

Navigating Intercultural Space: Land, Customary Law and the State in Australia and Timor-Leste¹

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Recognition of the powerful and ambivalent creativity of ‘thresholds’ - the liminal moment and liminal space - has a long and honoured history in Social Anthropology. Whether dealing with ritual through the works of Van Gennep (1960) and Turner (1969) or with what Gluckman’s Manchester School used to refer to as the ‘interstitial’ in wider fields of social relations or the ‘intercalary’ in political roles and relations, Anthropology has long acknowledged that important transformational possibilities appear in the powerful gaps between more certain social moments, contexts, structures and statuses.

When Bhaba (1990) finds the ‘third space’ in post-colonial experience or, more recently, Merlan (1998) coins ‘intercultural’ to characterise the contemporary socio-cultural space in which Australian Aboriginal people live in the Northern Territory of Australia, they are then both reflecting a recurrent and persistent fascination with the creative space ‘betwixt and between’ more certain, more taken for granted, states of being and conditions of existence. As Sullivan (2006) reminds us, we should of course be ever wary of slipping into the implicit assumption of hermetically bounded static ‘societies’ or ‘cultures’ that demarcate impermeable spheres of social life as though they were not *always* to some degree in interactive contexts *and* states of ‘becoming’. Nevertheless, it is possible to discern moments in history when two or more sets of dominant ideas and practices come together and are confronted with the need to accommodate each other to some extent or risk a situation in which one attempts simply to supplant the other in an act of *fiat*.

In this paper, I wish to assert that such a time has now come in both Timor-Leste (East Timor) and Australia. I will examine the grounds for this assertion and the implications as I see them for the future of the indigenous, rural and ‘remote’ peoples of both places. In so doing, I will explore both the differences between Australia and Timor-Leste and differences within the two countries with a view to asking whether there are lessons that can be learned from such a comparison that might shed light on the potentially dark futures of both populations. For these are indeed ‘issues that lie at the heart of who we are as a nation’ (Altman and Hickson 2007, ix) and of what Timor-Leste may become.

The last two to three decades have seen an increased attention to the ‘possibility of other narratives of the people and their difference’ as Bhaba (1990, 300) puts it. Moreover, understanding the Nation as a location for contesting ideas of identity and personhood requires us to cast a new gaze on the emerging relations between populations which are constantly confronted by their difference in a context where their equivalence as ‘citizens’ is continually asserted.³ Such are the current situations of the indigenous populations of both Australia and Timor-Leste. In many respects, these populations in both places constitute a category of ‘The Other’ living within the nation’s space. Rosaldo (2003) finds this a common feature of the people who live in the ‘hinterland’ of Island Southeast Asia. How such difference is experienced within and managed by the emergent state in two contemporary nations is the subject of what follows.

In examining the similarities and differences in the current experience of and potentials for Australian Aboriginal people and the indigenous rural people of East Timor. I shall employ the lens of their respective understandings of land tenure and their capacity to engage in their traditional

¹ This paper is an abbreviated version of a longer comparative paper being prepared for publication.

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³ Tsing (1993, 26) says of such ‘marginal’ people: ‘As culturally “different” subjects they can never be citizens, as culturally different “subjects,” they can never escape citizenship’

responsibilities with regard to land management in the context of their 'new' national situations.⁴ In both contexts a central government is seeking to engineer specific social change amongst those located far from the dominant urban centres. I shall be particularly concerned with the tensions between new national laws and the understandings and customary practices of local landowners. I shall suggest that these impositions upon conceptually 'distant' people and localities, by a state acting in the name of the 'nation', create gaps - arenas of uncertainty and contested values - where new and emergent potentials exist and that these are now becoming evident. The aim is to examine how people rendered structurally and rhetorically 'remote' equip themselves to navigate through these moments and spaces in the absence of older and culturally more certain reference points and modes of guidance, and in a context where their full integration into the national political and economic systems remains highly problematic.

At the core of the discussion in both contexts is the issue of the constraints placed upon cultural identities and their legitimate meanings in the face of self-conscious attempts to forge nationhood from cultural and social diversity. As Jayasuriya (2007, 51) recently stated the problem, 'The challenge of pluralism, arising from cultural diversity is to confront the paradox of cultural pluralism, of having to straddle difference with sameness by discarding the outmoded *identity politics* of culturalist multiculturalism'.

This paper will test this proposition and ask what can be learned from the analysis of the situations of contemporary Australia and Timor-Leste with regard to how diversity may be managed in a (post)modern nation state – whether or not that state styles itself as 'multicultural'. Bhaba (1990, 300) argues, '[T]he political unity of the nation consists in a continual displacement of its irredeemably plural modern space'. This paper will consider attempts to forge a national identity and the extent to which a 'liminal' moment is evident in the contexts of Timor-Leste and Australia as their governments struggle to control the energy of difference in their efforts to establish order and their own domination over the political agenda. This process inevitably involves 'forgetting' and 'a totalising discourse which helps construct a public sphere of what constitutes legitimate culture' (Gunew, 1990, 100) with all its implicit and attendant exclusions.

Making Nations

The consequence of Australia and East Timor's histories over the second half of the 20th century was to leave ethno-linguistic diversity as a major legacy in the context of an ideology of a single small nation with an ostensibly single form of citizenship (see Taylor-Leech, 2007). As Bhaba (1990, 300) puts the dilemma, 'The nation reveals, in its ambivalent and vacillating representation, the ethnography of its own historicity and opens up the possibility of other narratives of the people and their difference.' It is part of the aim of this paper to disclose some of those alternate narratives and to place them in the discussion of the space in which politically dominated, 'remote' and indigenous populations are compelled to live. This is founded on a basically Anthropological position, which is that we need to understand the outcomes of policy as they are experienced at a local level if we are to begin to seek to evaluate their appropriateness and effectiveness at a national level.

Islands of independence

Perhaps no other two islands of the postcolonial order better exemplify some of the more contradictory outcomes of 'independence' than do Timor and Australia. The island of Timor is now divided between two nations yet the borders are arbitrary and aberrant to say the least (see map). With a frontier that cuts through the middle of a territory customarily owned by the people most commonly known in the literature as the Tetun and Bunaq speakers, and with an enclave of East Timorese citizens living in Oecusse surrounded by Indonesia's West Timor, the logic of separate national identity is, of course, purely on the basis that West Timor was ruled by the Dutch and East Timor by the Portuguese until the mid twentieth century. This is not to say that several hundred years of significantly different colonial rule have not left their mark. Each system of rule has indeed been a significant element in the difference

⁴ Lest the term 'new' appear surprising in the Australian context, I was reminded by a speaker on Australian radio that the present Queen has been on the throne and therefore 'head of state' for over half the existence of the Australian Federation. Like many others, I remember watching her being crowned in 1953!

between the experiences of those living on either side of the international borders over a number of centuries. However, some people on Timor would argue the differences between the indigenous groups on their islands are still considerably less significant than those between Timorese and say Javanese or Balinese.

As an island continent made up of six British colonies immediately prior to the realisation of the unified political system in 1901, the Australian experience did replicate the Timorese patterns of colonial arbitrariness, at least in respect of its internal borders. In this case, lines on maps were drawn for the convenience of the London based administrators and local colonial governments and the boundaries bore no relationship to any pre-existing cultural or political understandings (see Powell 2000). This remains the case with the current Australian federation of states and territories that produces, for instance, Aboriginal claims to Native Title that relate to land that crosses one or more state or territory borders. It also sees the simultaneous existence of different regimes of 'land rights' applying in each state jurisdiction, such that the same Aboriginal group may hold land in one Territory under federal legislation while having to claim contiguous land under a different State's legislation. Such a situation pertains on both the Western Australia / Northern Territory border and the Queensland / Northern Territory border, for example.

It is the contention of the argument that follows that the struggle to 'find' and give meaning to a new national identity in the face of a heavy reliance on migration to fuel economic growth, when added to the increased recognition of Aboriginal rights over the last three decades, has left Australia in a state of being self-consciously 'betwixt and between', or at least 'becoming', ever since 1901. Both in terms of its relations to migration policy and the treatment of its Aboriginal population, and in regard to positioning itself in the world, the Australian nation state has been in a constant state of flux since its federation – a federation which is itself still incomplete with two 'Territories' that lack the status of fully fledged 'States'.⁵ As a nation still in a process of being fully born then, it is an elder cousin of Timor-Leste, which has seen its process of 'becoming' develop significantly since the change of Portuguese government and the decision to decolonise in 1974.

For Australian indigenous people, the 'betwixt and between' has in some senses been a perennial condition of existence since the expansion of white settlement. Forced to the fringes of white society and being able to sustain neither their independent subsistence economy nor a fully integrated place in the mainstream economy, their position has continuously been one of dependence and uncertainty. I consider that the recent Native Title decisions in the Federal Court, the current 'Intervention' and political statements such as those by the former Minister for Aboriginal Affairs condemning small outstations on Aboriginal land as 'cultural museums' along with the current 'hub town' policy of the Northern Territory government all serve merely to emphasise and exacerbate this condition of uncertainty. For East Timor's 'remotely' located populations too this uncertain status is becoming a present reality at an accelerating rate as the latest ideas of 'government', 'development' and 'education' penetrate the countryside in the name of building a nation from a new but fragile state (see Mearns 2008). I shall examine these positions later in the discussion.

Land Tenure and Land Management – comparative frames

For these purposes, I shall not spend much time or space dwelling on the indigenous Australian understanding of landscape and land tenure. This is now well documented by other scholars (see, for example, Keen 2004; and Sutton 2003). Suffice it to say that in most Australian contexts, the land is literally informed (given shape in the Gerard Manly Hopkins sense - 'inscaped') by the action of ancestral spirit beings whose spirit enters and remains in the land and is, in turn, inherited by the human population whose being is created and sustained by that land. To put it another way, the right to 'speak for' the land derives from an inherently ancestral and spiritual relationship to the creators of the land and its flora and fauna. Myers (2005, 11) captures an important dimension of this when he says, 'place or places are meaningful as tokens of social relationship, acquiring value by virtue of their participation in the transmission of identity'. As Sutton (2003, 116) would put it, this identity with place results in what can

⁵ It has been noted that the current 'intervention' (which saw the Federal Police and Australian Army enter Aboriginal communities) could be imposed upon the Northern Territory so easily and quickly only because it is not a state under the present constitution.

be seen as either an underlying or a 'proximate' title to land on the part of a defined group of descendents of the ancestors. The point for our purpose of comparison is that before the shaping and filling of the country by the ancestor spirits, there was nothing to make the land part of the human realm of experience. Indeed, the human could not exist prior to this endowment of the spirit.

In Timor, the local understandings of the primary relationship of some descent categories of people to land inhere in a different but equally fundamental spiritual and ancestral relationship. As I put it in an earlier publication (Mearns, 2002, 20),

The situation in much of East Timor remained similar throughout the long period of rule by foreigners. Despite the legal fiction of the occupying powers ownership of state or crown land, local land was considered to be owned and was certainly managed via local mechanisms based on kinship and the authority of patriarchs of a particular clan or lineage (see Hicks, 1990). As with many rural and remote societies, access to land was the most basic of requirements for a sustainable existence.

Sometimes, as Renard-Clamagirand (1982) would prefer, the 'kinship group' is better viewed through the prism of local understandings where the 'house' or *uma* takes priority as the symbolic heart of the family and the minimal social unit (Mearns 2002, 21).

As Traube (1986) describes it, the sacred centre of the social universe (*axis mundi*) is created at a mountain site from the union of Mother Earth and Father Sky whereby the land is given fertility and shape and the ancestral humans are created.

She and others describe the importance of those who know and practice the ritual associated with the sacred places. In Tetum speaking areas this involves the cooperation of two people, the 'Male Lord' and the 'Female Lord'. The mythological and ritual structures of this region are generally founded on a dyadic symbolic system in which the complementarity of such opposites as male and female, heaven and earth, is fundamental to understandings of being and living in the world. (Mearns 2002, 20)

While details differ from region to region, the idea that the sense of belonging to a place is a result of a local mystical creation process is widespread. A closely allied notion is the idea of 'precedence' in this part of the world (see, for example, Fox 1997). Those who were the first to occupy the land and who are closest genealogically and spiritually to its sacred centre are the true owners of the land according to customary law. Fox reminds us of the pervasive metaphor of the tree with its roots, trunk and branches in relation to the ongoing relations between groups of common origin. The relationship is ensured and re-enforced by the 'lord of the land' who knows and leads the ritual practice in relation to the land and by the authority of the council of elders of the senior houses of the area. Disputes over land ownership and use are dealt with at the local level in the context of this ritual domain and the knowledge of senior members of the community of the narratives of precedence and land management (see McWilliam 2005, for example). Even today, in the absence of effective courts and government administration, most local land issues are dealt with in this way (see Mearns 2002, and Hohe and Nixon 2003).

Precedence and the phenomenon of local autochthony provide a legitimating ideology in both indigenous cases. That fact has constituted relatively stable and durable local processes of organisation and management, despite the best efforts of the colonial masters. The strength of the 'local' in both Aboriginal and East Timorese systems of land management and the enduring allocation of duties and obligations lie in the notion of a 'sacred' relationship to the land. Yet, it is precisely the further subordination of the local that is the goal of the new nationalism and its concomitant inculcation of the idea of universal citizenship in both contemporary contexts. At the heart of the matter is the issue of 'ownership' and its meaning along with concomitant understandings of what governance implies for rural and remote populations.⁶

Furthermore, the imposition of alien systems of land tenure and usage upon a people with a deep understanding of their own ancestral and spiritual inheritance and obligations in respect of land are the ultimate deception when one speaks in terms of 'rights'. The irony of legislation that at one level purports to be 're-empowering' people while in fact providing an arena for lawyers to play their expensive games is not lost on the indigenous people of Australia, in my experience. Expressed as 'whitefellas still telling

⁶ As Mosse (2005, 11) points out in the context of aid 'the different meanings of 'ownership' itself – national self-determination, ownership by the people and protection of their rights vis-à-vis the state, national ownership of externally engineered reform – are themselves produced both as strategic responses by key political actors ... and as pragmatic adaptations in different country contexts.'

us what to do', they frequently see it as further evidence of what amounts to a form of disempowering neo-colonial hegemony into the affairs of the very people whose lives are supposed to be improved by the recognition of them as the original landowners⁷.

The imposition of external state systems upon local land management and ownership is equally problematic in Timor-Leste. Local families and clans (*uma*) have expressed fear that the government in Dili is seeking to subvert their local systems in the name of development while actually just appropriating power to itself. (Dili again telling us what to do) My point is that the judicial authority and political power to determine outcomes in the distanced context of a court, tribunal or remote bureaucratic office still has the effect that such policy decisions and legal processes become very real and fundamentally challenging in the lived experience of those indigenous populations of both nations who live in remote *and* metropolitan regions. It needs to be emphasised that in both contexts, we are dealing with a fundamental aspect of individual and group identity. Land is not merely a means of production, it is at the core of 'being' for Timorese and Aboriginals alike.

The experience of place of locale is, in the beliefs of both peoples, a phenomenon that extends back beyond the life of the present generation into the realm of ancestors who are in a very real sense still present in the landscape.

Conclusions

The government of Timor-Leste should seize this creative period and avoid making the same mistakes as Australia – avoid achieving the effective encapsulation and incomplete incorporation of extant and functioning local systems in East Timor – to the real detriment of the remote and rural populations. It is likely that any failure of the East Timorese government to achieve a similar outcome to presently functioning local authorities – at least in the short term – will simply result in a continued unproductive and disruptive contestation of local authority coupled with a covert but influential alternative system of land use and management. This system will persist because it is based on the far more threatening power of the ancestors rather than fear of the state, which is anyway likely to lack the human and financial resources to transform the situation for the foreseeable future

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⁷ On the power of the state in constituting subjectivity in Aboriginal contexts, see Batty 2005.

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