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Antagonistic Representations of Space Between the Aboriginal Noongars and the Australian State¹

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Since the customary land rights and interests of the indigenous Australians² were translated and enshrined in the Australian legislative system in 1993 by the *Native Title Act (NTA)*,³ the Aboriginal Noongars of the South West of Western Australia have been seeking legal recognition of their native title over their territory.⁴ Between 1994 and 2000, 78 overlapping and intersecting native title claims were initiated by various Noongar families (Bradfield). The South West Aboriginal Land and Sea Council (SWALSC) – the regional organisation officially recognised by the Federal State to represent the Noongars’ land claims – worked to bring them together into a single native title claim. SWALSC proceeded in stages, initially registering six intermediate claims with the Federal Court. Then, in September 2003, the organisation filed the *Single Noongar Claim (SNC)* on behalf of all the Noongars. This unique claim was intended to cover the Noongar territory, an area of nearly 200,000 km² comprising a Noongar population of approximately 27,000 people divided in 218 family groups (Bradfield). However, it was never officially registered because the

¹ This includes the Commonwealth of Australia and the State of Western Australia.

² Australia counts two indigenous peoples: the Aborigines (a multitude of groups including the Noongars) and the Torres Strait Islanders. To the extent that this article focuses on the Noongars, it will be mainly referred below to the Aborigines.

³ The legal native land claim process in Australia started in the 1970s. The decisive step was the case *Mabo v Queensland [No.2]* when, in 1992, the High Court recognised the existence of indigenous land rights.

⁴ While recognising the existence of indigenous land rights, the *NTA* confirmed the non-indigenous land rights granted prior to 1993, and private property is excluded from native title claims.

Federal Court considered that SWALSC had not obtained permission from the entire Noongar community. It therefore remained composed of the six intermediate claims.

At the request of the State of Western Australia and the Federal State, who were their main opponents, the *Metro Claim* (*Bennell v Western Australia 2006*) – the claim corresponding to the Perth metropolitan area – was judged before the Federal Court, separately from the rest of the SNC. In his verdict of September 19, 2006, Justice Wilcox rendered a decision in favour of the Noongars. He recognised eight Noongar native title rights, the details of which were to be specified later. In April 2007, the State of Western Australia and the Federal State appealed this decision to the Full Federal Court (*Bodney v Bennell 2008*). On April 23, 2008, the judges of the Full Federal Court rendered their verdict in which they found errors in the interpretation of the NTA legislation and ruled that the *Metro Claim* should be retried before another federal judge.

After consulting the Noongar claimants, SWALSC decided not to appeal, but urged the State of Western Australia to resolve the SNC through a formal negotiation process. At the end of 2014, SWALSC and the State of Western Australia reached a definitive agreement consisting of six Indigenous Land Use Agreements (ILUAs), one per intermediate region covered by the SNC (South West Aboriginal Land and Sea Council “Quick Guide”). These ILUAs aim to regulate exchanges between the Noongars and their interlocutors as to how the territory will be used and the resources exploited in each region concerned. From January to March 2015, SWALSC organised six authorisation meetings at which the Noongars voted in favour of the ILUAs and thus validated the agreement of which they are the backbone. SWALSC and the State of Western Australia have begun to work on its implementation, but it will not be formalised until all legal remedies have been settled.⁵

This article seeks to account for the antagonistic representations of space between the Noongars and the Australian State in the context of these native title claims, which took place in Courts and then through a negotiation process.

My interest will first lie on how the Noongars and the State fought around the concept of society, which the native title legislation imposes. We will see that,

⁵ For more information on native title, the *Single Noongar Claim* and the negotiation process, see my PhD thesis (Bernard) on which this article is based. See also South West Aboriginal Land and Sea Council, Website “South West”.

contrary to the anthropological approach of the concept of society as a group of people sharing common cultural traits, the legislation defines it as a fixed entity whose members are united by the observation of the same laws and customs. What the law requires and the facts it establishes are not anthropological realities, but interpretations shaped by the legal context and the trials before the judges.

In the face of the often recalcitrant Australian State, and their various other opponents (among which several local governments and private companies), the Aboriginal claimants seek the recognition of some of their customary land rights and interests. Indeed, the *NTA* does not grant a land title but a bundle of rights that must be individually demonstrated to be recognised (Glaskin, Strelein “Compromised Jurisprudence”). This interpretation implies a weakening of native title. For Katie Glaskin:

The notion of partial extinguishment relies on the characterisation of native title as a bundle of rights and interests that can be separately identified, conceptually and legally separated, and found to be extinguished or extant. [...] This is clearly not what one could call a holistic view of aboriginal title. The bundle of rights and interests model contrasts with a view of native title in which the connection with, and right to, the land is that from which other rights flow [...]. (71-72)

This codification of Aboriginal land rights and the notion of partial extinguishment do not reflect the character of the relationships that the Aborigines have with their environment. As Deborah Bird Rose points out (7-8, 11), the different Aboriginal groups consider their “country”, their land, as:

[...] a living entity with a yesterday, today and tomorrow, with a consciousness, and a will toward life. [...] Country is multi-dimensional — it consists of people, animals, plants, Dreamings;⁶ underground, earth, soils, minerals and waters, surface water, and air. [...] Country is the key, the matrix, the essential heart of life.

Humans, as well as all elements of their environment, are incarnations of their land. They are made of the same essence. Their ancestral lands are inalienable, contrary to the fact that the *NTA* considers that their relations with them can be partially or even completely extinguished. The Noongars had to comply with the requirements of the law to be recognised, but faced with the rigid legal approach of the concept of

⁶ “Dreaming” is a generic term for all religious beliefs and practices of Aboriginal peoples in Australia. It does, however, reflect a multitude of local concepts (e.g. Nyitting for the Noongars), applying to mythico-ritual complexes that admit significant differences beyond their similarities (hence the use of the plural in this quote) (De Largy Healy et al.).

society defended by their opponents, they sought to soften its definition to reflect the flexibility and dynamism that characterises their conception of space and of their social and territorial organisation.

I will then focus my attention on the negotiations between the Noongar claimants, represented by SWALSC, and the State of Western Australia. SWALSC sought to lead the Noongars beyond the simple resolution of their land claims and to enable them to resolve the difficulties they face. More than a symbolic recognition of a set of land rights over a limited number of parcels, the negotiations could offer concrete land assets, but also economic, social, financial and political opportunities. In order to resist the State of Western Australia and stand as a strong partner, SWALSC undertook to concretise the idea of a Noongar nation by strengthening the Noongars' sense of belonging, which had begun to emerge through the creation of the SNC. The modern nation reflects, as Patrice Canivez defines it, "[a] historic community characterised by a culture of its own, a collective consciousness and a claim to political sovereignty" (27). Thanks to this strategic political tool, we will see that SWALSC undertook to rationalise the Noongars' social and territorial organisation in a need for transparency and efficiency. This formalisation was essential to the establishment of a system of governance that could allow the Noongar community to remain united, to function and prosper, but also to be recognised by the State and thus gain a certain amount of autonomy.

The native title definition of society: the confrontation of two competing representations of space

The legal field of native title is the scene of multiple clashes. First, it gives rise to a confrontation between the indigenous claimants for the recognition of their native title and the Australian State. It also triggers a clash between disciplines — such as anthropology and history — as well as conflicts within these disciplines. Indeed, during trials, each party employs social scientists on whose arguments they rely. The claimants seek the recognition of their native title, while their diverse opponents strive to eliminate the threat that such a recognition represents to them for the integrity of the Australian nation-state and its territory (Attwood). These clashes are not trivial. They have considerable scientific, but above all social, economic and political consequences (Dousset and Glaskin).

In an article entitled “The Assymetry of Recognition,” Katie Glaskin and Laurent Dousset apply the double asymmetry of the philosopher Paul Ricœur’s concept of recognition to the case of native title claims in Australia. They explain that, to the extent that they hope to be recognised through this process, the indigenous claimants assume the “passive” role, or the “weak” role, while the representatives of the native title legislation have the “active” role of those who have the power and ability to recognise. In addition, they do not recognise the claimants in their entirety. They select particular elements that remind them of elements of their own structure, which they know and therefore recognise, from which they reconstruct the claimants who wish to be recognised.

The indigenous claimants thus engage in a long and difficult process requiring them to provide the necessary evidence for their recognition. They have to justify their request, to demonstrate their legitimacy and to seek recognition by the State. They must establish that, at the time of the acquisition of sovereignty by the British Crown, they constituted a society whose normative system produced laws and customs governing the occupation and use of land over the entire area they claim (for the Noongars, this date corresponds to 1829). They also have to prove that they still form the same society and that these laws and customs have since been continuously observed. The indigenous claimant societies shall not have fundamentally changed since their precolonial state. Precolonial societies are, in this context, considered as “authentic” societies; they embody the models that the claimants must meet to be recognised as “traditional”⁷ and claim some of their customary land rights and interests.

In practice, the native title legislation has focused on reducing the category of the “genuine” Aborigines to deny recognition of their native title to a greater number of Aborigines. The way in which the claimants are defined by their opponents, the state governments, the Federal State, and the judges fits into what Patrick Wolfe (163-214) describes as an ongoing strategy of elimination implemented by the Australian State. The strategic tool of this “logic of elimination” is what he calls “repressive

⁷ I use “tradition” and “modernity” in quotation marks to emphasise that they are not universal scientific concepts that can be clearly and objectively applied. Rather, I address them as discursive realities that need to be analysed in the ethnographic contexts in which they are produced and articulated. In this case, the focus is on the discourses on “tradition” and “modernity” produced by the Australian State, the conditions of their emergence and their effects.

authenticity”: the State has created an ideal Aboriginality, and Aborigines who cannot conform to it are considered unauthentic and eliminated from the category.

The *SNC* is emblematic of the way this strategy operates. Strongly impacted by colonisation, the Noongar claimants were far removed from the referential of the “traditional” Aboriginal on which the legislation is based and their native title was considered to be virtually extinguished. In order not to be “eliminated” and to gain recognition, they were well prepared to meet the mandatory legal requirements and to face the Australian State. The definition of a society was thus at the heart of their confrontations.

While the anthropological research has since highlighted more dynamic and diverse social and territorial organisations, the model of local descent groups, owners and users of a particular territory, established by classical anthropology, has been included in the legislative apparatus of land claims and introduced into the legal language of native title as “society”. It was familiar, understandable and recognisable by the judges because it corresponded to their vision of an ideal and authentic Aboriginality.

For most anthropologists, a society has become a set of social relations; it can have different shapes and it changes over time. On the contrary, for the jurists — and the anthropologists intervening as experts for the opponents of a native title claim — a society is an object, a stable and immutable entity, detached from any intercultural context. Their members are united by the observation of the same normative and sustainable system whose internal rules can be highlighted and analysed in an objective and unambiguous way (Glaskin and Dousset). The role of the social scientists thus becomes paramount. The judges will recognise the claimant group as constituting a society only if the concept of society presented to them contains elements that are intelligible and familiar to them. Glaskin and Dousset summarise this as follows:

The basis of the recognition of what constitutes a society then is the re-cognizing (re = repetition; cognizing = understanding) of a part of that thing that is being recognized according to one’s own knowledge and truth (for example, such as a system of land tenure) and the extrapolation of that to a whole (a larger society).
(145)

During the *Metro Claim* and the appeal process, to establish the existence of a Noongar society at the time of the acquisition of the British sovereignty in the South West in 1829, then the existence of a contemporary Noongar society and finally an

uninterrupted continuity between these two societies, several constitutive elements of a society were studied in detail: the language, the customs and beliefs, the social interaction but especially, the social and territorial organisation of the Noongars. The arguments deployed around this issue are emblematic of the representations of space that oppose the Noongars and the Australian State.

The Noongar claimants: society as a flexible social and territorial entity

The absence of landowners and borders determined by rigid principles, such as the hereditary principle, made the Noongar case particularly difficult to interpret within the framework of the legal concept of society. The Noongar claimants' experts and lawyers, however, succeeded in translating their precolonial social and territorial organisation to make it understandable and recognisable to Justice Wilcox. They attached importance to the land, rather than to its borders, and compared these customary rights to the land tenure of private property without interpreting them.

Kingsley Palmer, their expert anthropologist, emphasised the flexibility and dynamism of the Noongars' social and territorial organisation. Palmer came to the following conclusion: “[It] is an error to consider the land-holding system, as it is reported, as comprising a series of hermetic and self-contained land units (estates) over which individuals exercised exclusive rights” (53). He added that “mapping territory hides the complexity of the relationships between individuals and the implications that these relationships might have had for the exercise of rights to country in practice” (39). He described a Noongar society divided into social entities of varying sizes, but stated that the relevant entity regarding the Noongar customary land rights and interests was the subgroup.

These subgroups had, in a more or less delimited territory, rights and interests in land. Palmer found that these rights were not exclusive in nature: a person could have rights over several regions and many people could have rights over the same region. He referred to the anthropological debates about how to acquire these rights and the insistence on a legitimisation based on patrilineal descent. Referring to more recent work on the subject and his own findings, Palmer stated: “[It] is unlikely that precontact systems were as rigid and fixed as may have been supposed. [It] is clear that rights to country, as well as their exercise and legitimation, were complex matters that required the exercise of a range of social relationships rather than reliance on a singular principle” (52), at least in some areas. This was the case in the

South West where customary land rights could be acquired by other means than descent.

Questioned by the lawyers of the State of Western Australia and Federal State, Palmer admitted that there was a strong inclination for patrilineal descent in the Perth area at the time of the acquisition of sovereignty, but declared that the transmission by matrification was also running. He reiterated, however, that descent was not the only way to acquire land rights, places of birth and residence or knowledge of a region were also essential. It was a social process that allowed the affirmation and realisation of certain potential rights at the expense of others. He did not establish a hierarchy between rights acquired by descent and those acquired in the context of a social process, all were for him of a proprietary nature.

This brings us back to the question of the inalienability of the land previously mentioned. The concept of Noongar ownership is comparable to that of the Ngaatjatjarra Aborigines of the Western Desert. Dousset shows that for the Ngaatjatjarra the land is not a commodity, a possession, but that, as a social object, it is a characteristic of the individual. Their territories, he explains, are not horizontal surfaces delimited by borders but are constituted by sacred sites conceived as vertical spaces where different semantic layers are piled up. Dousset writes that “[the] sites which dot the Western Desert are [...] places fixed at creation times, referring to mythical figures and their morphologies and adventures, to the origins of the rules and human and social conduct, just as they are cartographic markers of the travels, whether mythical or human” (121), and to this must be added the history and experience of real human individuals. Individuals are cosubstantial of the places to which they identify and are responsible for. As Palmer defended in the case of the Noongars, Dousset shows that, for the Ngaatjatjarra, “[territorial] affiliation is a question of evaluation, identification, discussion and negotiation: of process” (122).

A contemporary social and territorial organisation, similar to that of 1829, was also portrayed by the Noongar witnesses interviewed for the trial and by Palmer. The claimants defended the idea of a substantial continuity of their society, a positioning implying that it did not change in substance, that is to say that certain formal elements were modified while the contents that define it have not been transformed. From this point of view, without these adaptations, they could not have remained “traditional” and apply for the recognition of their native title.

The Australian State: society as a rigid social territorial entity

The land laws and customs of the Noongar society described by the claimants did not correspond to the conception of space and private property shared by the State of Western Australia and the Federal State and, therefore, were not recognisable by them. They did not attempt to translate the Noongar land system, they interpreted it in the light of their own conceptions. They relied on the report by their expert anthropologist Ron Brunton, who, unlike Palmer, had a rigid and fixed conception of the Noongars' social and territorial organisation and conceived their territories as horizontal delimited spaces governed by immutable laws.

The subgroup was also for Brunton the land entity but, unlike Palmer, he assigned a defined territory to it. He also advocated the existence of a larger group from which the normative system producing the laws and customs respected by the subgroups would have emerged. However, he did not identify this group as the entire Noongar claimant community whose existence he rebutted as a society. He defended rather the idea of several smaller societies, without nevertheless being able to identify them.

Brunton recognised the existence of other means of belonging to the subgroup, but continued to insist on patrilineal descent as a normative rule. He accepted that individuals could have rights in more than one region, but he disagreed with Palmer's claims by declaring that they were not rights of the same order. He drew a distinction between exclusive property rights obtained by patrilineal descent and usufructuary rights derived from secondary relations. He referred to the distinction made by the anthropologist Peter Sutton between "core rights" — "which [enable] a person to claim a certain area as their own 'main place,' their own 'proper' or 'real' country, and thus to assert a fundamental proprietary relationship to it" (14) — and "contingent rights". The "contingent rights" come from "core rights," they are temporarily acquired and are not transferable. For Brunton, the Noongars who possessed "core rights," property rights in their own territory, also held "contingent rights" that allowed them to exploit it economically. Those who did not have property rights in a territory could only have usufructuary rights, dependent on kinship relations with persons having, for example, these property rights. To access a territory — what Brunton conceived of in the sense of penetrating boundaries — and using the resources, they needed permission from their owners.

Christos Mantziaris and David Martin (64) recall that Sutton's distinction is a translation of the Aborigines' relationships with their physical environment for the

purpose of recognising native title. Yet Brunton applied this distinction between rights of a different nature as a direct description of the Noongars' customary land tenure system. Unlike Palmer, who sought to translate this system by describing a complex web of land rights and interests based on both descent and social process, Brunton overinterpreted and codified it. He established a hierarchy between property rights, transmissible by patrilineal descent, and temporary usufructuary rights, acquired by relations considered secondary.

The State of Western Australia and the Federal State also sought to establish that the Noongars could no longer be "traditional" and had interrupted adherence to the practice of their laws and customs because colonisation had been too devastating in the South West. Instead of focusing on a substantial continuity of the Noongars' laws and customs, they defended the idea of a fundamental transformation of their society. Their assumption was, contrary to what the claimants were advancing, that there was no longer any normative system governing the Noongars' rights and interests. According to them, even if the situation described could have been qualified as a normative system, it could not have been considered as "traditional" anymore.

Justice Wilcox favoured the claimants' anthropological approach of the concept of society, whose members are united by shared ways of doing and thinking. To distance himself from the misunderstandings and confusions it generates, he preferred using the term "community" in his judgment. He recognised that the notion could apply to social entities of varying sizes and that it was not easy to identify them. However, he considered that the Noongars formed a single society attached to a territory and united by a strong social interaction, the use of the same language and respect for customs and beliefs, including land laws and customs. This contemporary society was issued from, and maintained a cultural continuity with, the Noongar society observed during the acquisition of sovereignty by the British Crown. As a result, he rendered a verdict in favour of the claimants and identified eight native title rights that could be recognised and whose terms should be later specified.

The State of Western Australia and the Federal State nevertheless appealed against this decision. The representation they had of the concept of society — a fixed and durable social and territorial entity — was re-established by the judges of the Full Federal Court during this second trial and the Noongar society was redevi- sited into several social and territorial subentities. It was again reified by exogenous actors

giving themselves the ability to analyse and define it in the light of their own concepts.

The building up of a recognisable Noongar space

The bureaucratisation of the Noongar social and territorial organisation

In view of the Australian State's refusal to consider them as true "traditional" Aborigines and to recognise their native title rights, the Noongars had to behave like "modern" Australian citizens, just like the rest of the population of the country. Located outside the legal process itself, the negotiations between the State of Western Australia and the Noongars represented by SWALSC is a space of engagement between the two parties giving the Noongars a greater margin of manoeuvre. SWALSC used "modern" technologies, bureaucratic procedures, to assert the sovereignty and autonomy of the Noongar nation that it builds and to overcome oppositions, both within the Noongar community itself and from the State of Western Australia.

The negotiations were based on the six claims that underpinned the SNC. When I interviewed him, Glen Kelly, then chief executive officer of SWALSC, told me he did not know how the boundaries of these six underlying claims had been drawn. According to him, they did not correspond exactly to the cultural boundaries, some were too broad and could have been further divided. However, this division proved to be an asset to negotiate because the specificities of each of the regions could thus be respected.

SWALSC undertook genealogical research — through archives, historical documents and testimonies from Noongar claimants — to establish the list of ancestors of these six claims. It was, for each region, to identify the Noongars who lived there at the time of the acquisition of sovereignty by the British Crown in 1829. The claimants' genealogies were drawn up to determine the ancestors to whom they may trace their descent, and thus the claims to which they were connected. These data were used to map the runs of each Noongar family (the segments of land where they own and exercise customary land rights). This research was also intended to clarify and formalise the "speaking for country" process (the right to make decisions about a territory and to disclose cultural or spiritual information relative to it) as all persons with land rights in a region are not allowed to do so.

This process of bureaucratisation allowed SWALSC to consolidate the Western Australian State's confidence in ensuring that, for each of the six regions, it

negotiated with the “right” people, that is, the claimants who were legitimately attached to it. However, this cannot be summarised as a bureaucracy imposed from above and suffered by the Noongar community (Hibou). SWALSC designed this system to represent the interests of the community. The organisation also responded to the Noongars’ many requests to put an end to the recurring family conflicts that prevented them from achieving positive progress.

SWALSC was then able to superimpose an administrative layer on this social and territorial organisation approved by a majority of Noongars. The Noongar community is marked by internal conflicts and their demands are not unanimous. This formalisation was seen by the organisation as essential to the establishment of a governance system that would enable the Noongar community to unite, to function and prosper (for what follows, *cf.* South West Aboriginal Land and Sea Council “Quick Guide” and “Transition Program”).

Until then, SWALSC was organised around fourteen administrative entities called wards. In 2007, SWALSC adopted a new constitution that reduced their number to six in order to align their boundaries with those of the six claims. These six wards will become the foundation upon which the Noongar governance system would rest. The Noongars are required to join a ward when completing the application form to become SWALSC members. They may be genealogically attached to several “traditional” regions but must select the ward that they deem to be most appropriate to them and provide details to support their statement. Once their candidacy is validated by the organisation, they can participate in the elections of their ward.

At the same time, SWALSC undertook to review and update the composition and functioning of the six working groups (the groups consisting of Noongars who, for each region, represent the families who have interests and responsibilities in them). They were endowed with a form of constitution and a code of conduct, to which their members gave their assent. The objective of the organisation was to ensure the consultation, information and representation of all families, but also the respect for good governance practices, by the working groups. Their formalisation was essential because they were at the heart of the negotiation process: members of each of the six groups were part of the SWALSC negotiation team, along with staff of the organisation. This team was also supported by lawyers.

In addition, the working groups will become the Noongars’ six official representative bodies if the negotiated agreement is finally ratified. SWALSC

prepared the groups to take full responsibility for their operation and decision-making process in this eventuality. They will convert into six regional corporations, supported by a central corporation in financial, administrative and legal terms. This will form a governance on the model of a hub and spoke system that will concretise the gathering of the Noongars in a nation. According to Glen Kelly, this structure would give the regions real independence, while guaranteeing that they work together for the development of this nation.

The Noongars' participation can be carried out to different degrees. They are already members, according to their ancestry, of one of the six ILUAs. In theory, this concerns all Noongars, with the exception of a minority of them who have openly refused to join the agreement. Members of the ILUAs may also apply to become members of the regional corporations and the central corporation. Many elements remain to be specified but the members of each regional corporation will have to elect four directors to represent them, who will then appoint two expert directors. These "experts," lawyers or accountants for example, will be selected according to the specific qualifications and expertise that the corporations feel they need.

The members of the central corporation will elect six directors of its board, who will also appoint two expert directors. The elections of the directors of these seven Noongar corporations will be by postal vote under the supervision of an independent verification body. In order to prevent a small group or family from gaining control of one or more corporations, directors can only be elected for two consecutive terms and become directors of only one corporation at a time. In addition, a limit on family representation on a corporation board will be set: when a person is elected, his/her parents, siblings, husband/wife and children will not be able to sit on it. The chief executive officers of each corporation will, in turn, be selected by an independent recruitment company, based on the criteria defined by the corporation boards.

For SWALSC, this governance system would aim to limit conflicts of interest, allow for the widest possible involvement and ensure that the Noongars' assets are managed in a safe and efficient manner and that they are indeed the beneficiaries. This system also appears as a means for the organisation to present to the State a familiar and reassuring structure that it could recognise and approve. The Noongars could thus, according to SWALSC, take their future in hand and be able to manage their financial and land assets and develop cultural, social and economic programs according to their vision.

A conception of space still “traditional”

Despite its concern not to become bureaucratic and to include a majority of Noongars in the governance system, the structure developed by SWALSC is both fundamentally bureaucratic and hierarchical. This is due to the very nature of the organisation. Its status as a corporation, responding to demands for profitability, efficiency and transparency, contradicts the nature of its official discourse and the vision many Noongars have of their destiny. However, this bureaucratic governance is accepted and validated because, in the eyes of my Noongar interlocutors⁸ it would at the same time prevent the risk of conflict of interest, corruption, clientelism or takeover by some Noongar families. Its formal structure ultimately addresses concerns they share with the Australian State.

It is through the use of elements thought to be “traditional” that the dichotomy between the structure adopted and the discourse circulated by SWALSC is attenuated and justified. As part of the negotiations, SWALSC also focused on affirming the Noongars’ existence as a historic community and community of culture with its own territory, which the State of Western Australia had opposed during the trials. Through various media — documents (e.g. “Introduction,” “Connection,” “Living”), website (“Kaartdijin Noongar”), Facebook page (“South West”) — SWALSC emphasised that the Noongars’ territory is interdependent with all aspects of indigenous life, and not only with laws and customs. The organisation defined the territory and the internal structure of the Noongar nation as the Noongar “country”. SWALSC insists on this connection and on its spatial, but also temporal, dimensions. The Noongars are described as being divided into fourteen linguistic groups, each associated with a geographical area and with specific but complementary ecological characteristics. These groups form a society, a nation, attached to its territory as a whole and whose duration is unlimited.

This structuring into linguistic subgroups, while many Noongars do not speak their language fluently, is used by the organisation to legitimise the bureaucratic order inspired by the Australian administration. It is part of a cultural polishing that helps to round off its angles and erase its roughness, making it more representative and familiar to the Noongars. This also gives it an indigenous specificity. This

⁸ During my fieldwork in the South West of Western Australia, I interviewed a wide range of Noongar people, including some occupying official positions (Bernard 89-157).

"Noongarised" bureaucratic governance system thus meets both the aspirations of the Noongars and the expectations of the State. SWALSC ("Transition Program" 2) mentions, for example, that members of the ILUAs may become members of several regional corporations, which was not the case with the wards. This multiple attachment refers to a "traditional" logic expected by the Noongars, who think their social and territorial organisation as fluid and flexible and possess land rights and interests in several regions. This flexibility, as mentioned, was not possible under the native title legislation, which requires a fixed and identifiable system. With the establishment of a partial Noongar sovereignty within the Australian nation, some so-called "traditional" elements are tolerated by the State only because they rely on a system of bureaucratic governance that it can recognise.

Similarly, the executive committees of each regional corporation will have to develop a Cultural Advice Policy to define the procedures and mechanisms that will enable them to make decisions for their respective regions and to obtain the advice of people with cultural authority and the right to "speak for country" among the ILUA members they represent (South West Aboriginal Land and Sea Council "Transition Program" 5). The central corporation will put in place a Cultural Consultation Policy to define how it will also refer to the "appropriate" people. These measures put forward the idea of "tradition". By respecting the Noongar processes and hierarchy of decision-making, SWALSC strives to demonstrate its respect for the "traditional" conception of space and social and territorial organisation. It aims to demonstrate that this conception has not been neglected in the design of its system of governance, but that it rather consolidates and validates it.

Conclusion

The study of the antagonistic representations of space and social and territorial organisation between the Noongars and the Australian State brings to light not only the challenges faced but also the integrations and the strategic and creative revisions made by the Noongars. The analysis of the concept of society, as articulated in native title claims, shows that it is based on a play of interpretation and on the ability of the actors in competition to assert the contents that they attribute to it. The Noongar claimants managed to overcome the difficulties that this legal concept confronted them with and to obtain the recognition of a contemporary Noongar society, stemming from the precolonial Noongar society. In so doing, they opened

and extended the strict definition of the native title legislation and succeeded in asserting the way they conceived of their territory and, as far as possible, occupied it. New requirements were then demanded and put in place by the State of Western Australia, the Federal State and judges of the Full Federal Court to restore the legal definition of a society and maintain their vision of space in order to preserve the legislation. This positioning makes it possible to maintain the capacity of State actors to reject the Aborigines who, like the Noongars, do not correspond to their idealised vision of Aboriginality and whose native title rights they do not wish to recognise.

Through the negotiations, SWALSC sought to bypass the limitations of the native title, while building on what it stands for, namely the recognition of the distinct identity of Aboriginal peoples and the special place they occupy (Strelein "Symbolism"). Beyond a simple symbolic recognition, SWALSC intended to reach an agreement comprising a set of concrete measures that would allow the Noongars to improve their situation and decide their future. The interest of the concept of nation that SWALSC resorted to resides in its political definition, which allowed the organisation to reshape the national image of an idealised Aboriginality by placing it in the Noongars' contemporary reality. The organisation did not advocate absolute sovereignty, unlike some of its Noongar opponents, but defended the idea of a Noongar nation embedded in the "modern" Australian nation. For this reason, it was essential for the Noongars to adopt a form of government and organisation which, in order to be seen as functional and effective, and thus be accepted by their State interlocutors, was to satisfy both the aspirations of the Noongars and the technocratic and managerial requirements of the State.

SWALSC and the State of Western Australia brought their perspectives and objectives closer together during the negotiation process. SWALSC overcame the feeling of resentment felt by the Noongars against their colonial oppressor. The State was ready to trust them as soon as elements of governance and objectives of economic development were deployed. This approach is part of what Patrick Sullivan describes as a "consolidated approach". On the one hand, it takes into account the peculiarities and the specific needs of the Aborigines. On the other hand, it stresses that their future, as that of the descendants of settlers and immigrants, is inextricably linked. "Consolidation," writes Sullivan, "requires recognizing what is shared, and what is distinctive" (17). The State of Western Australia agreed to revise its vision of space. It challenged the nation-state relationship by recognising the Noongars'

anchoring in the contemporary Australian nation and granting them some autonomy. In doing so, it also consolidated its legitimacy and comforted its national history.

Works cited

ATTWOOD, Bain. "Mabo, Australia and the End of History." Bain Attwood. *In the Age of Mabo: History, Aborigines and Australia*. St Leonards: Allen & Unwin, 1996, pp.100-116.

Bennell v Western Australia [2006] FCA 1243 (19 September 2006).
<http://www8.austlii.edu.au/cgi-bin/download.cgi/au/cases/cth/FCA/2006/1243>. Accessed 29 November 2012.

BERNARD, Virginie. Quand l'État se Mêle de la « Tradition » : La Lutte des Noongars du Sud-Ouest Australien pour leur Reconnaissance. PhD thesis, École des Hautes Études en Sciences Sociales, 2014.

Bodney v Bennell [2008] FCAFC 63 (23 April 2008).
<http://www.austlii.edu.au/au/cases/cth/FCAFC/2008/63.html>. Accessed 19 November 2012.

BRADFIELD, Stuart. "Settling Native Title: Pursuing a Comprehensive Regional Agreement in South West Australia." Marcia Langton et al. *Settling with Indigenous People: Modern Treaty and Agreement-Making*. Annandale: The Federation Press, 2006, pp.206-229.

CANIVEZ, Patrice. *Qu'est-ce que la Nation ?* Paris : Vrin, 2004.

DE LARGY HEALY, Jessica, et al. « Temps du Rêve ». *Dictionnaire Universel des Dieux, Déesses et Démons*. Paris : Seuil, 2016.

DOUSSET, Laurent. Pour une Anthropologie de l'Incertitude : Une Autre Introduction aux Aborigènes d'Australie. HDR Thesis. École des Hautes Études en Sciences Sociales, 2014.

DOUSSET, Laurent, and Katie GLASKIN. « L'Anthropologie au Tribunal : Les Revendications Foncières des Aborigènes en Australie ». *Génèses*, vol. 74, 2009, pp.74-93, www.cairn.info/revue-geneses-2009-1-page-74.htm. Accessed 15 January 2019.

GLASKIN, Katie. "Native Title and the 'Bundle of Rights' Model: Implications for the Recognition of Aboriginal Relations to Country." *Anthropological Forum*, vol. 13, no 1, 2003, pp.67-88.

GLASKIN, Katie, and Laurent DOUSSET. "Asymmetry of Recognition: Law, Society, and Customary Land Tenure in Australia." *Pacific Studies*, vol. 34, no 2/3, 2011, pp.142-156, <https://www.researchgate.net/publication/278812405>. Accessed 15 January 2019.

HIBOU, Béatrice. *La Bureaucratisation du monde à l'ère néolibérale*. Paris : La Découverte, 2012.

KELLY, Glen. Personal interview. 8 May 2012.

- Mabo v Queensland (No 2)* [1992] HCA 23 (3 June 1992).
<http://www.austlii.edu.au/au/cases/cth/HCA/1992/23.html>. Accessed 10 April 2014.
- MANTZIARIS, Christos, and David MARTIN. *Native Title Corporations: A Legal and Anthropological Analysis*. Sydney : The Federation Press, 2000.
- Native Title Act 1993 (Cth)*. <https://www.legislation.gov.au/Details/C2012C00273>. Accessed 2 October 2017.
- PALMER, Kingsley. *Noongar People, Noongar Land: The Resilience of Aboriginal Culture in the South West of Western Australia*. Canberra: Aboriginal Studies Press, 2016.
- PATEZ, Fabrice. « La Nation Moderne ou la Souveraineté Ethno-Démocratique ». *HAL-SHS (Sciences de l'Homme et de la Société)*, 2006, halshs.archives-ouvertes.fr/halshs-00010213/document. Accessed 25 April 2016.
- RICŒUR, Paul. *Parcours de la reconnaissance : trois études*. Paris : Gallimard, 2004.
- ROSE, Deborah Bird. *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness*. Canberra: Australian Heritage Commission, 1996.
- Single Noongar Claim (Area 1) (WAD 6006/2003)
- Single Noongar Claim (Area 2) (WAD 6012/2003)
- STRELEIN, Lisa. "Symbolism and Function: From Native Title to Aboriginal and Torres Strait Islander Self-Government". Marcia Langton et al. *Honour Among Nations?: Treaties and Agreements with Indigenous Peoples*. Carlton: Melbourne University Press, 2004, pp. 189-202.
- . *Compromised Jurisprudence: Native Title Cases since Mabo*. Canberra: Aboriginal Studies Press, 2009.
- SULLIVAN, Patrick. *Belonging Together: Dealing with the Politics of Disenchantment in Australian Indigenous Policy*. Acton: Aboriginal Studies Press, 2011.
- SUTTON, Peter. *Native Title in Australia: An Ethnographic Perspective*. Cambridge : Cambridge University Press, 2003.
- South West Aboriginal Land and Sea Council (SWALSC). "An Introduction to Noongar Culture and History." 2010, d1y4ma8ribhabl.cloudfront.net/wp-content/uploads/2013/07/IntroductiontoNoongarCultureforweb.pdf. Accessed 30 January 2019.
- . "Connection to Country." 2010, www.noongar.org.au/images/pdf/forms/BookOne-ConnectiontoCountry12p.pdf. Accessed 13 September 2012
- . Facebook page. *South West Aboriginal Land and Sea Council*. 15 Oct. 2010, www.facebook.com/swalsc/. Accessed 30 January 2019.
- . "Quick Guide To the Proposed Noongar Native Title Settlement." 2014, www.noongar.org.au/images/pdf/forms/Final%20Quick%20Web%20Version%200edited%20for%20Gov_v2.pdf.
- . "Living Culture – Living Land and Its People: Noongar Protocols, Welcome to Country." 2010, www.noongar.org.au/images/pdf/forms/BookTwo-ProtocolGuide16p.pdf. Accessed 13 September 2012.

- . “Transition Program: Establishment of the Regional Corporations.” 2016, https://static1.squarespace.com/static/56cac409d51cd4381775480d/t/57f5028fff7c50c1a4f58120/1475674934791/SWA169011+Transition+Program+-+Establishment+of+the+Regional+Corporations_WEB.pdf. Accessed 25 November 2016.
- . Website. *Kaartdijin Noongar*. www.noongarculture.org.au. Accessed 30 January 2019.
- . Website. *South West Aboriginal Land and Sea Council*. 2016, www.noongar.org.au. Accessed 30 January 2019.
- WOLFE, Patrick. *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event*. London: Cassell, 1999.