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Abstract

This paper focuses on the reimagining of sea space in Australia. It considers the distinctive ways in which rights are related to responsibilities in the common property regimes of indigenous Australia and contrasts these with the predominantly private property regimes introduced by a colonising culture. The growing insistence by indigenous coastal groups on their right to take primary responsibility for inherited marine common property domains along the coast is different to, but reconcilable with, a sense of responsibility among non-indigenous groupings. It is argued that each can make a unique contribution to a re-formed Australian identity and a reimagined marine space, one which respects the previously unacknowledged contribution of indigenous groupings to the management and care of their land-sea homelands. A crucial step in reimagining sea space is the exploration of how the dominant conception of coastal marine space as an 'open access' area for all Australians rendered customary marine tenures invisible, how this construction of marine space emerged historically in Europe in the transformation of land ownership from joint or common property to absolute individual ownership, and the association of the latter with 'free riding' individualism. The experiences and perspectives of indigenous communities on the northern coasts, related in this paper, their interrelations with other groupings, are informed and strengthened by a larger context which differentiates contrasting 'cultures of owning'. A necessarily widely focused and historical exploration seeks to reveal how the naturalisation of the dominant construction of marine space has precluded serious consideration of the positive contribution indigenous groupings embedded in common property situations may make towards responsible and non-exploitative practices. In the difficult and long passage ahead, the process of re-forming Australian identity may draw inspiration as well as practical expertise from those with different ways of going about conserving landscapes and seascapes for coming generations.

The Challenge of Northern Coastal Common Property Regimes

The northern coasts form the homelands of major concentrations of Australia's two indigenous groupings: Aboriginal and Torres Strait Islander peoples. They dwell mainly on these inherited homelands which include bounded marine space. Aboriginal people characteristically call the latter 'sea country'; the Meriam of the Torres Strait refer to their inherited marine waters and reefs as 'the sea that belongs to the land' (the land's sea). From the Torres Strait in the east, to Cape York Peninsula (both in Queensland), to Arnhem Land and the off-shore islands of the Northern Territory, to the northwest Kimberley coast of Western Australia, the indigenous people form the majority of the coastal population, major exceptions to the national figure of less than two per cent of the total population. Along the North Territory coasts they compose 87 per cent of the coastal population; in parts of the Torres Strait and many other islands, the figure reaches 100 per cent.

The common property regimes of these indigenous communities, as they are referred to in Australia, are composed of associated clans and families with interdependent rights and responsibilities, living in inherited geographical locales which include both terrestrial and marine space. As with their lands, the boundaries of marine territories are defined and their seas given meaning through song cycles and tracks of ancestors, which may begin far outside home reefs, beyond the state three-mile limits, the twelve-mile Australian territorial seas and into the Exclusive Economic Zone (EEZ) defined by the International Law of the Sea. While the people of these

marine cultures carry an accumulated ancestral wisdom about the sea as a source of sustenance, in life and in death the sea is not simply a resource.

For the indigenous coastal peoples, the aesthetic qualities of the sea are 'matched' with its dramas, which find expression in the tempests of their lives. Among the Yolngu Aboriginal people of East Arnhem Land, the shimmering of the sea is re-created artistically in the cross-hatching of the salt and the fresh waters as complementarities; clan designs in their paintings, representing sacred sites in the sea, are insignia of ownership of particular areas of sea; and a land-sea unity is continued in burial ceremonies where the spirit of a person is guided from one clan territory to another by the handing over of that spirit from one land-sea owning group to another (Morphy 1977).

The right to a locale or clan territory includes foreshore, reef, seabed, waters, fish. As with land it has *going with it* identifiable responsibilities. Among the Meriam people of the three Murray Islands at the north of the Great Barrier Reef who brought the now famous *Mabo* case which overturned the doctrine of *terra nullius* in Australia on 3 June 1992, these responsibilities are given to the head of the patriline or nameholder of jointly-owned marine space to share it and its produce with designated kin, to look after it, to fish and 'farm' it, to exclude others from it (according to the 'keep off' rules of the Meriam god, Malo). In formulating the *right* to land-sea property handed to him by his father, senior Meriam witness in the *Mabo* case, Gobedar Noah did not detach it from the *responsibility* to use it according to custom: 'If I am gone, you have every right and all the responsibility' (*Mabo and Others v Queensland and the Commonwealth*, Supreme Court of Queensland, Transcripts 1984-89: 2108 as cited in Sharp 1996a: 77-78).

As anthropologist, W.E.H. Stanner wrote of the Aboriginal conception of property, each member of an owning group relates to the land and to marine space owned jointly 'with every other member' of the owning group so that each person is with and of each other member and with and of the locale - terrestrial, riverine, marine (1969:4). 'With' and 'of' a locale implies rights and responsibilities to place and to the people who belong to it from generation to generation. Another leading Meriam witness in the *Mabo* case explained the Meriam sense of primary responsibility: 'Fish swim with their own kind, they don't mix up'; so too must the Meriam. He was drawing on the law of the Meriam god Malo-Bomai which says, keep to your own place on land and sea, don't take other people's fruit, don't meddle in other people's business. The schools of fish metaphor denotes a sense of belonging; in doing so it also says that a first responsibility is to one's own kind, where 'own kind' refers both to people and their habitation. The 'same kind' includes many-layered sets of identifications delineated according to father's and mother's land-marine territory (=place), wind-season, totems, and the stars (Sharp 1993).

The boundary-crossing process of reciprocal giving and returning creates expanding identities which continue to exist *simultaneously*: a person may have an identity as a frigate bird, a turtle and at the same time recognise himself or herself as a Meriam and a Torres Strait Islander. Their sea-god, Bomai (the secret name of Malo) who appeared as an octopus with eyes shining like stars, after transforming into many other sea creatures in his long voyage, possessed the spiritual power to knit together eight clans into one body - the Meriam people (Sharp 1993).

Deborah Rose captures an aesthetic and a life-sustaining unity of allied groups and persons in Aboriginal common property regimes: through the manifold associations of their inseparable

rights and responsibilities, the well-being of each depends on the well being of the other so that 'living beings truly stand or fall together' (1997:140). These principles fit well with the Meriam reality and that of other Torres Strait Islanders. Their well-being rests upon reciprocal rights and obligations - or what the Meriam call 'diversities in unity' (Sharp 1993), which are diffused through all spheres of their social life and imagination regulating the interrelations among themselves and with other beings.

Such reciprocal rights and obligations form the basis of common property regimes. Common property, in contrast to private property regimes, includes marine space. It takes for granted a set of rights and responsibilities in relation to defined areas of land and sea for 'a well-defined group whose membership is restricted' (Bromley 1992). Common property regimes are so constructed that the individual's needs and interests are realised only insofar as those of others with complementary rights and obligations are met. '*Eburlem es maolem*', the Meriam say; don't exploit the land or sea, take only what you need, don't waste fish or garden produce. If you don't follow these rules, all living things will stop giving and human social life will cease. They have a custom concerning the first turtle for the new season; if they share this especially prized sea creature in a public all-inclusive feast at a ceremonial site, the sea will give the Meriam abundant turtles in the coming season (Sharp 1998d).

In Aboriginal terms, northern coastal marine space is a series of common property areas owned by identifiable indigenous groups with restricted memberships, each with its own geographical locale; and these are handed down as part of land-sea inalienable tenures in regimes based on local law and custom. In Anglo-Australian law state territorial marine space is an area of 'open access' based on the public rights of all Australian citizens conceived as isolated individuals (Sharp 1996b). When the High Court recognised the principle of indigenous rights to land in *Mabo v Queensland* (1992), its decision was limited to lands above the high-water mark (Sharp 1997). Except for Aboriginal marine space in the inter-tidal zone to the low-water mark recognised under provisions of the Commonwealth Northern Territory Land Rights Act (NT) 1976 (Smyth 1993), public rights to marine space exist throughout Australia.

In 1996-97 a major legal challenge was made to this common law right by a group of Aboriginal islanders. Known as *Mary Yarmirr and Others v the Northern Territory*, it claimed native title rights to 2,000 square km of sea surrounding the Croker Islands 250km northeast of Darwin, marine areas integral with inherited lands. The claim under S.223 of the Commonwealth Native Title Act 1993 is to foreshore, reefs and seas beyond the three mile but not the twelve mile limit. More than 150 claims involving marine territories are registered with the Native Title Tribunal and await hearing.

The arguments in the Croker Island case speak out of two fundamentally contraposed traditions with respect to marine tenure: I have outlined the one based on common property; the other, the state view, legally enforced, is that marine space cannot be owned. The Commonwealth is arguing that the common law cannot recognise a right in the sea that excludes the public from fishing in a particular area; non-indigenous fishermen say their catch in the area claimed over ten years or more is substantial and that they are exercising their common law right as licensed fishermen; and counsel for the Croker Islanders argues that the equation of native title rights with common law rights is 'derived from an approach which fails to recognise native title rights within their own conceptual framework' (Author's notes, Federal Court, Darwin, 1 December 1997).

Interests in land 'of a kind unknown to English law' recognised in *Calder v Attorney-General of British Columbia* (1973) and in *Mabo v Queensland* (1992), are being claimed within a marine milieu (Sharp 1996a).

Taking Responsibility - The Exercise of a Common Property Right

Within a world situation of the overexploitation of resources, the pressing need is for people - groups, communities, nations - to take responsibility for creating a sustainable life. Taking examples of indigenous common property situations in northern Australia with which I have direct experience ranging from three to twenty years, I argue that groupings which retain a fidelity to cultural principles which cradle complementary rights *and* responsibilities may make an exemplary contribution towards a reimagined sea space which is founded upon respect for cultural difference. The wish and demand to exercise the right to take responsibility is seen here as an opportunity; this viewpoint runs counter to the image projected from the highest level in Australia by opponents of native (that is Aboriginal) title to land-sea domains: an Aboriginal octopus - black now, not red - reaching out its tentacles to engulf Australia.

The empirically-based argument of this paper which relates to communities on the northern coasts, is informed and strengthened by a wider contextual one. In this more general perspective 'free riding' individualism and the singular pursuit of economic self-interest are integral with individually-based private property in land where right has been severed from a direct and invisible association with responsibility: 'I alone own this property to do with it whatever I please'. To say this is not to forget the fact that a different, even if asymetrical, relationship between rights and responsibilities also exists in a social world which emphasises individualism. However, since this is not the preoccupation of this paper, 'individualism' is used here in Hardin's sense of pursuing one's own best interest (1989). As one crucial step within the overall argument of this paper, I propose to discuss how the 'open access' construction of marine space is an adjunct of private property in land and how this construction of marine space came to eclipse that of customary marine tenure in the history of Europe. The position of dominance of 'open access' rendered common property systems invisible; in consequence, it excluded the possibility of appreciating the cultural values of giving and returning as offering any practical alternative to the ascendancy of commodity values and the ethic of individualism.

Today indigenous communities in northern Australia are claiming the right to take responsibility for their lands, waters and resources. The demand 'to do things in our own way in our own time' as the primary guardians of land-sea territories has risen in a crescendo during the 1980s, and especially since the recognition of native title rights in *Mabo* in June 1992 (Smyth 1993, Sharp 1998c). I argue that these sentiments and practical moves (of which native title claims are one expression), reflect a central strand in indigenous thought and practice deriving in significant measure from the principles of their common property institutions. Furthermore, I suggest that their preparedness to take responsibility for country handed down to them is *reconcilable* (as well as conflicting) *with*, a sense of responsibility among those fishermen and others who are guided by a 'conservation ethic' which prioritises sustainable management and development of coastal fisheries. The two senses of responsibility take different forms. The 'conservation ethic' is an expression of individual conscience around universalised goals (for example, 'think global, act local'); the other is embedded within the structures of corporate groups tied to specific geographical locale (Dwyer

1994). In the difficult and long passage ahead, each can make a unique and significant contribution to a re-formed Australian identity. While both would be drawn into that reconstruction, the previously unacknowledged contribution indigenous groupings may make in taking responsibility for their homelands and home seas, forms the focus of this paper.

In a current exchange concerning who are the primary guardians and managers of Aboriginal country on the south east of the Gulf of Carpentaria, in Cape York Peninsula in far north Queensland, spokesmen for Kowanyama Aboriginal community insisted with a regional land-use body their 'belief that it [the community] is responsible for managing its affairs in its own way'. This response reflects a position which crystallised publicly at Kowanyama some ten years ago: that regional planners and managers of resources must accept a declared Aboriginal right to self governance on land handed down as common property and expressed in law as native title rights 'through their own management agencies' (Kowanyama Land and Natural Resources Management Office [KLANRO], 12 February 1998). The immediate context of this controversy is a proposal by a non-indigenous regional body, the Cape York Land Use Study (CYPLUS) to establish an overarching resources management body for the entire Cape York Peninsula (CYPLUS, Stage 2 Draft Report 1997, as cited in KLANRO, 12 February 1998; cf Sinnamon 1995: 12).

Kowanyama community consists of three associated linguistic groups or tribes, each with defined country, as Aboriginal people call the geographical locale which they inherit and are part of. They are primarily riverine people living in delta country on the eastern side of the Gulf of Carpentaria, north Queensland, which includes sandridges, tidal flats and 50 km of coast.

The move to take primary responsibility began in anger on the beach at Topsy Creek in Kowanyama's sea country in early 1980s. The elders were infuriated at the appearance of discarded fish species thrown out of nets onto the beach by non-indigenous fishermen looking for other species. Kowanyama people believe that wastage of fish is disrespectful to the sea, leading to 'closed up' country, a sea refusing to give. Down at Karumba, the leaders of commercial barramundi fishermen were angry too. They approached the elders seeking co-operation: 'We are conservationists too', they said.

The Kowanyama people were also ready to move on their own: they convened a conference at Kowanyama in 1988 and they got themselves on the official fisheries map which listed the different types of fisheries: 'We put another little box down and said "Indigenous Fisheries", for the first time'; and they declared their lands and rivers closed to recreational fishermen without camping permits; they designated certain camp sites at five dollars per car per night. Two years later they opened the Kowanyama Land and Natural Resources Office (KLANRO). Commercial fishermen, conservationists, government agencies were arriving at Kowanyama in the knowledge that members of that community now had their country to themselves. The 'partnership' between Kowanyama and others helped to initiate a Ranger Training Program and the first Aboriginal fisheries inspector was trained. Money from campers allowed helicopter surveillance of the network of rivers in the vast delta country. In 1990 the Mitchell River was closed to fishing and moves were made for a watershed catchment management scheme. The partnerships with outsiders retained the identities of the parties involved and gave strength to the whole without one encapsulating or reducing the identity of the other (Sharp 1998a, 1998c).

I am suggesting that in a fundamental sense the Kowanyama experience is a striking

example of the impulse to take responsibility. Dhimurru, the Yolngu Aboriginal people's self-managing land corporation, based in Nhulunbuy/Gove, in the Northern Territory and founded in 1992, is a self-managing body with strong acknowledgements to the Kowanyama Aboriginal Community and the Kowanyama Land and Natural Resources Management Office (KLANRO), but with its own Yolngu agendas (Dhimurru Land Management Aboriginal Corporation Plan, 1992-97).

Kowanyama's move to take responsibility is integral with the principles of common property regimes. This is 'easy' for indigenous people because it is integral to their life's design. Yet for people immersed in European property systems to grasp the idea of the indivisibility of rights and obligations means to cross a major cultural boundary in the institutions of individualised private property which has pulled them apart into two discrete and exclusive categories.

Viewed in this light declarations (and practices) of responsibility by indigenous people speaking out from (their) common property situations may be the expression of their right to care for inalienable common property; just what is needed in a world in which the effects of widespread irresponsibility are maximising. I argue that the growing demand by indigenous people to shoulder responsibility for their marine (and land) space provides an appropriate context to explore the way in which the naturalising of the dominant European construction of marine space has precluded serious consideration of the inherited rights and responsibilities to marine domains held as common property.

'Reimagining sea space' is an expression I have used (1996b, 1998b) to identify a process which breaks free from the reification and naturalisation of the open access construction of marine space. Two interrelated clarificatory steps are taken here. Following in the footprints of others, a distinction is made between institutions of common property and open access. Having untangled and disassociated these two contrasting conceptions, a second step sets out patterns in land and sea tenures which shows the perhaps unexpected interrelationship between individualised private property in land (in which the latter has a saleable commodity value) and open access to the coastal sea.

Together this clarification of categories seeks to provide a basis of refutation of the pervasive, unanswered and influential argument - the Hardin fallacy - that humankind is *naturally* driven by individualistic self-interest, so ruling out consideration of alternatives to strategies seeking to curb individualistic activity exclusively by centralised management and direction.

By distinguishing common property from open access it becomes possible to see how a human 'nature' formed not by the possessive individualism of 'I alone this land', but on the interdependence of reciprocal rights and duties is created in social life. The seeming paradox between private property in land and open access to the sea finds resolution in the fact that both are embedded within a set of institutions which raise the status of possessive individualism to the position of a central cultural value.

These steps are delineated briefly, foreshadowing the concluding section. There the discussion returns to reflect on the aspirations and the experiences in northern seascapes: the possibilities and the complexities of reconciling different senses of responsibility in ways which respect and value its living and varied expressions.

Common Property and Open Access: A Contrast

Thirty years ago Garrett Hardin pointed to the devastating effects of irresponsibility among hunters and herders, which few would gainsay. In 'The Tragedy of the Commons' he used the pastoral commons as a metaphor for the whole world freely accessed by individuals serving their 'own best interests'. Where the high seas had become the scenario for deep sea and mid-water trawling and where technological innovation had far outstripped the capacity of managers to safeguard fish stocks, Hardin's arguments were most persuasive. By 1972 an exponential rise of the world catch of 60 million tonnes had been reached six years ahead of schedule. The open season to 'ride freely' seemed to have no bounds (Warner 1984). However, while his empirical observations may have been accurate enough, Hardin's argument rests on two fallacies. First, he took open access regimes to be a category of common property (Berkes et al. 1989). His second insupportable assumption - that mankind is *naturally* driven by individual self-interest, so that people will always over-exploit stocks - is integral with his failure to distinguish common property from private property situations.

This paper challenges these assumptions, arguing that 'free riding' - the pursuit of individualised rights now floating free of obligation - is culturally specific. It is created socially through the individualisation of property rights and the dominance of commodity market relations. By individualised property right I mean property in land in which 'I alone own this land' and may exploit it, alienate it, disinherit my offspring. The locking together of rights and obligations in the face to face reciprocities of common property regimes throws into question the assumption of an essential, individualist human nature. Persons in the common property situations on the northern coasts cannot just pursue 'their own best interests'. Those who try to do so are noted. For example, Meriam people refer to them as 'those with dollar signs on their foreheads'. Living in accordance with a set of culturally defined rights and obligations means to be 'prisoner' to the reciprocities of giving, receiving and returning in Meriam social life: it 'makes a man big [respected] to be a good hunter'. Where being taught to hunt and being taught to share are embedded in the same social matrix, 'it makes you feel real great to share it [your turtle] with people' (George Kaddy in Sharp 1998d). Being irresponsible, in this case keeping your catch to yourself, is unthinkable.

Taking contrasting constructions of coastal marine space, I show their interrelation with property relations in land, so providing a basic classification of property rights institutions. The fact that common property constructions of land and marine space exist in their own right challenges the view that these regimes are merely an expression of open access situations. These steps are taken within the footprints of others in a 'common property rescue operation' from its incorrect positioning within open access situations (Ciriacy-Winthrup and Bishop 1975, Berkes et al. 1989, Cordell 1989, McCay 1989, Ostrom 1990, Bromley 1992, Maurstad 1992, 1995, Eythorsson 1995). The intention is to contribute towards refuting the enduring but false proposition that plunder and its tragic consequences may be attributed 'to the institution of common property itself' (Runge 1992:19).

Profound ill consequences follow from that ill-considered view. The confounding of the two situations - open access and common property - has the effect of rendering invisible the very central virtue of common property: the indivisibility of rights and responsibilities at a time when this quality is just what is needed for the nurturing of living beings, both humans and habitats, in an era

of incomparable irresponsibility towards environments and peoples.

Having begun to bring this alternative perspective on terrestrial and marine space out of the shadows created by the dominant paradigm, one may readily become aware of the uniqueness of rich if often beleaguered and threatened common property situations. 'That sharing is still part of us', the Meriam say of their contemporary culture (G. Noah in Sharp 1998d), which, in structuring reciprocal interdependence, enshrines sharing not individualism as the central value.

The Imperial History of Seascape Construction

Dotted around the world are peoples living by the sea who continue to observe customary marine rights and obligations flowing out of common property regimes. Where marine space is defined in this way, respect for certain principles derived from named and unnamed ancestral beings and based on giving and returning is seen as material to the preparedness of the sea to provide for those who belong to that area.

A contrasting conception which rose to prominence in Europe from the seventeenth century onwards and was transported across the oceans through imperial expansion, is that no one person or group can own marine space: rights to coastal seas and foreshore are conferred on all citizens equally by the state. In this situation, questions of how those 'open access' areas are used, who will use them and under what conditions, are the responsibility of government bodies. Associated with the latter perspective is the notion of the sea as a resource. Both in Europe and the antipodes, the 'open access' construction of coastal sea space came to eclipse or at least render invisible marine tenures of resident groupings with inherited customary rules and law.

In both open access situations and in common property regimes there is sea belonging to land, but the principles of that 'belonging' differ *in quality*. In the one, the right to land-sea domains is embedded in persons whose central being is created in face-to-face interrelations. Land-sea property is held and bequeathed by a person on behalf of a family, clan or other group of associated persons who together shoulder responsibility for it. In the other, the right to the sea is not a right on behalf of a tangible group of persons who are associated with a geographical locale. It has been removed from the level of persons and reconstructed as an impersonal, abstract right vested in a monarch or state acting for all the citizens of a polity. It is given legal expression as public rights where at least in principle, every citizen has the right to use and enjoy the coasts.

The sea is an inseparable adjunct of land in both situations, but the difference lies in localised land-sea unities which are the province of family, clan or community in contrast to state territorial seas which are 'inseparable appurtenances' of adjacent land masses held by monarch or state authority on behalf of the body politic. Coastal marine space is predominantly the medium of economically-marketable resources in the one case and the habitat of beings, material and invisible, with whom people claim affinity in the other case.

A major social transformation occurred in Europe in which the cultural connection between land and sea characteristic of common property systems became subject to a new set of principles: where the right of particular persons and groups to seas adjoining their lands was reconstructed as a public right to newly created centralised state territorial seas vested in a monarch. When the Dutch jurist, Hugo Grotius wrote *Mare Liberum* in the context of nascent imperial rivalry, he drew upon

one long-standing belief that did not brook disputation, the subject of a body of writing in the works of Virgil, Cicero, Ovid, Seneca: as the life-blood of all mankind water and air are in their very natures to be shared by everyone. Notwithstanding the antagonistic arguments of Grotius and the British writer, John Selden on the freedom to navigate the oceans and the need to keep 'other nations at a distance' from coastal waters (Selden 1663, 2: 282), they came to have a complementarity in the world-embracing market of rising state imperiums in the modern capitalist era (Sharp 1996b). As a justification for the free pursuit of market goals the doctrine of freedom of the seas served as an immensely powerful ideology of imperial dominion. It was also an indispensable component of the individualisation of property in land as an alienable economic value.

For the purposes of this argument, it is essential to hold in mind that unlike land, coastal marine space did not undergo a change from one form of property to another; it ceased to be property. While land was receiving the status of a commodity which a sole owner might now dispose of as he wished, the coasts were being declared the property of no one: the riddle of private enclosed lands and open access seas.

Yet this seemingly strange conjunction hinges on a major revolution in property relations in Europe where private property in land emerged as the dominant social form - from ownership by a defined and restricted group to 'individualist ownership' (Macfarlane 1979: 39 following Marx). Where land-sea holdings on specified land and sea space once joined generations of identifiable corporate groups, they now became splintered among individuals with new rights: to dispose of the land on the market as they desired according to economically based principles. The individual owner is no longer restricted by obligations to the other members of this identifiable group. In Macfarlane's words, the landowner is now 'not merely the trustee or organizer of a small corporate group who jointly owned the land ... The land is *his* land' (1979: 63; my emphasis). This new system of 'enclosed' land, that is land held in absolute individual ownership, came to predominate in England by the end of the seventeenth century (Campbell and Godoy 1992: 101).

In the same historical period in which enclosed land had become the outward expression of the substitution of inalienable land of a restricted group with joint or common rights and responsibilities in perpetuity by absolute individual ownership, the marine territories of the coasts were being 'freed' of joint common property rights vested in a local group in the name of public rights of all citizens of absolutist states. No longer conceived as property and being presented as universal by dominant groups, they then became *invisible as culturally specific forms.*

By distinguishing the social relations of private property in land on the one hand and land held jointly or in common by an identifiable corporate group on the other, it becomes possible to set out a simple classification of land and sea tenures which makes quite explicit those distinctions which were previously obscured.

TABLE
Land and Sea Tenure Patterns

	Land	Coastal Marine Space
(1)	Common property (inalienable tenure)	Common property (inalienable tenure) Inherited local-regional sea tenures (res communes, property in common)
(2)	Individual private ownership (alienable title)	Open access to state territorial seas (res publica, public rights of citizens to state-managed marine resources)

As Berkes and others have noted (1989), in practical life there is often a coexistence of different tenures, exchange relations and productive systems in which one is dominant. As Runge has observed, marine regimes are often constructed as open access situations; yet unwritten customary rules between those sharing common property may exist unbeknownst to those who establish and regulate those 'official' regimes. He concludes that 'what appears to an outside observer to be open access may involve tacit cooperation by individual users according to a complex set of rules specifying their joint use' (1992: 18).

People of indigenous societies have responded with vigour to the plundering of earth and sea: the reassertion of common property responsibilities manifest in claims to primary stewardship, a theme developed in this paper, is basic to this response. It is 'matched' with a developing sensibility among people formed primarily by the dominant culture which prioritises the circulation of economic values. Heightening moral concern at the unaccountability of free riding finds expression in heritage and associated legislation. It finds major expression too in individual conscience: a preparedness to risk one's life by lying before bulldozers or sailing in the path of powerful ships.

Reimagining Sea Space: The Return of Responsibility?

Given the depth of the environmental and human crisis, the virtues embedded in common property institutions on ways of owning which embody reciprocal interrelations, may point towards practical alternatives to those based solely on individualism. As Ciriacy and Bishop noted 23 years ago, there are no rules regulating individual use rights in open access situations (1975); and as others have concluded recently centralised government regulation in the 1980s and 1990s has not solved the problem of fisheries ravaged in the 1960s and 1970s (Garcia and Grainger 1997). In prioritising economic goals global market forces are shaping a world of unprecedented irresponsibility. As Bauman, a widely influential social theorist concerned to integrate theory and ethics, writes, the poor are being forsaken for the first time in history (1997). The 'new enclosures', to use Phyne's expression (1997) may see 'aquabusiness' and other privatised regimes finally dissolving any surviving common property institutions which have continued their unseen, often sporadic and clandestine activities within 'open access' constructions of sea space.

Maurstad's unique empirical study of contemporary cod fisheries in northern Norway illuminates a reshaping process in microcosm. Cod fishermen, following customary rules of give and take within marine space divided according to ancient common property rights, were being swept into tragedy in the process of being resocialised according to principles of possessive individualism and the pursuit of money goals for their own sake. 'Closing the commons - opening the tragedy', the title of a paper with a living poignancy, given by Maurstad to the third IASCP conference in 1992, lays the responsibility for the tragedy with those forces moving towards the further reconstruction of property relations and persons - from *homo reciprocus* to *homo economicus*, to use Polanyi's terms (1965), and the separation of right from obligation.

Reimagining sea space calls on the intelligence, perceptiveness and especially, on the good will and mutual respect between cross-cultural groupings, who hold different perspectives on marine space. Perhaps the micro experience of the Kowanyama Aboriginal community and a group of the gill-net fishermen at the port of Karumba provides a context in which to consider the problems and the prospects of reconciling along the beaches. Why did they co-operate? Has their experience a general relevance or lessons for others? Are the living actors the same as they were a decade or more years ago? Are there lessons for reimagining sea space or land space? A first answer is that each group was in the process of defining itself in its own way, its goals and needs and how to advance them; each had respect and some understanding for the other's 'cultural way'; and the conditions were such that getting together could assist each.

From the Karumba fishermen's standpoint, five circumstances acted together: they were threatened by 'free riders', what they called 'the cowboy element' within their fishing domain; they saw ahead that regulating the use of rivers would be beneficial to the fishing industry (the proposal to mine the mineral sands in the sandridges of the river delta was seen as a threat). They themselves cared about the resource: 'We had to convince Aboriginal people we have the same ideals as them', said Karumba Chairman Gary Ward; Aboriginal people posed no threat to what they saw as their fishing space; and the key leaders at least, respected and had some understanding of how Aboriginal people felt about their land and its self-governance: 'It was always seen that fishermen shouldn't fish near Aboriginal communities' (Kehoe 1990: 12).

From the Aboriginal viewpoint, the first three circumstances were the same, although conceptions of what they were conserving differed: first and foremost for Kowanyama people was 'the conservation of their own traditional subsistence fishery' (Sinnamon 1995: 21). The fishermen who posed threats to the Karumba fishermen were non-indigenous people who, in Kowanyama people's eyes came without permission into their lands and rivers and sea space.

It is this 'free-ness' and dissociation of persons and groups from place which is so central to 'open access' as a social construction. In the Croker Island sea claim hearings, mentioned earlier, commercial fishermen told the Supreme Court of the Northern Territory how they took crayfish in the inter-tidal zone of one of the islands being claimed when the reef was uncovered (Author's notes, 19 August 1997). The impulse among the islanders is to chase them away; and this is just what the Meriam fishermen did in 1993 when non-Islander licensed fishermen came into their traditional waters to fish (Sharp 1996b). The Meriam argue that these fishermen must ask the permission of the traditional Meriam marine owners and they must sell their catch to the Mer Island Community Council which also buys the Meriam fishermen's commercial catch (Chairman, Mer

Islands Community Council, pers. comm. 30 January 1998).

A reimagined sea space in the northern land-sea homelands of indigenous people might begin with the recognition of the rights of stewardship they are declaring as theirs. Australia's vast Exclusive Economic Zone, larger than the continent itself, holds ample space, both physical and social, to accommodate non-indigenous fishers. Care for the sea environment requires a responsible use of knowledge, both general and local. Aboriginal and Torres Strait Islander sea peoples have intimate knowledge of local species and their habits. Meriam children as young as five know how to obtain all culturally approved foods and how to process them (Bliege Bird, Bird and Beaton 1995). As Johannes concluded ten years ago, Aboriginal women's vast and highly refined knowledge of shell fish could make an important contribution to seafood technologies (1987). Dhimurru Aboriginal Land Corporation has made the important statement that indigenous and non-indigenous conceptions of the environment and their ecological knowledge are equal but different (Dhimurru, Plan 1993, 1997). Its Yolngu founders and functionaries have shown a readiness to learn as well as to give: their turtle breeding videocassette explains how researchers demonstrated to them that loggerhead turtles do not breed in the sea as tradition has it; they breed at certain places in southern Queensland (Dhimurru c.1997). It is wise to proceed with caution based on cross-cultural understanding. Indigenous cultural and intellectual knowledge or 'property' belongs to particular persons and groups of a particular locale; it is not homeless. Equally important, being tied to intangible spiritual aspects of property it is not up for sale (Posey and Dutfield 1996).

In a world made increasingly homeless by the global market system, attachments to place which do not trangress the primary rights of others are positive qualities. The Karumba fishermen may have come from other parts of Australia to fish, but they have put down roots there, demonstrating what Berkes and others refer to as 'the self-regulating capabilities of users' (1989: 92). There is a growing literature on customary rules associated with place among fishermen taking precedence over government regulation. For example, in Teelin, southern Donegal (Taylor 1981); or in the counties of Troms and Finnmark where the recognition of state law that 'fishing is open to all' is coupled with the belief that 'this is my site' (Maurstad 1995: 8); or among lobster fishermen in Maine where informally given 'traditional fishing rights' operate (Berkes et al. 1989: 92). In these situations, open access to the public becomes a vehicle whereby different groups may retain places handed down to them, a subject I touched on in the last section and at greater length in another paper which focussed on underlying factors mitigating against the recognition of distinctions between forms of tenure (1998b).

These customary practices are generally unwritten, at times necessarily secretive and usually not known to officials (Cordell 1989). Exercise of customary foreshore and marine rights based on unacknowledged or extinguished common property tenures was criminalised in Ireland in the nineteenth century (Keary 1992: 12). In Australia colonised indigenous sea peoples were re-schooled to forget about their plots of sea; the Meriam were told by the government representative and school teacher that it was unChristian not to share the sea (Johannes and Macfarlane1991). The post-*Mabo* Meriam experience points to a first priority: to define themselves for themselves and to the world as the primary guardians and managers, not governments or the non-indigenous fishing industry. The same priorities are held at Kowanyama and among Yolngu in East Arnhem Land; self-management and self-governance come first; partnerships may develop on that basis (Sharp 1998c).

Some declarations of responsibility become rhetorical; because one's forebears nurtured country does not prove that sons and daughters will follow their footsteps (Foale 1997). The coastal groupings along the coast exist neither as unsullied gems nor as tribes downtrodden by colonial boots. They are influenced by market forces; and they have learned from and been inspired by experiences of indigenous peoples in other places. The Kowanyama experience owes much to the long struggles and building experiences of the people of the north-west Indian fisheries' nations of Washington State and their organisations, with whom they have made close reciprocal links (see for example, Northwest Indian Fisheries Commission 1991).

Kowanyama elder, Colin Lawrence speaks eloquently of upholding his people's rights to fish. He is speaking of a right borne by people who are 'with' a locale; he is speaking of a landscape which answers back in providing; he is speaking of the ancestors whose spirits inhabit that country; and he is speaking of generations yet to come. He is also speaking of a way of relating to land and to other persons where rights and responsibilities are 'with' one another. The strength and moral force of one's right is matched with one's obligation to share it with joint owners and simultaneously to look after it, which I mentioned earlier in relation to Meriam people (Sharp 1996a). This is 'the law of the land'.

At the beginning I mentioned the process whereby identities based upon diversities-in-unity expand their range without dissolving the more limited ones which form their centres. Kowanyama people reached out to other groupings to build up the capacity of their fish stocks. In becoming 'co-operating' or 'partnership-bearing people' they did not weaken or submerge their identity, they augmented it. Self determination and self governance on inherited land provided the framework and basis for co-operation with others (cf for example Fenge and Rees 1987, Rettig, Berkes and Pinkerton 1989, Jull 1993, Usher 1996, 1997). It presupposes partnerships based on two-way respect, not asymmetrical regimes in which indigenous communities act as rubber stamps for strategies determined elsewhere.

This is a relationship which *adds* to others also. Karumba fishermen's secretary, Bill Kehoe reflects on that addition to himself over nearly two decades of working with Kowanyama people. Then I believed 'We're fishermen, our interests have to come first' (pers. comm. June 1997). 'Now I have a more regionally-based conception. I see far better the decency of Aboriginal people. And I feel I am a better person for it ...' (pers. comm. 9 April 1998).

When Kowanyama people address their primary aim of conserving their own traditional subsistence fishery - they speak to a cultural way undervalued within the dominant society in which they find themselves. Yet this is a subject very close to the hearts of the people of the northern seascapes. Mabo's people, the Meriam, speak a last word from their home seas. Their myth of Meidu says, while the Meriam may eat from daylight to dusk, they cannot eat all the food they produce. In their language, the responsibility to feed themselves translates as 'pride speech' (Sharp 1996a). As I complete this paper, they report their waters are rich in fish and their co-operative, self-managed commercial fishing project beginning to thrive (Meriam fishers, pers. comm., 9 April 1998). Yet as I said at the beginning, among the Meriam the sea is not just a resource; nor is the corporeal divided off from the spiritual. They are 'matched' with sea creatures; and in the moment of dying a

Meriam person may take the form of his or her totem, performing its movements. Crossing the last bridge between the corporeal and the invisible, between land and sea is 'natural' for the Meriam.

As experiences of cross-cultural partnerships attest, people may be put in touch not only with other rich cultures, but also with areas of themselves which have been attenuated or placed in abeyance by the one-dimensionality of their work and their lives. Co-responsibility for a reimagined sea space may take its bearings from such interchange.

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