

## Water injustices and potential remedies in indigenous rural contexts: A water justice analysis

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Published online: 22 February 2007  
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**Abstract** This paper examines Indigenous water rights in rural and remote Australia and how water justice seems to be elusive in many of these spaces. The purpose of this literature review is to link water justice theory and practices to the way different water cultures are valued in Australia while simultaneously critiquing the water justice movement. This paper situates the notion of water justice as a specific kind of environmental justice to cater for the unique qualities that define this resource. In doing so, this paper draws on Schlosberg's (2004) conception of environmental justice with its trivalent approach that describes the following three 'circles of concern': recognition of difference, plurality of participation, and finally equitable distribution of resources and costs and benefits. This framework provides that if the first two 'circles of concern' are not in existence in a natural resource management process, then inequitable distribution of that resource is a likely outcome. This paper presents two areas where water injustices exist in the context of Indigenous rural and remote Australia. The first relates to how Indigenous rights to water have been inadequately recognized and the second presents empirical data on water supply and sanitation in rural and remote Indigenous communities that demonstrates ongoing dilemmas around securing this basic human right. The undervaluing of cultural differences relating to water is argued to be antecedent to the injustice manifest in poor water supply and sanitation provision for Indigenous rural contexts. This paper does not attempt to survey the body of ethnographic work on society-water relations in rural and remote Indigenous Australian contexts but reviews the gaps in current mainstream acknowledgement of Indigenous water cultures. In exploring water justice in rural and remote Indigenous Australia, this paper offers a novel approach to a dilemma more frequently analysed solely as a health development issue.

**Keywords** Indigenous · Justice · Rights · Rural and remote · Water

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## 1 Introduction

Transformations in society-water relations<sup>1</sup> in regional Australia have been and still are partly shaped by interactions of different water cultures. Different water cultures produce an abundance or scarcity of supply in specific contexts. While trying to avoid essentializing the water management practices of Indigenous cultures in Australia, it is fair to say that these society-water relations have, overall, been sustainable. This is in contrast to the society-water relations characteristic of non-Indigenous Australia that have constructed a scarcity in many instances. There are important differences within these broadly defined water cultures requiring recognition and these are comprehensible through looking at different scales that constitute these cultural and geographic realities. Further, interactions at the expansion of frontiers of development in Australia have resulted in negotiations across these cultures. It is important to note at this stage that proportionally more Indigenous people live in rural and remote Australia than in urban settings. In 2001, 27% of Indigenous Australians were living in either remote or very remote areas, compared with around 2% of non-Indigenous Australians (ABS, 2003). Further, Indigenous Australians comprised 24% of Australians living in remote or very remote areas and just 1% of Indigenous Australians live in major cities (ABS, 2003).

Water justice is conceptualized here as a specific sort of environmental justice that recognises how environmental decision making is always political but is also always grounded in material realities. For water justice to be achieved, it is necessary to recognise difference when engaging communities, have participatory practices in decision making processes, and, finally, prioritise equitable distribution of water resources. This paper argues that a framework of water justice could be useful in helping to deliver better outcomes for Indigenous rural and remote communities in terms of water supply and sanitation and, more broadly, a better recognition of their water rights. One such thing that will assist this is appropriate recognition of the Indigenous peoples' different cultural traditions relating to water.

This literature review consists of three sections. The first is an examination and critique of water justice as theory and practice which applies environmental justice theory to water justice activism. The second section examines two facets of water injustices in rural Indigenous contexts; this section includes an overview of how Indigenous rights to water have been marginalized in water allocation processes and a presentation of empirical data on water supply and sanitation issues in Indigenous rural and remote communities. The third section contextualises the data by examining the way differences in water cultures are relevant to notions of water justice and argues that Indigenous water cultures are currently undervalued in many situations. The connection between native title recognition of riparian rights and water health and sanitation as a human rights issue may initially seem tenuous. However, a cultural flows regime that appropriately recognizes Indigenous water rights may provide the basis for improving environmental health outcomes of Indigenous communities. This would be because their position as important stakeholders is better understood and the particular and different needs of their rural and remote communities can be

<sup>1</sup> The term 'society-water relations' is used here to describe the myriad complex ways humans interact with this natural resource, including social, cultural and economic dimensions.

addressed. Negotiating differences in water cultures is one of the cornerstone principles in working towards water justice. If water cultures are inappropriately valued, then ensuring water justice may be impossible.

## 2 What is water justice?

Water justice is conceived here as a subset of environmental justice in recognition of the unique qualities of this resource. Water is unlike other resources because of its universal need and yet innumerable different valuing systems that shape particular society-water relations in diverse contexts (Strang, 2004). These differences prompt a special analysis of dilemmas around water and hence justifies a focused framework within a more broadly defined environmental justice approach. Currently, ideas around water justice are employed predominantly by international and networked activists. This paper repositions water justice by drawing on recent environmental justice analysis, of both theory and practice, by Schlosberg (2004). He explores how the environmental justice movement helps expand the notion of justice through social practice. In doing so, he argues that the Rawlsian notion of justice limits the understanding of justice to purely distributional elements of practice. Rawls (1972) postulated that all social goods, such as liberty, are to be distributed equally with the stipulation that unless an unequal distribution of these goods advantages the least well off, then an alternative distribution may be more just. In terms of environmental justice, this is most often understood as the distribution of costs and benefits from developments that impact on environmental assets.

Traditionally, the environmental justice movement has argued that environmental ills such as pollution have been inequitably distributed with those already economically marginalised experiencing further disadvantage through contamination of their environments (Dobson, 1998; Stephens et al., 2001). The argument is that the costs of development are borne by those of difference, usually those who are economically and racially different from the mainstream. Theorists and activists have extended this analysis to move beyond a focus on distributive justice towards an approach that embraces a politics of difference. One theorist who does this competently is Schlosberg (2004) who argues that the environmental justice movement defines justice in a broader sense as it recognises the diversity of participants and experiences in affected communities. This valuing of plurality gives recognition to different sorts of knowledges and may open up environmental decision making processes to non-mainstream involvement. For instance, it is possible to value the traditional ecological knowledge that Indigenous communities hold for their country within a framework that appreciates plurality.

The environmental justice movement also emphasises the importance of participation in the political processes that create and manage environmental policy. Participatory processes in consultations, feedback mechanisms, public review processes, and activist modes, are all crucial to the environmental justice movement. This feature of the environmental justice movement, Schlosberg (2004:518) argues, contributes to remedying one of the key inadequacies of liberal justice theory which normatively examines fair processes for the distribution of goods and benefits. Including difference in the theoretical approach to environmental justice, previously focused on ‘fairness’

of distribution, overcomes the narrowness some argue is associated with notions of distributive justice. The idea is not to go ‘beyond’ liberal notions of justice but to adopt a ‘trivalent’ conception of justice. Schlosberg (2004) states that ‘justice demands a focus on recognition, distribution, and participation and that they are three interlinking, overlapping circles of concern.’ (Schlosberg, 2004:521). This integration is where Schlosberg (2004) draws inspiration for the theoretical expansion of the notion of ‘justice’ and he sees this integration reflected in the practice of the environmental justice movement.

A fundamental building block in environmental justice practice is recognition of the multiplicity of power. In the case of environmental justice, Schlosberg (2004) argues that environmental justice cannot be *uniform* but it can be *unified*. This is because of the range of processes and resistances that occur in local spaces all over the world. The water justice movement would benefit from embracing a similar framework. At the moment, it is too focused on uniformity in a battle against the threat of privatisation of water. This aborts the possibility of building a comprehensive, integrated movement because the unitary nature of their claims resists recognition of difference. Evidence of this focus on uniformity is found in material produced by organisations such as Friends of the Earth International (FOEI). In one publication, FOEI stated that the ‘world’s poorest people are desperately in need of water and sanitation services, but experience has shown that they are just further marginalized when their countries follow the corporate mode of privatization.’ (Friends of the Earth International, 2003:4).

While it is true that the world’s poorest people are desperately in need of water and sanitation services in many circumstances, the too easy dismissal of private participation in water supply and sanitation is inaccurate and problematic. There are several instances of private vendors providing water in urban contexts where public utilities do not operate and have provided this service for decades (Bakker, 2003; Budds and McGranahan, 2003). This means that people are already experiencing reduced access to supply and are being innovative in the remedying of this lack. There are complex processes, such as what Bakker (2003) calls ‘archipelagos of supply’, in place to overcome these inadequacies and these may not take the form of the public networked water supply so familiar in urban developed environs. It is necessary to acknowledge the variety of practices people have in securing supply in order to understand the potential impact of transformations. This would help the water justice movement to move away from a polarised fight against international financial institutions (IFIs) and multinational corporations (MNCs).

Just as one side of the private versus public debate discursively obfuscates the material reality of water supply and sanitation, so too does the other. IFIs and MNCs similarly simplify the argument in their portrayal of the majority of public provision of water as being generally inefficient and ineffective (Garn et al., 2002; World Bank, 2005). The common line is that public sector providers have, in most cases, been inefficient in providing access to reliable water supply and sanitation. This prompts calls for private sector investment to ‘fill the gap’. The debate is so heated because the stakes are so high. Water is a universal need that should be available irrespective of peoples’ capacity to pay and this is where the water justice movement seeks to intervene. Water cultures that have different histories to developed nation’s water management trajectories can fall foul of the one size fits all approach that so often

comes with private sector participation. This is also where water cultures that diverge from the mainstream experience conflict with overarching structures.

The clashing of water cultures is something that the water justice movement is conspicuously aware of and use to ground their position. Paradigm conflicts over water management practices have grown into fully fledged wars according to some, including Shiva (2002), Barlow and Clarke (2002) and Roy (1999). In her polemical text ‘Water Wars: Privatization, Pollution and Profit’, Shiva (2002) turns her activist gaze to the contest over water.

Paradigm wars over water are taking place in every society, East and West, North and South. In this sense, water wars are global wars, with diverse cultures and ecosystems, sharing the universal ethic of water as an ecological necessity, pitted against a corporate culture of privatization, greed, and enclosures of the water commons. (Shiva, 2002:x)

This universalizing and simplifying of the conflict highlights what is concerning about the water justice movement in its current shape. The pitting of big corporations against diverse cultures and ecosystems misrepresents what is a complex situation in each locality. There is often a mix of regimes of provision in each context (Bakker, 2003) and this needs acknowledgement rather than reduction to a case of corporate cultures preying on victim communities. At the other extreme, there are some arguing that water is actually a catalyst for cooperation that brings together nations regionally to work towards equitable distribution and use (Asmal, 2001). Asmal (2001) suggests that no group has gone to war strictly over water and predicts that they never will. Regardless of the veracity of his claims, as one time President of the World Commission on Dams, his position carries some weight. Water management acting as a peace-builder is also reflected in the more prominent role of Indigenous peoples in water planning in some parts of the world. This was captured in the World Water Forum (held in Mexico, June 2003) that included a space for the vocalisation of Indigenous water rights. A report by Groenfeldt (2004) on this forum details the trend towards acknowledgement of an appreciation of traditional water management arrangements and how these hold ongoing relevance in contributing to a sustainable future with regards to water resources. However, he is quick to point out that while these trends are emerging, there is still significant lag in terms of actual projects and policies.

One way out of this impasse in the water justice movement is to explore the local specificities of water supply and sanitation regimes, in situ. As Dubash (2004) argues in his political ecology of groundwater markets in Western India, it is essential to move away from arguing over the intrinsic superiority of public versus private sector participation in water supply and sanitation. He suggests that political ecologies of water management, that by need are located in specific contexts, reveal more about the impact of different modes of operation, be they private, public or a mix of both. It is the ideological predispositions towards either mode that clouds appropriate evaluation of practices. Both Dubash (2004), and Bakker (2003) argue that repositioning the dilemma of water governance in material realities can serve to counter polemical discourses. However, Dubash (2004) does grant that ‘the tangible sense, validated by experience. . . (of) unchecked expansion of the market interest in the water arena does threaten the public interest and spur a counter-movement aimed at restricting market excess.’ (Dubash, 2004:221).

This paper is an attempt to re-embed water politics in material realities through its identification of water injustices in Indigenous rural and remote communities. It then describes some of the differences in water cultures that contextualise the raw data. Rather than perpetuating a polarised debate, this serves to contextualise the dilemmas in achieving water justice where it counts most, in local spaces. This section has engaged with the global debate on water justice and resituated it to be relevant to rural and remote Indigenous water relations. The next section presents evidence of inadequate recognition of Indigenous values in water resource management and data on water supply and sanitation, both of which demonstrate instances of water injustice. These two issues are separated for clarity although, as will be shown, they are clearly connected.

### 3 Water injustices in indigenous rural contexts

#### 3.1 Inadequate recognition of indigenous values in water resource management

A lack of acknowledgement of cultural differences contributes to the current under valuation of Indigenous rights to water. This is partly due to the limited appreciation of many dimensions pertaining to Indigenous society-water relations. The differences between Indigenous and non-Indigenous water management practices within Australia is highlighted by Jackson (2005). She analyses the Indigenous values and water resource management issue with a case study on the Daly River in the Northern Territory. The ‘subjective, intangible and highly distinct values underpinning Indigenous people’s relationships to water do not easily translate into Western environmental management frameworks’ (Jackson, 2005:136) but this does not mean that they should be further marginalized. In another northern Australian catchment, Strang (2005) examines an analogous case of differences between water cultures. She analyses the complexities in the Mitchell catchment where longstanding Indigenous interests in water have been and continue to be renegotiated in response to settlers seeking expansion of pastoral and other corporate developments. One factor in achieving this cross-cultural recognition is the necessity of properly embracing the internal differences in Indigenous cultural practices. The northern catchments of Australia are, as Jackson (2005) describes, extremely socially complex. She cites the case of the Indigenous population in the Kimberley’s Fitzroy catchment that includes seven ethno-linguistic groups and about 30 discrete communities. Catchment management practices are evolving to incorporate new approaches to natural resource management as evident in the introduction of environmental flows to provide for ecological requirements of rivers. However, Jackson (2005) argues that while environmental values are being recognized, further changes to catchment management practices are still required to fully acknowledge Indigenous interests in water.

The lack of acknowledgement of Indigenous traditional values over water is similarly raised in a report on the Indigenous rights to water in the Murray (Morgan et al., 2004a). Control and management of inland waters and waterways has, along with land control and management, been a key tool in non-Indigenous settling of Australia. As Morgan et al. (2004b) describe, responsibility for the control and management of inland waters and waterways lies primarily with the States. They point out that

only the NSW and Queensland legislation have provisions that address the distinct Indigenous interests in waters (Morgan et al., 2004b). This lack of legislative provision means that in State water allocation processes, Indigenous rights are either easily marginalized or overlooked altogether (Behrendt and Thompson, 2003; Morgan et al., 2004a,b; Jackson, 2005).

The different society-water relations of Indigenous Australian peoples have been less visible than settlers' priorities with regards to water in Australia (Jackson, 2005; Strang, 2005). Regulation of rivers to provide reliable supply for multifarious uses, from irrigation to hydropower, has been a dominant priority in the early development of regional Australia by the latter group. Indigenous communities have an interest in healthy river systems as one way of ensuring a clean water supply according to Behrendt and Thompson (2003) in their report on the recognition and protection of Aboriginal interests in New South Wales (NSW) rivers. They state that Indigenous aspirations about water quality are quite distinct to non-Indigenous priorities and that this is based on society-water relations that have existed, in time, far beyond the nation state of Australia. They state that 'Aboriginal people generally aspire to a standard of water quality that is good enough to drink from the river. This aspiration contrasts markedly with the non-Aboriginal view and clearly illustrates an Aboriginal perspective that must be acknowledged rather than dismissed as unrealistic.' (Behrendt and Thompson, 2003:12). They call for cultural flows to be instituted as essential components of river management and that these should be characterized by 'sufficient flows in suitable patterns to ensure the maintenance of Aboriginal cultural practices and connections with the rivers.' (Behrendt and Thompson, 2003:2). The current under acknowledgement of Indigenous peoples' rights to a secure cultural flows regime is critiqued by Behrendt and Thompson (2003) and I interpret it here as a serious water injustice.

### 3.2 Environmental health in indigenous rural and remote communities

Environmental health development is another area where a discussion of Indigenous water rights in rural Australia is highly relevant. The necessity of providing sufficient quality and quantity of water to maintain standards of living is challenging in remote Indigenous communities. The reasons for this are complex and not solely determined by physical factors. An overview of these complexities is given in a paper by Hearn et al. (1993). They give a very brief history of Indigenous cultural change since European occupation began and how, partly because of this, health status and population size has fluctuated. Hearn et al. (1993) then go on to review the relationship between the current health status of Indigenous people and their water supply drawing on 'international knowledge of the water and human health nexus where appropriate' (1993:135). Similarly to today, the health status of Indigenous people at this time was significantly lower than that of other Australians on all indicators. For instance, Indigenous people had on average a life expectancy at birth of 15–17 years less and an infant mortality rate of 1.9–3.8 times higher than the average (Hearn et al., 1993).

Hearn et al. (1993) observe that while much is written on Indigenous health, at that time comparatively little was written about contemporary Indigenous water supplies. They present data from a national survey on housing and community infrastructure

that was undertaken by the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1992. The following statistics were compiled:

1. 17% of the population living in discrete communities relied on water not complying with national health guidelines on water quality.
2. Only 38% of communities had regular water quality testing by people qualified to do such testing.
3. In terms of quantity, water supply was inadequate as well. Water restrictions were common with 33% of discrete communities surveyed having restricted supply during the 12 months before the survey.
4. The main reason for water restrictions was inappropriate technology with equipment breakdown causing 63% of water restrictions in these communities.
5. 14% of communities did not have a maintained water supply system.
6. 45% of communities said their water supply infrastructure was inadequate to meet their housing needs over the next five years. (Hearn et al., 1993:141).

The majority of problems with water supply relate to technical breakdowns and the need for external assistance to remedy malfunctions according to Hearn et al. (1993). This suggests that it is the social transfer of technology that is problematic. That is, the incommensurability of technologies with cultural practices seemed to be an important factor. It is important that Hearn et al. (1993) identify the insufficiency in examining Indigenous water supply and sanitation issues solely from a medical and technical viewpoint. The need to look at the issue of provision of water in terms of communities and capacity building and appropriate technology transfer is brought to the fore here. They argue that funds need to be directed away from technical agencies for infrastructure development towards Indigenous institutions that are working with principles of self-determination to build capacity.

Concurrent with this work, the Human Rights and Equal Opportunity Commission (HREOC) began examining issues of water equity in Indigenous communities and how different cultural realities may challenge this goal. The HREOC investigated the provision of water and sanitation in remote Indigenous communities in 1994 through using a survey approach complimented with case studies of discrete communities. The substantial report subsequently produced, 'Water: A Report on the provision of water and sanitation in remote Aboriginal and Torres Strait Islander communities', drew on multiple methods including consultations in the field and a meeting with representatives of all communities to discuss the findings of the case study investigations collectively. Similarly to Hearn et al's. (1993) findings, underpinning this report was a belief that the issues in the provision of water were social and political rather than purely technical in nature. In addition, the participation of Indigenous people who were to be project beneficiaries was absolutely necessary to achieve success in the water provision project (HREOC, 2001). The 1994 HREOC investigation concluded with the recommendations shown in Table 1.

Following up this water report, the 2001 HREOC review found that major developments have taken place since that time (HREOC, 1994) and that the trend at a national program level, and in seven of the ten individual case study communities, has been towards increased investment in water and sanitation infrastructure by governments. This finding suggests that responsiveness to the recommendations from the first report was significant and effective.



**Table 1** Recommendations from the Water Report (HREOC, 1994)

Area of recommendation	Explanation of recommendation
Community control	That Government at all levels recognise the vital element of community control in effective provision of services and amend legislation to reflect such.
Equality and less discrimination	That Government at all levels actively promote a broader community understanding of equity and equality based on recognition of differences between cultures.
Indigenous peoples rights	That the Federal Government prepare a national statement of Indigenous peoples rights.
Technical advice	That ATSIC continue to consider and address the means by which Indigenous communities receive and respond to scientific and technical advice.
Sustainable development	Peak Indigenous groups consider the implications of this approach.
Concomitant changes in relevant departments	The Aboriginal and Torres Strait Islander Social Justice Commissioner determines if changes or augmentation of Government policies and programs are required to give effect to issues of standards, values, equality and self-determination identified in the Report.
Monitoring and review	An ongoing process to begin one year post the completion of the 1994 review by the Race Discrimination Commissioner.

Notwithstanding this acknowledgement of responsiveness, there was some work still needing to be done at the time of the publication of the HREOC (2001) review. This included better reflection in policy of the cultural differences between Indigenous and non-Indigenous peoples and prioritising sustainable provision of supply. A rights based approach, as advocated by HREOC, allows for recognition of respect for another culture rather than providing access to conventional market opportunities. This HREOC review identifies that the Council of Australian Government (COAG) reforms that include market driven environmental reforms in water resource management, with concomitant integration of sustainable development goals (Smith, 1998), may need reworking for Indigenous rural and remote communities. The HREOC (2001) review identifies that the ‘challenge (in water supply and sanitation) is to meet distinct group needs. . . on Indigenous land, through delivery mechanisms which are cost-effective, demand driven and sustainable.’ (HREOC, 2001: in Conclusion section, unpaginated). This highlights the tensions between market driven approaches and maintaining social values of water that may be separate to this domain or impossible to be maintained in this domain.

A later review of available national and state/territory survey data on water supply and sanitation in remote Indigenous Australian communities was compiled by Bailie et al. (2004). This review found that many communities still do not have a reliable water supply and sanitation system. Sanitation system breakdowns were frequent and prolonged. Bailie et al. (2004) found that 12% of communities of 50 people or more experienced five or more periods of water restrictions in a one-year period. For sanitation, the figures were worse with 10% of communities experiencing sewage overflow or leakage 20 times or more in a one-year period (Bailie et al., 2004:411).

While this is only a review of data without any case study to flesh out the findings, it is interesting that despite the abovementioned efforts at improving water supply and sanitation in rural and remote Indigenous communities, there are still significant and concerning deficiencies in this area. Bailie et al. (2004:413) justly ask ‘how is it that in a country of Australia’s wealth in financial, material and human resources there are still many people without adequate water supplies or sanitation?’ The answer, they suggest in part, is that there is insufficient information to inform policy and planning in this area. They further argue that emphasis should be on providing easy access to adequate quantities of water as this may be more significant in terms of reducing illness outbreaks than the quality of water. They conclude that the basic human right to water must be first and foremost and ask if it may be a lack of political will that has impeded securing this right. It is clear from this data that there are serious deficiencies in water supply and sanitation in rural and remote Indigenous communities. Water justice is, apparently, some way from being a reality in many of these contexts. The next section looks at how recognition of different water cultures is intrinsic to water justice but has not yet been adequately realised in numerous contexts in Australia.

#### **4 A lack of recognition of Indigenous water cultures undercutting water justice**

The way Indigenous people used water prior to European occupation is infrequently examined but assumed to have been appropriately matched to environmental conditions. In his seminal text on water resources and management in Australia, Smith (1998) observes that ‘few modern writers on Australian water history comment upon pre-European Aboriginal use of water’ (1998:139). The little that has been written refers mostly to the ingenuity of fish traps. In terms of resource management and contestation post-European settling, most work has prioritised the issue of land rights (Toussaint et al., 2001; Jackson, 2005). This is partly due to the political success of struggles for land rights and native title rights dominating recent attempts to garner widespread recognition of Indigenous rights. Native title determinations have included some recognition of water rights and this will be discussed further below. There is less written on Indigenous society-water practices than the vast body of material on land related issues but this area has recently begun to attract some academic attention (Morgan et al., 2004b; Jackson, 2005).

In looking at Aboriginal interests and perspectives on negotiating water, Craig (1991) relates how Indigenous water rights and Indigenous interests in water resource developments have received little formal attention or study. This is despite the way that conflicts over water resource allocation and use have had serious implications for Indigenous people in Australia. The water resource examples Craig (1991) analyses show little evidence of paradigm change in the way governments and bureaucracies negotiate cultural differences. One way to overcome this intractability would be to build cross-cultural negotiation processes that draw on practices appropriate to Indigenous cultural realities (Craig, 1991). Native title legislative changes acknowledged the different rights of Indigenous peoples in Australia including how to appropriately acknowledge cultural continuities in Indigenous realities. However, the argument that Craig made in 1991 is echoed in 2002 by Langton in writing on Indigenous water rights. The distinct water cultures of Indigenous peoples have been vulnerable to

settlement practices that appropriate control and access to water. Langton (2002) discusses how the cultural traditions associated with Indigenous waterscapes have been misappropriated by colonial practices. In light of this history, the importance of appropriate context in building equitable cross-cultural negotiations to better acknowledge Indigenous rights to resources, including water, is emphasised by Craig (1991) and others including Yu (1997) and O’Faircheallaigh (2004). It is insufficient to provide a commitment to facilitate negotiations without necessary funding and support to ensure a fair participatory process. Craig (1991) wrote prior to the development of native title legislation but her argument is not diminished by these changes. In native title determinations now, the trend is towards negotiating agreements between parties (O’Faircheallaigh, 2004). These negotiations are only equitable, O’Faircheallaigh (2004) states, if parties are similarly situated in terms of resources during negotiations. Achieving fair outcomes is only possible with according full respect to cultural differences.

The broad range of Indigenous rights that should be recognised if water justice is to be achieved is discussed by Morgan et al. (2004) in their discussion paper on Indigenous water rights in the Murray. This paper is based on participatory research with Indigenous groups. They identify the right to self-determination as one of the most important elements in recognising Indigenous rights. Self-determination concerns the shape of the engagement between Indigenous peoples and the government. It should be the fundamental element in recognising the rights of Indigenous people and as such contextualise all negotiations, including over natural resource management (Morgan et al., 2004).

‘Indigenous peoples in Australia have distinctive rights and a status based on prior and continuing occupation of land and waters, and authority and autonomy as distinct polities.

Indigenous peoples’ contemporary identity is a window into and reflection of their past which shows strong threads of continuity and the survival of their distinct political, social, cultural and economic identity’ (Morgan et al., 2004:28).

Recognising these distinctive rights is the cornerstone for appropriate engagement between Indigenous and non-Indigenous parties. The different histories that Indigenous peoples in Australia have demands acknowledgement. Such acknowledgement should be built around a self-determination principle (HREOC Aboriginal and Torres Strait Islander Commissioner, 2001). Internal governance with structures that respond to internal needs rather than being reflexive to external demands is essential to the practice of self-determination. Water justice can only be achieved within this type of framework. The current situation with the abolishing of the Aboriginal and Torres Strait Islander Commission by the Federal Government, the very structure designed to help achieve self-determination, does little to achieve this internationally accepted basic right of Indigenous peoples. It is also not clear at this stage that the Federal Government policy shift towards Shared Responsibility Agreements with communities are the best way to support a greater recognition of the culture differences in Indigenous communities (Collard et al., 2005), including the water cultures that make up a part of Indigenous natural resource management approaches.

The cultural significance of water in Indigenous communities prompts recognition and validation of this difference in natural resource management practices. The *Native Title Act* refers to land and waters as integrated systems, and determinations recognise the rights to access and use water in most cases (Thompson and Behrendt, 2003; Morgan et al., 2004a; Jackson, 2005). Even where Native Title has not been verified in common law in certain instances, many rights over waters are nevertheless recognised. For instance, native title has been recognised to include:

1. 'The right to use and enjoy the land and waters of the determination area
2. The right to take water,
3. The right to fish,
4. The right to control use by others, and,
5. The right to protect places of significance, including sites under water.' (Morgan et al., 2004:43).

It is clear that there is substantial scope for recognition of the water rights of Indigenous peoples in rural and remote communities within this framework. It is in this context that cultural flows are directly relevant. Cultural flows are akin to environmental flows where the different needs of the environment are acknowledged and prioritised. Cultural flows are perceived as reparation for past dispossession of water and the associated impacts on cultural rights of this dispossession (Morgan et al., 2004:63). Acknowledging cultural flows for Indigenous peoples as a recipient in water allocation decision making could go some way towards achieving water justice in Indigenous rural and remote Indigenous communities. This section has examined the way the distinct cultural realities in society-water relations are not yet suitably recognised in Indigenous rural and remote communities on a national and state scale. As recognition of difference is one of the 'circles of concern' in water justice practice, evidence of its lack provides some explanation for how water justice is yet to be a reality in this context.

## 5 Conclusion

Water justice remains elusive in rural and remote Indigenous communities at this point in time. There are numerous reasons for this but this review has focused on the lack of appropriate recognition of cultural differences. Through interrogating current water justice theory and practice on an international scale, a theoretical structure for water justice is developed that is relevant to analysis on a national, state and local scale. That is, a water justice approach must be situated within particular localities and resist simplifications that perpetuate polarised debates. In light of this, the advantage of using a water justice framework to argue for better acknowledgement of water rights for Indigenous rural and remote communities is that discursive obfuscations are exchanged for a closer understanding of material realities. Despite high level investigations and reports, the basic human right of adequate water supply and sanitation for all is still not a reality in Australia. Water injustices, including a lack of valuing of Indigenous water rights and inadequate water supply and sanitation, persist in Indigenous Australian regional contexts. It is possible that introducing a cultural

flows regime may remedy this. Examining a particular catchment to investigate water justice issues within a local context is one possibility for future work in this domain.

**Acknowledgments** Thanks to Marcia Langton, Bill Pritchard, Phil Hirsch, Bob Fisher, Daniel Montoya, Abbie Hartley and an anonymous reviewer for helpful feedback on draft versions of this paper.

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