNG Precinct on affected Aboriginal people, and includes numerous recommendations for management arrangements designed to minimise negative impacts and maximise Aboriginal opportunities (KLC, 2010b). The KLC has used and continues to use representations to State and Federal Government Ministers and officials, and the public submission processes mandated by the Strategic Assessment, to press for these recommendations to be the basis for enforceable management arrangements accompanying any approval of an LNG Precinct. The Strategic Assessment process

is due to be completed in late 2012. The central role afforded the KLC and Traditional Owners in the Strategic Assessment stands in marked contrast to the conventional situation in which project proponents prepare impact assessment reports with minimal input from affected Aboriginal people (see for example Woodside, 2007).

As the negotiations towards comprehensive agreements proceeded, the James Price Point project faced increasing opposition from environmental groups and from some families within the GJJ native title claim group, which hampered the negotiation efforts of the KLC and the GJJ. (For a discussion of these developments and their impact on negotiations see O'Faircheallaigh, 2011). Despite these difficulties, in May 2011 a substantial majority of the GJJ approved three agreements governing development of the LNG Precinct. Agreements of this type are usually confidential, but in this case they were published. Only a summary of key points is provided here; the reader is referred to the agreements for further details (State of Western Australia and Goolarabooloo and Jabirr Jabirr Peoples, 2011; State of Western Australia et al., 2011a; State of Western Australia et al., 2011b).

### 3.5. The Browse LNG agreements

The Precinct Project Agreement (State of Western Australia et al., 2011a) involves the GJJ peoples providing native title consents and approvals for the LNG Precinct. The Agreement explicitly protects the GJJ's right to object to and seek judicial review of the conditions, including environmental conditions, attached to any project approvals. It establishes a Precinct Management Committee involving the GJJ, the State and all Precinct operators to oversee establishment and operation of the LNG Precinct, and guarantees GJJ representation on any other bodies established to manage the Precinct. It also guarantees the GJJ a substantial role in environmental management of the Precinct, including the power to direct Woodside to construct a desalination plant if the GJJ believe that use of groundwater would cause unacceptable environmental damage. The State must employ a compliance officer specifically for the LNG Precinct throughout its life, to ensure GJJ input into environmental management and to monitor compliance with environmental conditions. The Agreement establishes a management regime to minimise any impacts on Aboriginal cultural heritage, and provides funding for the life of the Precinct for an Aboriginal ranger program to undertake environmental and cultural heritage monitoring.

The Agreement sets out a range of benefits that will accrue to the GJJ, including funding to establish GJJ governing institutions; an allocation of freehold land and houses in Broome; funding for housing and economic development initiatives; annual payments by Woodside as the Foundation Proponent of the Precinct; and payments by any additional proponents, benchmarked to Woodside's payments. The Agreement also contains Aboriginal employment targets for Precinct operators and State agencies, Aboriginal training initiatives, and funding by Woodside of early intervention education support programs. A range of measures are included to allow Aboriginal owned businesses to take advantage of contracting opportunities, including funding for a business development organisation and a requirement that a minimum of A\$5 million annually in contracts be allocated to Aboriginal businesses.

Under the Land Agreement (State of Western Australia et al., 2011a), the State undertakes to prevent any further LNG development on the Kimberley coastline and to limit use of the Precinct to petroleum processing. The latter rules out, for instance, the establishment of chemical or fertiliser plants, that have been co-located with LNG plants in other parts of the world. The Government also undertakes to remediate and rehabilitate the Precinct site after it is closed, and to transfer the land to the GJJ. These undertakings by

the State will be enshrined in legislation (a 'State Agreement Act'), the first agreement between the State and Indigenous people to be ratified by Parliament. This in itself offers significant protection to Traditional Owners from any attempts by subsequent governments to depart from the undertakings, because any such changes would have to be approved by both houses of State Parliament. In reality it affords an even greater level of protection because all major mining projects in Western Australia are approved by State Agreement Acts. Any move by the State to amend the Browse State Agreement Act is likely to result in a backlash from the politically-powerful mining industry, concerned at the establishment of a precedent that might lead to unwelcome amendment of mining company State Agreements.

The Regional Benefits Agreement (State of Western Australia et al., 2011b) grew out of the understanding of the KLC and the TOTF that a project on the scale of the LNG Precinct would have impacts across the whole Kimberley, and of their determination to express and renew the cultural values inherent in the *wunan*. As discussed in Section 3.3, those values required that benefits arising from the LNG Precinct should be distributed widely, reflecting the need to maintain reciprocity, to reinforce relationships between groups, and to support an ethic of egalitarianism. The Agreement provides for the establishment of a Traditional Owner body to administer initiatives designed to benefit the Kimberley region as a whole. These include substantial annual payments by the State to support new measures in Aboriginal education, housing, economic development, cultural preservation and land conservation, and in addition a A\$108 million Kimberley Enhancement Scheme to extend existing successful initiatives in these areas. Government spending under the Agreement must be in addition to its existing budget commitments. Woodside also undertakes to make annual payments to the regional body, which will increase with each processing train added to its initial operation in the LNG Precinct, while any additional proponents will also make contribution benchmarked against Woodside's. There is a commitment by the State to work with the KLC to resolve outstanding native title claims.

#### 4. Conclusion

The construction of the Kimberley LNG Precinct is not due to commence until 2013 and its impact will not be known for some years thereafter. However the agreements negotiated by Traditional Owners and the KLC, and the site selection process that led to them, have already generated positive outcomes. A number of Traditional Owner groups along the Kimberley coast have been able to say no to LNG development, and their decisions have been enshrined in legislation. They will thus be able to maintain their existing livelihoods or choose to supplement these with different forms of economic activity. This represents a fundamental shift in outcomes that few of the theories discussed earlier would predict. In addition, the operation of the TOTF, the site selection process, and the conclusion of the Regional Benefits Agreement mean that Indigenous cultural values which, as noted earlier, tend to be undermined by extractive industries, have in this case been reaffirmed. In summary, in response to the State's (short-lived) policy of accepting the need for Indigenous consent to LNG development in the Kimberley, the KLC and Traditional Owners combined traditional cultural forms with contemporary modes of organisation and communication to gain a real measure of control over development.

Looking to the future, the type of industrial development that can occur at the LNG Precinct is limited by statute, and the GJJ are entitled to have the Precinct site rehabilitated and returned to them after LNG production ends. They are guaranteed a role in managing

the establishment and operation of the LNG Precinct, and specific measures are in place to minimise its impact on Aboriginal cultural heritage. The KLC and Kimberley Traditional Owners hope that the Strategic Assessment process will result in the imposition of management arrangements that will minimise broader social and cultural impacts from the Precinct, and help address the economic and social disadvantage that threatens to reduce the ability of Aboriginal people to share in the benefits of development. The Precinct Project Agreement and Regional Benefit Agreement should certainly make a significant contribution in the latter regard. The agreement provisions relating to payments by the State, Woodside, and future proponents, to transfers of land and other assets, and to Indigenous access to employment and business development activities should ensure that Traditional Owners share in the economic benefits created by LNG development.

Events since the change in government in WA in September 2008 do emphasise the fragility of government policy commitments and the strength of the forces that can mobilise to resist Indigenous control over development. The GJJ had to deal with the threat of compulsory acquisition and serious time pressures, while the KLC was deprived of funding to maintain its support for Traditional Owners at a critical juncture. Yet despite these challenges, Kimberley Traditional Owners and the KLC appear to have achieved outcomes much more positive than those typically described in literature on extractive industries and Indigenous peoples.

How can we explain these outcomes? The changing national and international context in relation to recognition of Indigenous rights certainly played a role. Australia's recognition of 'native title' does not of itself give Indigenous landowners control over development, but the procedural rights it affords them provide new opportunities to engage with developers and the state. Growing international recognition of Indigenous rights was reflected in the WA (Labor) Government's policy of seeking Traditional Owner consent to LNG development, which in turn permitted the establishment of the TOTF and its pivotal role in the site selection process. This policy was reversed by the Liberal/National Government, but by then some critical decisions about potential sites had already been made, and the KLC and Traditional Owners had entrenched themselves sufficiently that while the WA Premier might threaten compulsory acquisition, his Government felt compelled to negotiate agreements that offered significant protections and benefits to Traditional Owners.

The ability of the KLC and Traditional Owners to mobilise politically in response to the opportunities that arose was critical. The KLC's capacity to mobilise resources, engage with Traditional Owners along the Kimberley coast, and establish and support the TOTF, and the capacity of Traditional Owners to engage with scientists, developers, state agencies and other stakeholders were a major influence. This highlights the absolutely central role of Indigenous political organization, while the role of the TOTF in supporting individual Traditional Owner groups emphasises the importance of Indigenous political unity. Cultural resources and values were vital. The continued power of the *wunan* provided the cultural bosses with principles on which to develop their approach to LNG development, while Aboriginal values provided a clear basis on which to establish the respective roles of the TOTF and the Traditional Owners of potential sites for a Precinct. The site selection process and the structure and content of the LNG Precinct Agreements, in particular the inclusion of a Regional Benefits Agreement and the prohibition on further LNG development along the Kimberley coast, reinforced the relevance and utility of those principles and values.

The Kimberley experience has lessons for other Indigenous peoples. It illustrates the potential leverage available to them as

a result of the growing national and international recognition of Indigenous rights, while at the same time highlighting the need for political mobilisation if they are to take advantage of these changes.

Indeed political mobilisation is of critical importance in any remote or rural region where local populations are marginalised. This wider relevance of the case study is highlighted, for example, by Devlin and Tubino (2010), who show how the political mobilization of local populations resulted in changes to the environmental and benefit-sharing policies of the giant Brazilian iron ore company, Vale. However once this mobilisation ended, the implementation of agreed initiatives trailed off, and local governments renegotiated agreements with Vale, resulting in less favourable outcomes for affected communities (see also Peluso et al., 1994, p. 33).

Another finding with wider implications involves the need to institutionalize gains won from developers and state agencies through popular mobilization if they are to lead to long-term change (Devlin and Tubino, 2010, p. 112). The case study provides an illustration of how this can be achieved, in the form of institutional arrangements and resource allocations that will continue throughout the life of the LNG Precinct. These include the use of the State Agreement mechanism to ensure the maintenance of State commitments; the establishment of Aboriginal-controlled governance structures; and the linking of resource allocations (for instance the employment of an environmental compliance officer, benefit streams from Precinct operators) to the entire life of the Precinct. Not all of these specific avenues are available to non-Indigenous communities. However use of the basic mechanism involved, a contractually-binding agreement between an affected community, developers and state agencies, is growing rapidly in the form of 'community development agreements' or 'community benefit agreements' which are now being concluded a wide variety of political and geographical settings from inner-city America to remote resource regions (O'Faircheallaigh, 2012).

How is the case study relevant to the theoretical approaches outlined earlier? It offers little support for liberal economic theory. Market mechanisms failed to generate benefits for Kimberley Aboriginal people from earlier mining projects, and there is no indication that outcomes from LNG development would be any different in the absence of policy intervention by the WA Labor Government and political mobilisation by the KLC and Traditional Owners.

On the other hand the case study indicates that there is no inevitability about the grim outcomes for rural and remote regions predicted by many of the other theories reviewed above. It shows that the strategies and actions of powerful resource companies and the state agencies that support them, assumed to be hegemonic by writers drawing on dependency and world systems theory, can be influenced by action on the ground, even by people who have experienced extreme marginalisation. These writers, and analysts such as Bunker (1984) who focus on the ecological impact of extractive industries, assume that the impacts of resource extraction on livelihoods in rural and remote regions are inevitably and severely negative. But the case study indicates that these impacts can at least be modified, as evident from the ability of Traditional Owners to avoid development at some sites and from the environmental and cultural conditions that will apply to the Precinct. Dominant ideologies, assumed to be hegemonic by neo-Maxist theorist such as Bell and York (2010) can be challenged, as occurred through the articulation and reaffirmation of Aboriginal values of mutual assistance and sharing through the *wunan*, indicating that engagement with extractive industries does not necessarily undermine Indigenous cultural values.

The case study illustrates the validity of West's argument that particular 'constellations of forces' can allow marginalised groups to challenge the dominance of major economic interests (1994, p.

417). In this case the 'constellation' included the recent recognition of native title in Australia; a Labor state government prepared to give policy effect to the growing international recognition of Indigenous rights; the experience gained by the KLC in previous negotiations with developers; and the economic forces working to render profitable the exploitation of offshore gas reserves. The case study also illustrates West's point that challenging the political and economic status quo depends on 'strategic use of current possibilities' through 'will, determination and mobilization'. Indeed Kimberley Traditional Owners and the KLC demonstrate the absolute centrality of these factors in challenging the 'constellation of forces' that surround extractive industries in rural and remote regions.

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