Connections in Native Title: Genealogies, Kinship and Groups

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Contents

Acknowledgments .................................................................................................................. v

Introduction .......................................................................................................................... 1

1. The system as it was straining to become: fluidity, stability, and Aboriginal country groups .......................................................... 13
   Peter Sutton

2. Generation and gender differences in genealogical knowledge: the central role of women in mapping connection to country .......... 59
   Fiona Powell

3. Lumpers, splitters and the middle range: groups, local and otherwise, in the mid-Murray region .................................................. 73
   Rod Hagen

4. Sustaining memories: the status of oral and written evidence in native title claims ................................................................. 85
   Julie Finlayson

5. Norman Tindale and me: anthropology, genealogy, authenticity .......................................................................................... 99
   Ian Keen

6. Genealogies kinship and local group organisation: old Yintjingga (Port Stewart) in the late 1920s ............................................. 107
   Bruce Rigsby
7. The relationship of genealogical reckoning and
group formation: Yolngu examples ........................................... 125
Nancy M. Williams

8. Mediation of native title applications: a new structure and
role for anthropologists and lawyers .......................................... 141
Geoff Clark

Contributing authors........................................................................ 165
Acknowledgments

The workshop *Genealogies, Kinship, Descent and Groups: Issues and Problems in the Native Title Era* was organised by Bruce Rigsby and Julie Finlayson as the first of two areas covered by the native title workshop *Anthropological Research Issues and Perspectives* held at The Australian National University in February 1998. Mary Edmunds, Julie Finlayson, Francesca Merlan, Penny Moore, Kado Muir, Nicolas Peterson, Bruce Rigsby, Diane Smith and Lisa Strelein formed the organising committee, while ancillary help was provided by the Centre for Aboriginal Economic Policy Research at The Australian National University and the Native Titles Research Unit at the Australian Institute of Aboriginal and Torres Strait Islander Studies. Executive assistants Sally Anderson and Sam Bricknell ensured the conference organisation appeared effortless. Hilary Bek assumed an editorial role in bringing the monograph to the publication stage.

We would like to thank Linda Roach and Jennifer Braid for valuable assistance in proofreading and layout. The editors also wish to acknowledge the contribution of CAEPR in subsidising the financial costs of the publication.

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March 1999
Introduction

*Connections in Native Title: Genealogies, Kinship and Groups* comprises papers presented to the first day of the Anthropological Research Issues and Perspectives workshop, which focused on issues of ‘Genealogies, kinship, descent and groups: issues and problems in the native title era’. The second day of the workshop was concerned with ‘Compensation for native title: anthropological issues and challenges’; these papers will be published by the Native Titles Research Unit, at the Australian Institute of Aboriginal and Torres Strait Islander Studies. The workshop was held in Canberra at The Australian National University on 19-20 February 1998. The workshop represented an effort to focus closely on matters likely to impact on the scope and presentation of research for native title claim preparation and mediation, and for compensation and resource development negotiations under the *Native Title Act 1993* (NTA). While issues raised in these papers unashamedly focus on issues for anthropological research for native title claims and mediation, they will also be important to a wider readership, who may not attend specialist conferences or have access to conference papers. Each author in this volume has significant practical experience in both land rights and native title issues.

This monograph is the third in the Centre for Aboriginal Economic Policy Research Monograph Series with this genesis (see Finlayson and Smith 1995; Smith and Finlayson 1997). This is indicative of the Centre’s research focus on native title issues, as recognition of the potential of native title rights to be a source of positive change in the economic power of indigenous Australians. While there is no certainty about the extent of future recognition of native title, or benefits deriving from *Mabo No. 2*, the NTA and the *Native Title Amendment Act 1998*, these changes have reshaped the relationship between indigenous Australians and the wider economy and State.

Professional knowledge as applied to issues and questions in the native title research process, is evolving, just as the meaning and application of the native title legislation has, and is, undergoing similar transformations. One of the major issues arising from such a process is the challenge to maintain and enhance communication between different expertises, in particular between bureaucratic, anthropological and legal systems and practices. All contributions to this volume reflect on inter-active practices in native title research process, matters increasingly worthy of the attention of indigenous and non-indigenous policy makers.

However, the issue addressed in this volume is expressed by Sutton:

For indigenous claimants to prove their native titles in Australia, among other things they need to show not only that they have rights in country according to their own system of laws and customs, but also that such a system is a rightful descendant of an organised society which occupied the relevant area at the time when British sovereignty was established.
CONNECTIONS IN NATIVE TITLE

The question of how indigenous groups were constituted historically, socially reproduced and sustained over time, together with the question of how they remain effective now, has re-emerged as a crucial issue in the native title era. In this context it is appropriate to highlight the nature of the study of kinship of the past two decades, and explore some implications of the requirement of biological descent in the common law.

The study of kinship

The study of kinship and social organisation has somewhat different histories in America, Britain and our country over the past two decades. Weston (1995: 89) noted that kinship had disappeared as a desired specialisation in advertisements for anthropology teaching positions at a time when debate over new family forms intensified in America (Weston 1992). Brettell (1998: 15; forthcoming: 1) recently commented that 'During the first half of the 20th century almost every cultural or social anthropologist worked on the topic of kinship and contributed to theoretical developments in the area'. While she observed that a course on kinship and social organisation remains part of postgraduate training in anthropology in America 'despite the cooling of anthropology's love affair with kinship' (in Peletz 1995: 345), Brettell (1998: 15) concludes that:

Although kinship may have lost its central place in ethnography and anthropological theory, it remains an important part of human social life throughout the world. It is not hard to convince students, since they see it all around them in our national discourse. Indeed, by using examples ... of the meaning and practices of kinship in our own backyard, I am able to impress on students the continued value of the conceptual and analytical tools developed during more than a century of anthropological preoccupation with kinship. Knowledge of these concepts and the surrounding intellectual debates makes all of us better anthropologists.

In Britain, Barnard (1994: 783) wrote:

There was a time not long ago when kinship firmly commanded the highest position among the theoretical realms of anthropology. This is probably no longer true, but it is not true that kinship is an idea with a past and no future. Kinship remains as important as ever an element of human society, and new perspectives within the social and biological sciences offer opportunities to reconsider some old arguments in a new light and to look forward to new debates and new ideas.

Barnard (1994: 785-86) suggested that 'kinship is good to think with' and that kinship studies help highlight our own (English-speaking) cultural preconceptions.

Holy (1996: 172) wrote that 'Recent reviews of anthropological theory and the current state of anthropology (Ortner, Clifford and Marcus, Marcus and Fisher, Borofsky) hardly make reference to the theoretical problems in the study of kinship which exercised the imagination of our predecessors'.

Parkin (1997) noted that 'anthropology has undergone a definite shift away from traditional approaches to the study of kinship, formerly one of its central
concerns', and implicated what Scheffler (1991) has called the 'anti-kinship school in symbolic anthropology' in this movement. Parkin's (1997: ix-x) assessment is interesting:

...Now, however, a feeling has arisen in some quarters that things have gone a little too far down the road towards this sort of deconstruction, and that to neglect kinship is to disregard a good deal of what any society explicitly recognises...

This is not to say that the work of these last few years is to be rejected. Quite the contrary: there have been real gains in ethnographic richness and specificity, in the sheer range and depth of what the subject now covers, in the interconnectedness of previously demarcated spheres within it, and in our understanding of the relationships between thought and action, rules and behaviour. But this should not blind us to the fact that many societies still think in terms of lineages, affinal alliance systems, residence rules and marriage payments, while virtually all are still organised in families of some sort and use kin terms to identify and classify relatives. Moreover, quite a number of anthropologists, refusing to be either seduced or browbeaten by the insistence of some of their colleagues that there is no such thing as kinship, have persisted in developing traditional approaches, with many fruitful results. Some recent conferences have indicated that their twilight world is steadily becoming a new dawn.

In Australia, Peter Sutton (1998a: 11) recently remarked that 'A serious decline in the teaching of kinship and social organisation at Australian universities in the last two decades has probably reduced the effectiveness of some anthropologists working in the field of indigenous land tenure', citing Shapiro (1979), Turner (1980), Heath, Merlan and Rumsey (1982) and Keen (1988) as researchers making 'some of the last major efforts to publish in this domain' – we would add Scheffler (1978). In discussing the need for fresh detailed fieldwork on the post-classical Aboriginal social formation which he terms 'families of polity', Sutton (1998b: 53–54) wrote:

The ethnography required to describe such cases needs to be fine-grained and systematic, but it also needs to be informed by the rigour of anthropological theory, if areas of indeterminacy and enduring structures are to be demonstrated convincingly. The most relevant body of theory in this instance is the much neglected domain of kinship and social organisation.

It is the shape of anthropological interests in the native title field which has brought the study of kinship and social organisation back onto centre stage and opened new spaces for debates over group composition especially. Several works can be identified as important in breaking the drought on kinship studies.1

Sutton (1998b) comprehensively examined regional ethnographies for evidence and clearly identified the major features of the new cognatic descent group organisation which has developed largely independently around the country. This major ethnographic contribution to the study of Aboriginal social organisation took Sutton back to the older, wider literature on kinship, descent and social organisation (Sutton 1998a).

Marcia Langton (1997) highlighted the role and importance of women in contemporary Aboriginal social organisation: despite the serial patrifilial (if not patrilineal) transmission of clan identities, women had significant property rights and interests in the classical clan-based systems of land and sea tenure. Complementary filiation to one's mother's father's clan gave important rights and interests in its estate, and sometimes analysts have been too quick to interpret those ties as evidence for matrilineality.

Finally, Alan Rumsey (1989, 1993) clearly identified the type of social group which has become known as the new tribe or the language-named tribe among Aboriginalists. It differs significantly from the earlier Tindale-Birdsell notion of the dialectal tribe. Like cognatic descent groups, language-named tribes are found around the country now, and quite often they occur together.

**Requirement of biological descent**

The terms *kin* and *kinship* do not actually appear in the *Mabo No. 2* decision, the NTA or the *Native Title Amendment Act 1998*. Anthropologists think them important, however, in understanding and describing how individuals and groups come to have or acquire native title rights and interests in land and waters. As Neate (1997: 262–63) has observed, the continuity of native title has been linked to the continuity of a group of people (native title is communal, held by a group, not by individuals), as seen in Chief Justice Brennan's statements in *Mabo No. 2* that:

...[U]nless there are pre-existing laws of a territory over which the Crown acquires sovereignty which provide for the alienation of interests in land to strangers, the rights and interests which constitute a native title can be possessed only by the indigenous inhabitants and their descendants (Brennan J., in Bartlett 1993: 42; emphasis added).

Native title to particular land ..., its incidents and the persons entitled thereto are ascertained according to the laws and customs of the indigenous people who, by those laws and customs, have a connection with the land. ... Membership of the indigenous people depends on **biological descent** from the indigenous people and on mutual recognition of a particular person's membership by that person and by the elders or other persons enjoying traditional authority among those people (Brennan J., in Bartlett 1993: 51; emphasis added).

Here the operative terms are **descendants** and **descent**. As Neate (1997: 262–63) phrases it:

A person asserting entitlement to enjoyment of the interest at the present day must show biological descent from the group which was observing the system of
rules of which the interest was part. In other words, the person must show biological descent dating back to just before the establishment of the common law.

On the face of it, it would seem that the common law takes only a very narrow view of descent and relatedness, one which recognises only biological or genetic connectedness. However, that interpretation is problematic.

Firstly, the concern is with the continuity of a group. That leads directly to the matter of how social groups recruit new members so as to maintain themselves over time. For groups such as whole societies, peoples and nations, there can be little doubt that their primary mode of recruitment is through biological reproduction and the subsequent socialisation (social reproduction) of people born into them, although comparative ethnography also records other processes for naturalising new members from outside the polity such as capture, adoption, marriage and grants of citizenship. In this light, the requirement of biological connectedness or descent seems unexceptionable for it is part of the modal process for group recruitment.

Secondly, relevant land claim precedents indicate recognition that traditional law and custom may provide for the transfer of rights and interests in land and waters from one indigenous group to another, although the normative case is for an owning group to perdure but with a changing membership as discussed above. Neate (1997: 263-66) discussed cases of succession to land in accordance with indigenous law and custom where 'the persons claiming title are descended not from the group connected to the relevant land at the date when the common law was established, but from some other group'. These occur when an owning group wanes and disappears (due to whatever demographic vicissitudes), but another group or groups takes over its estate in accordance with local law and custom. Sometimes there is external evidence for such succession having taken place earlier even when the current generations have no memory or acknowledgement of it. Neate discussed the succession of contemporary Waanyi people to land which had previously been owned by the Injilarija people, who belonged to the same 'cultural block'. He also referred to the Finniss River claim, where the Land Commissioner recognised the succession of Marranunggu people to part of the former Kungarakayn estate, a process which the latter contested, and he noted that Justice Blackburn would not have accepted such succession in the Gove Land Rights Case. No doubt there are other cases of succession in the reports on land claims under the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA) and the (Queensland) Aboriginal Land Act 1991. For example, in the Cliff Islands National Parks land claims under the (Queensland) Aboriginal Land Act 1991, a number of claimants presented evidence that the contemporary Lamalama people, a language-named tribe, had acquired rights and interests in the coastal strip around Port Stewart and southward to Running Creek which had previously formed parts of the estates of now-extinct Ayapathu-speaking clans (Cliff Islands Report 1996). Basically, the estates had passed to the sister's sons of the original clan-owners, and from their clans to the Lamalama people as a whole.

Thirdly, when we have a closer look at common law definitions and views on mainstream Australian and Australian Aboriginal kinship and descent, we find that they are not all that different from the views and perspectives of anthropological studies of kinship and descent. Butlerworths Australian Legal
Dictionary (Nygh and Butt 1997) provides an extremely useful compilation of definitions, common law precedents and legislation relating to matters of kinship and descent. It includes entries for general concepts such as adoption, affinity, consanguinity, descendant, descent and marriage, entries on the new reproductive technologies and entries for Standard English kinship terms. The main entry (Nygh and Butt 1997: 350) for ‘descendant’, for example, reads ‘A person related by blood to another person of a previous generation: one related to another by descent’, but the section immediately following reads:

Aboriginals and Torres Strait Islanders In relation to Aboriginal people, it includes a descendant under Aboriginal tradition and in relation to Torres Strait Islanders, a descendant under Island custom... A descendant may be a social rather than biological descendant from another, (for example, because of adoption or acceptance in accordance with Aboriginal tradition or Island custom).

The entries on the new reproductive technology are interesting not because they describe common situations of Aboriginal reproduction, but because they clearly distinguish among more abstract roles in biological and social reproduction such as the genetic father, the pater (mother's husband), the genetic mother and the birthing mother which contemporary kinship theorists have also recognised. They are evidence for a broader legal view of kinship and descent. For example, a child born to a woman (the birthing mother) but conceived by artificial insemination where the donor of the semen (the genetic father) is not the mother's husband is legally regarded as her child and the child of her husband (assuming that both parties consented to the procedure).

By contrast, the entries for Standard English kinship terms are consistent with the Eskimo or Yankee type of kin classification or terminological system. They are not adequate for translating or analysing and describing the meanings of indigenous Aboriginal or Islander language kin terms or even Aboriginal English and Creole kin terms. For these tasks, we need to make use of the conventional anthropological notation which employs basic kin types and their relative products and we need to educate our lawyer colleagues about the several kinds of kin classification and terminological systems which Aboriginal and Islander people employ around the country as these, too, are part of their traditional law and custom.

In this regard, it is instructive to compare the kin classification system of Standard English for one's relatives of the same generation level with that used by many speakers of Aboriginal English and Creole varieties along the east coast of Cape York Peninsula. In Standard English, we distinguish our brothers and sisters, with whom we share a mother and/or a father, from our cousins, who are the children of our parents' siblings. We apply cousin to our father's brother's and sister's children, and our mother's brother's and sister's children. The three terms can be used vocatively in direct address to our siblings and cousins. In contrast, many Aboriginal people apply the English kin terms brother and sister to their parallel cousins (the children of their parents' same-sexed siblings), as well as to their whole and half-siblings, when they are talking about or addressing them. They can and do, if they wish, distinguish their parallel cousins from their siblings by describing them as their cousin-brothers and cousin-sisters, as the case
may be. And they regularly apply the kin term cousin (or its derivatives cuz and cuzzie) only to their cross-cousins (the children of their parents' opposite-sexed siblings).

Emerging research and policy issues

Apart from the present resurgence of anthropological interest in kinship studies, not least because of its legal importance in native title claims, the question of how indigenous groups were constituted historically, socially reproduced and sustained over time, and remain effective now has become a critical political issue. The report by John Reeves, QC, of the review of the ALRA has brought a new sense of urgency and immediacy to questions once considered ethnographically esoteric and arcane (Reeves 1998). Reeves has publicised a view of the instrumental and misguided role of anthropology in the articulation of Aboriginal land-owning groups, a view which is politically controversial and contested within the discipline. His general hypothesis that Aboriginal land-owning groups are largely constructed by the anthropological imagination without reference in a grounded reality simply highlights the importance we see of understanding the evolution of kinship studies and the continuing importance they have in Australian Aboriginal fields of inquiry.

When the February workshop was held, Reeves' report was not yet in the public domain. Speakers and participants were not, therefore, addressing the general arguments of Reeves' position that Aboriginal groups are constituted without any degree of concrete or solid existence at the local level, but can be identified at the regional level. The fact that several papers in this volume address the question of how land owning groups are constructed such that they remain recognisable over time indicates an awareness by anthropologists working in the native title field that an understanding of what native title is must be developed beyond legal definitions through conceptual input from anthropology.

The renaissance in the contribution of anthropologists to the native title claim process is further evidenced by the requirements of the claims registration test under the amended NTA, where the question of describing the group, group authorisation and group decision-making processes are key points. In addition, the recent findings of the Miriuwung Gajerrong Federal Court hearings makes it clear that a legalistic reading of native title as a bundle of 'rights and interests' is no longer sustainable. Instead, there is a return to the position advocated by anthropologists in the early days of the claim process, that native title be seen and dealt with as a property right from which certain rights and interests flow differentially, or as Sutton termed it, the identification of 'core and contingent rights' (Sutton, this volume: 3).

Several policy issues arise from papers presented here. Indeed, an early observation (Smith and Finlayson 1997: ix) that indigenous groups are not necessarily alike in their composition and structure is particularly pertinent to the dialogue between papers in this volume (see Sutton, Keen, Rigsby and Williams). These differences, now emerging increasingly as a debate, relate to the view that 'dispute mediation and resolution must be based upon a rigorous investigation of the causal factors and the key relations, perspectives and objectives of the parties involved' (Smith and Finlayson 1997: ix), and recognition that the method and
nature of anthropological research has significant legal ramifications. As Bruce Rigsby noted in the program for the workshop:

Some of the concepts, notational conventions, definitions, etc. which we take for granted in introductory anthropology courses now loom as problematic in preparing native title and other claims and seeking to present complex materials in comprehensible ways.

Although not explicitly discussed, implicit in much of this discussion are implications for the role of indigenous representative organisations and challenges for the effective role and function of these bodies. Not least of these vexing matters are funding limitations from both private and public sources, the additional time limitations and other issues introduced by the Native Title Amendment Act 1998 and the current re-recognition process for Native Title Representative Bodies (NTRBs) (see below).

Research and policy issues are intertwined throughout the contributions in this monograph. Fiona Powell addresses recurring problems in the construction and documentation of genealogies with the fragmented nature and reliability of information, the validity of connections, issues of privacy and intellectual property, and choice in descent and filiation. Rod Hagen, with recent experience of the Yorta Yorta claim, argues that the NTA is much less prescriptive than the ALRA about the nature of groups who may succeed, that the most practical approach is to find the most appropriate level of analysis, and that the more broadly formulated claims are likely to be the least divisive and most efficient. Geoff Clark concurs on the benefits of the NTA prior to the passage of the Native Title Amendment Act 1998, particularly the allowance for negotiated evidence, the simpler test and the opportunity for mediation. While his model for connection reports no longer has currency under the new amendments regime, it does serve as an indication of the different approaches required for native title claims compared to the claim books prepared under the ALRA. Also drawing on the Yorta Yorta claim process, Julie Finlayson indicates the higher evidentiary threshold likely to become common place as claims increasingly face the Federal Court and must meet the new requirements of the NTA. Finlayson suggests that written evidence, as compared with oral evidence, may be increasingly sought from claimant parties and explores some implications of this.

Peter Sutton observes that, in the contemporary scene, ethnographic evidence of fluidity enjoys greater emphasis than evidence of regularity, stability and repetition in indigenous society. In this context, he argues, it is increasingly important for anthropologists to separate ethnography from interpretation; and in the context of legal proceedings, to distinguish evidence from argument to ensure the enduring value of ethnographic work. Ian Keen demonstrates the centrality of genealogical connection to the native title process. Bruce Rigsby demonstrates the way older and newer primary materials can be utilised to reconstruct features of local group form and composition, as distinct from the clan-based system of tenure which defined rights and interests. In doing this, Rigsby explores issues inherent in collecting, storing and presenting genealogical data. Nancy Williams focuses on how the idiom of kinship is used to express the relationship of individuals to groups, thereby defining the group, and indicating their interests in land. Williams argues that there is abundant evidence that no single
generalisation about Yolngu society or culture applies categorically and without exception.

Two broad dynamics helping to shape contemporary native title process are addressed by the timely publication of these papers. One is current arguments about the 'real life' status of Aboriginal land-owning groups, the question of biological descent and attachment to country, and a corollary view in some quarters, that the localised clan group is simply a reification of anthropological concepts embodied in legislation. The other dynamic operating is an incipient notion that native title is primarily about legal concepts most appropriately dealt with in legal terms and legal forums. Both dynamics need to be actively challenged by claimants and practitioners alike.

In a previous CAEPR Monograph, Hal Wootten (1995) argued that once native title processes included forums of expert advice there was an ever-present danger of producing alienated rather than co-operative positions. He argued this point by tracking the way native title had all-too-readily become short-hand for a bundle of individuated rights and interests. His advice to professionals was to listen to what Aboriginal people want to say about their native title, while urging professionals to rethink what it means to take an inter-disciplinary approach in the claims process. In this sense, Wootten foreshadowed the importance, now an imperative of best practice, to develop co-operative practices which are not professionally colonising or oppressive (see also Sutton (1995) on the tensions between anthropologists and lawyers in native title matters). To this end, the present volume tries to canvass a broad church of interested readers while acknowledging that none of the subjects discussed are straightforward or unproblematic. Finally, the volume indicates that at a moment when the orientation of the native title claims process and its threshold questions of connection and evidence is shifting once again as a result of the amended NTA, anthropologists have an important role to play and one which calls for a substantive engagement with core concerns of the discipline.

Notes

1. Here we restrict ourselves by and large to the published literature of anthropology, but there is a considerable amount of material on kinship and social organisation which remains unpublished in claimbooks, transcripts and other documents prepared in connection with land claims and the like. This is not a good state of affairs for the development of our discipline (see Rigsby 1995: 35-36), and it also works to disadvantage Aboriginal and Islander people because material which has been through normal peer review and published has greater evidentiary value than in its unpublished forms and it can also be referred to and put before courts during hearings and in post-hearings documents.

2. The term genetic father is not strictly synonymous with genitor, a conventional term in kinship analysis. It is better to reserve genitor to signify the begetting father, i.e. the man whose sexual intercourse with the bearing mother is regarded as having produced her pregnancy. Although societies and cultures differ in their folk theories of reproduction as to whether men contribute substance and/or form to the child, there is always recognition that heterosexual intercourse is necessary for
reproduction. Knowledge of genetics (Mendelian or molecular) is, of course, part of our recent international scientific tradition.

3. A kintype is 'any category of relationship [that is, genealogical position] which can be conceived as differing in any way from another', and is specified as one or another of the basic kintypes or some combination thereof 'with such additional distinctions according to relative age, sex of ego, etc., as may be necessary to handle a particular body of data' (Goodenough 1965: 287). There are eight kintypes which are not reducible to one another; these basic kintypes are M (mother); F (father); D (daughter); S (son); Z (sister); B (brother); H (husband) and W (wife). Other genealogical positions can be described as complexes of the basic kintypes; e.g. MMBDD 'mother’s mother’s brother’s daughter’s daughter'.

References


INTRODUCTION


1. The system as it was straining to become: fluidity, stability, and Aboriginal country groups

Peter Sutton

The evidence shows a subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence. If ever a system could be called 'a government of laws, and not of men', it is that shown in the evidence before me (Milirrpum v. Nabalco Pty. Ltd. Blackburn J. (96)).

Introduction

Until fairly recently, one of the main tasks of anthropology as a discipline was to provide systematic and reliable accounts of how different societies resolve the problem of maintaining a reasonable amount of social order, one in which the passions of self-interest, sexual desire and aggression, for example, are channelled and delimited rather than allowed too destructive a liberty. Kinship, social organisation, the distribution of property, succession to office, and the regulatory role of religion and sorcery were therefore typical of the major concerns of anthropology in its classic period.

In studying societies that lacked written laws or separate judicial and policing institutions, and especially acephalous societies such as those of Aboriginal Australians, a great deal of attention was paid by scholars to the rules and collective organisational practices which stood between the populace and anarchy. It is significant that two of the three main founding figures in the emergence of modern anthropology in the mid 19th century, Lewis Henry Morgan and Sir Henry Maine, were lawyers who took an interest in what was systematic and rule-driven in relationships between people, group identities, offices and property, among a wide range of societies.²

Particularly since the 1960s the anthropological project has broadened dramatically and one can no longer say that the discipline is particularly concerned with understanding the maintenance of the social order. This period coincides with the final ending of the isolation of most small-scale societies from the reach of the nation-state and its capacity to impose order externally. Even where social organisation continues to be of anthropological interest, that interest has for some time been one that can pay as much attention to the processes by which social institutions are evaded, reconstituted and imagined as it does to the way they are structured, how they are maintained sometimes over vast periods of time, and what they do for their members—as we know, structuralism and functionalism have long since become devil worship. The very use of the notion of 'systems' sometimes looks like it also might follow them down the same drain.
There has been a positive and general shift in Australianist anthropology away from structuralist emphases on relatively rigid social and cultural forms, and on cellular and segmentary analyses of those forms as if they were objects in space-time, towards greater recognition of their negotiability and fluidity as meanings (for more details see Sutton 1990). I have been in the habit of calling this the Seventies Corrective, but in fact, as Nancy Williams has pointed out, such a shift, at least in so-called ‘hunter-gatherer studies’, has been apparent since at least 1966 (Williams 1986: 212-15).

In this paper I argue that in some of the literature on Aboriginal society, and especially as it relates to land and marine tenure, this pendulum has swung so far that, for some writers, ‘fluidity’ has acquired the status of an almost obligatory descriptor in spite of the ethnography of the case, and there is sometimes a kindred and in my view unjustifiable tendency to ignore or play down that which is systematic in Aboriginal cultural and social life, as a matter of principle or perspective rather than on empirically justifiable grounds.

In the context of claims of native title, the issue cannot be ignored. The High Court in its majority decision Mabo v. Queensland (No. 2) referred to native title as resting not only on ‘traditional laws and customs’ but also on a ‘system of rules’ or ‘the overall native system’.3 There is no explicit legislative or common law yardstick against which evidence must be tested in order to support the making of a determination that the laws or rules enunciated by native title claimants or explored in anthropological evidence constitute such a system. Nor is there, to my knowledge, any consensus in this field as to what might count as a system and what might not.

There are perhaps two main aspects to the system question in this context. First, are the relevant group’s various relevant practices4 themselves severally regular, or regulated, to a degree which would attract definition of any of them as systematic, even though at times they may be breached or imperfectly applied? Second, do the group’s practices, in combination, form a system rather than merely constituting an incoherent assemblage of practices, or perhaps a set of internally coherent yet mutually incompatible practices engaged in by different individuals?

Answers to such questions in specific cases will depend not only on the specific evidence but also on how such words are interpreted by the courts. The more basic senses of ‘system’ provided by The Macquarie Dictionary are of interest here:

1. An assemblage or combination of things or parts forming a complex or unitary whole: a mountain system, a railway system. 2. Any assemblage or set of correlated members: a system of currency, a system of shorthand characters. 3. An ordered and comprehensive assemblage of facts, principles, doctrines or the like in a particular field of knowledge or thought: a system of philosophy. 4. A coordinated body of methods, or a complex scheme or plan of procedure: a system of marking, numbering or measuring. 5. Due method, or orderly manner of arrangement or procedure: have system in one’s work.
Some recurrent elements of these various definitions suggest that a system might be described more elementally as an assemblage of things which are somehow correlated or coordinated among themselves, and in which there is an ordered complexity of some degree.

We are as yet in the position of having very little precedent material on which to base a view of the way Australian courts are likely to approach the question of how much coordination and how much complexity has to be demonstrated before an indigenous group's ways of dealing with country can reasonably be said to constitute a system of relevant laws and customs. Existing decisions deal with the issue only in passing, if at all.

In his *Reasons for Judgement* in the Croker Island native title case, Olney J. wrote a section called ‘The system of native title’. He observed there that the applicants’ ‘system of native title’ had ‘four components’, which were the estate, the estate group, incidents of title held in an estate, and a mechanism of succession to it. Clearly these four components are integral to a single system and they all have the estate in common as a focus. In that sense they are coordinate. While the representation of the system as having only four components may make it appear simple rather than complex, Olney J. went on briefly to summarise a number of its other features, the relative complexity of which is suggested by local rules of descent, filiation and adoption in relation to estate group membership, the maintenance of a distinction between core and contingent rights and interests, the way boundaries are handled, and so on. There will probably be other cases where tenure arrangements will not be so complex, and the question may arise as to whether or not their relative simplicity denies them the status of ‘system’. I suppose a quick answer to that is to say that these may be ‘simpler systems’ rather than ‘non-systems’, depending on the evidence.

**The fluidity problem: the Western Desert versus the rest?**

A parallel question to the one about complexity is that of how much fluidity in a set of customary tenure arrangements is sufficient to deny it the status of a ‘system of laws’. Whose definitions of ‘laws’ or ‘fluidity’ will be privileged in these debates, for example? Again it is too early in the history of native title law in this country for us to be able to answer such questions by reference to existing cases. There is, however, something of a debate in the anthropological literature on Aboriginal societies which is of increasing importance to this issue.

In some of the more recent anthropological literature, fluidity is at times examined and ‘problematised’ in the absence of equal treatment being given to that with which fluidity is usually in constant dialectic, and without which it is a vacuous category, namely, stability. Increasingly one comes across evidence of an underlying assumption that the only alternative to fluidity is rigidity. A small number of exceptions to somebody’s rules about how to do something apparently can mean that the cultural phenomenon being described is ‘fluid’—full stop. A certain detectable glee in these small ethnographic defeats of overweening
patriarchal restraint and regulation ironically suggests that things might not be quite so fluid out there after all.

The most classically fluid type of Aboriginal society, that of the Western Desert, and especially the Pintupi as represented by Myers (see especially Myers 1986), has for some scholars become the preferred source for generalisations about Aborigines anywhere, and in some instances one can see the Pintupi now exerting an exaggerated colouring influence on how other kinds of groups themselves are to be understood and discussed. This obsession with fluidity, which began as a positive corrective to older static and cellular models, can now sometimes amount to distortion, in my view.

In a careful comparison between Western Desert and northern semi-desert local organisation at McLaren Creek, Ian Keen, while he avoided projecting the Pintupi onto different groups, showed that differences between Western Desert and McLaren Creek do not amount to a simple contrast between 'the presence or absence of patrilineal descent groups or corporate clans'. Instead,

[the] difference lies primarily in the relative weight accorded to, or the ranking of, various grounds for articulating identity and claiming to hold country, the ways in which these relate to one another, and the relevance given to naming systems such as subsections and moieties (Keen 1997: 67).

Keen reported for McLaren Creek that people made land claims

on a variety of grounds including filiation, initiation, conception, birth, a parent’s death, long-term residence and consociation, and knowledge. These are the same kinds of claims as those made by people of the Western Desert, but ... McLaren Creek people rank them in a particular way (Keen 1997: 73).7

It appears that for McLaren Creek people it was patrifiliation that outranked these other bases of claim (for example, Keen 1997: 92). Indeed, it also appears that patrifiliation was taken as a norm or default means of recruitment to country-holding groups, as six of the bases of claim that are typical in the Western Desert were 'especially important' at McLaren Creek ['where people claimed country to which patrifilial connections had been interrupted' (Keen 1997: 91). That is, the salience of forms of connection other than those based on descent or filiation was generally higher where succession to an estate was in progress or in suspension. And while countries or estates generally had agreed core sites and mythic identities and were formally named, the ownership of such countries was contested. Not only that, but at least some people divided and reconstituted countries, and the common identity of particular individuals with others, defined in terms of connection to focal places, 'was hotly debated' (Keen 1997: 87).

My problem with descriptions like this is that they leave unclear just how much of the land tenure situation can be characterised as subject to, for example, non-filial forms of recruitment to land-holding groups, events of succession to the country of groups which have no direct descendants, and hot debate over the placement of individuals within the scheme. Within the regional purview, and
perhaps looking at the several ethnographic accounts available from a series of neighbouring land claims, was it the case that succession cases were frequent, occasional, or exceptional? Were there hot debates about a few dozen persons out of a few thousand, or a few hundred? Are the McLaren Creek cases of recruitment by conception, initiation, father’s initiation and father’s birthplace restricted to the singular case of each that is cited by Keen (1997: 91)? How many of the 516 claimants (Aboriginal Land Commissioner 1991: para 9.1) in this case fell into the category of those recruited to the groups principally (though not solely) by filiation or descent, and how many fell into the remaining categories? I am not arguing for a statistical anthropology but for some indication of where the great weight of the case material falls, if it falls at all.

There is a reason for wanting to know. If, for the sake of argument, around 90 per cent of McLaren Creek claimants were there on at least the basis of the single top-ranked criterion and the other 10 per cent were distributed among half a dozen other criteria, this tells us something very important about the ranking involved. If, by contrast, the basis of Western Desert people’s land claims are far more evenly distributed across a similar set of criteria, then the difference between McLaren Creek and the Western Desert is not merely one of ideological ranking and enacted preference but also one of relative homogeneity or unity of system.

Again, if there is a predominance of patrifilial group-based claims at McLaren Creek, and a rather binding consistency between estate Dreaming subsection couples and those of their principal patrifiliates, and such totemic groups persist at all through at least several generations within substantially the same family trees, then the McLaren Creek system is clearly far more corporate in character than that of the Western Desert where individual bases of claim are common and enduring genealogical groups of a corporate character have not been reliably recorded. This is a systemic difference, not a difference of emphasis on common principles.⁹

Fred Myers wrote:

My contacts with Warlpiri were considerably different [from those with Pintupi]; as informants, they were inclined to treat kinship, social organization, and language in more systemic terms.

Evidence of the difference between Warlpiri and Pintupi people in regard to ‘systematizing’ does not depend on my impressions alone.

... we might classify the Pintupi as phenomenological rather than structuralist in their approach to cultural forms.

The greater definitiveness with which Warlpiri [land and ritual] groupings are made implies that some rights may be asserted by them without fear of abridging or rejecting relatedness among people. It is as if these distinctions were not matters of personal will and rejection, but rather were already achieved understandings to which one assents: objectifications (Myers 1986: 293–95).
There is a further contrast between Western Desert people and their north-eastern neighbours: the McLaren Creek system, especially if non-descent criteria are as rarely invoked as in say 10 per cent of cases, is one that seems strongly committed to attempting to maintain stability in relationships between countries and sets of people who stand in certain kinds of ancestor-descendant relationship to each other. The Western Desert systems do not, at least until recently and in restricted areas, show such a commitment. 'Among Western Desert people, social attention to temporal continuity in terms of mortuary, clan structure, or even the reproduction of alliances is insubstantial' (Myers 1986: 295-96). This is a systemic difference that far exceeds mere contrasts between rankings of the same criteria.

The extent to which a tenure system was stable in the pre-colonial past cannot be taken for granted. The Western Desert is the region that seems to have been in the greatest demographic instability at the time of colonisation. This is often attributed to the ecological uncertainty the people faced there before the arrival of bores and imported food. I am inclined to consider, however, the possibility that the recency of their presence in at least the eastern part of the Western Desert, a range of evidence for which has been assembled by Patrick McConvell, may account for some of their relative geographic instability among themselves, as it may for the fact that they seem to have been making incursive movements at least on the east and south-east and taking over certain parts of the country formerly associated with different languages, at the earliest colonial phases.10

Annette Hamilton earlier considered the possibility that ecology was not the only factor at work here:

The whole of the Western Desert cultural area was, at the time of the arrival of the Whites, in a state of transition, in which indigenous cultural institutions were undergoing transformations without having yet achieved any kind of balance. A static model of social organization could not possibly account for the structural features found under these circumstances. Where such transitions had already occurred and been stabilized, a static account appears much more successful (see the Walbiri, the Aranda). It remains a moot point whether such a stabilization would indeed have been possible, given the ecological constraints of the area. Strehlow repeatedly attributes the social organization of the Western Desert to its extreme aridity and lack of resources. This question cannot now be decided empirically, since that particular trajectory has now ended for good, to be replaced by another of equally doubtful outcome. We may however construct an ideal model to account for the features of the system of local organization in the Western Desert as they might once have been, and another to describe the system as it was straining to become (Hamilton 1982: 103, emphasis added).

One can always say that all peoples are struggling with their systems of local organisation and social organisation, but even within Aboriginal Australia it seems that some groups literally have or had more in the way of system than others. Even in the demographically more stable parts of the continent, however.
some writers have been reluctant to suggest that unified and integrated systems of local and social organisation have been achieved.

In the early 1960s W.E.H. Stanner wrote of the Murinbata people of the north-west Northern Territory that their:

society and/or culture cannot be set up as a 'unified whole' ... The 'principles' of social interaction do not appear to have a ground of unity which can be stated. ... the totality of Murinbata life is one of multiple principles. Because the principles are conjugate they affect different regions of life which overlap and are in conflict. ... If the principles have a unity among themselves I have not been able to find what it is, and doubt if it exists. Certain aspects of Murinbata tradition suggest a working toward a unified system or unified whole (Stanner 1963: 36-37).

Referring to the period from the early 1960s to the late 1980s, and especially in relation to studies of social organisation, Ian Keen wrote about the decline of 'systems thinking' among anthropologists, and their paradigm shift from 'a systems approach to a 'structurationist' perspective in which social life is pictured as a looser weave across the warp of time' (Keen 1988: 104-5). But not only is there no universal yardstick for distinguishing 'a system of customary laws' from 'a swag of unconnected customs', for example, but there remains the perennial problem of subjective preferences—could not the same social institutions be described by one anthropologist as a 'system' and by another as a 'looser weave' without their disputing the ethnographic base account? Depending on their intellectual temperaments, I believe so. In the context of land tenure matters, this recreates a classic problem for courts attempting to come to conclusions after listening to conflicting expert evidence from anthropologists, all of whom have been confronted with the same ethnographic and evidentiary materials.

**Something of the times**

In the present intellectual climate it often seems that it is transgression rather than repetitive conformity that fascinates, as indeed it might. Atomic agents, evanescent action and the dynamism of power and process are sometimes preferred to the stodge of intricate and formal classes of person, complex enduring structural groups and their associated paradigms of cohesion, articulation, subordination and oppositional coherence. In such an atmosphere, to note that some people within a single region assign groups to segmentary hierarchies in somewhat contradictory ways might become the springboard for simply saying the people have no hierarchical social structures, just overlapping personal networks—but that can hardly be the end of the story.

Of more concern is the privileging of meta-discourse over craft in defining what is glamorous in anthropology. While not present everywhere in the academy, this has certainly become rather widespread. It is not making it any easier to find recent anthropology graduates who are employable as native title case researchers. Nor is the recent emphasis on postmodernist and cultural studies paradigms doing much to provide undergraduates with essential field and
analytical skills for the much needed work on indigenous tenures. Michael Silverstein's definition of 'Yuppie anthropology' as 'Geertzian blurred genre, post-structural deconstrufenomeno-critiinterpreteneutics' has apparently failed to stem the tide (Silverstein 1985: 795–96).

But at least one part of the Radcliffe-Brown legacy remains, and it continues to have too much power over us: the possibility of a largely ahistorical approach within which the synchronic account is enough to show how people run their lives, and the anthropologist's time among a people is the most important time and the only time one really has to confront. Anthropology's international re-engagement with history in the last 20 years has to an extent curiously passed many of us by in Australianist anthropology, even though we have some remarkably rich sources for detailed studies of certain Aboriginal peoples over periods now in excess of 150 years.¹²

Loss of craft means a decline in the power of ethnography to act as a natural brake on the theoretical schema we bring to experiencing another people. It is easy for us now to identify the distorting effects of the assumptions and values of the ethnographers of a century ago, because so many of those assumptions and values have become outmoded and sound weird. Their death knell was often sounded by the arrival of new and better ethnographies. The problem in dealing with one's own distorting presuppositions is that it is so hard to achieve any distance from them, something made harder by working only within one's own social and cultural world. The corrective process of self-knowledge through contrast is as much an aspect of reflexivity as is the recognition of one's own presence during ethnographic fieldwork, although one might not think so after listening to the way the term 'reflexive' is often used by anthropologists. Getting skilled at reaching this kind of distance both from others and oneself is hard, but not impossible. It is also teachable to others, although it is not clear to me that much time is usually spent in taking students through these issues before they are thrown out into the field.

Perhaps this is because anthropologists these days are less agreed than they formerly were on the question of whether, or how far, one should make efforts to hold one's presuppositions at bay. Since so few anthropologists now come to the discipline from a scientific background it is perhaps unsurprising that there seems to have been a serious decline in the extent to which empirical rigour is required of an ethnographer and anthropological writer in recent decades. In a time when there are now many very different ways of 'doing anthropology' this may be no great loss, except that students are not always taught more than one way. If that way fails to inculcate in students an attitude of humility towards knowing about the world, and a healthy respect for the persuasive role of systematically researched ethnography, then they may have great difficulty treating their presuppositions with the necessary scepticism.

It is sometimes the most valued of our presuppositions that cause us the most difficulty in recognising them as problems. The replacement of positivist structural-functionalism by a view that anthropology is primarily about the earnest critiquing of unequal power relations would not guarantee that no Native
Title Representative Body will ever sue us for negligence on the grounds that we got our basic description of the local land tenure system all wrong. Nor would it save us the acute public embarrassment of being cross-examined as to why our analysis of a claimant group's land tenure system was contradicted by their own evidence in a way that couldn't just be explained away.

Defective views are not the exclusive property of the old-fashioned. Our capacity to perceive different societies with clarity gets hampered by the very fact that anthropologists, like anyone else, are daily tempted to see themselves in others, just as some of their forebears were tempted to see their own evolutionary ancestors or fancied primitive inner opposites among the tribal peoples they studied. An expectation of constant change and novelty, liberation from Victorian mores and their victimless crimes, unfamiliarity with the experience of physical violence, the efflorescence of personal choice, an assumption of security, the advancing conquest of patriarchy, a shift from the public to the private in so much cultural life, the validation of narcissism through technology and affluence, and the very rise of the individual, can colour the way we understand other societies perhaps much more than we are able to bring to consciousness. On the other hand it seems perfectly reasonable to experience desire for a little chaos when one's own society is documenting, registering, superannuating, monitoring and regulating one's life with what appears to be an increasing relentlessness. Anthropologists' emphasis on the fluidity of others may therefore, at times, be mixing memory with desire.

The Sansom line

The most extreme example of fluidist ethnography in Australia remains Basil Sansom's work among Darwin fringe-dwellers. To read his publications on these people is to be confronted with a world in which there are no enduring social groups, no corporate structures, no stable forms of property, and little or no continuity in relations between people and each other, or between people and specific areas of country (see Sansom 1980a, and, in particular, Sansom 1980b). For example:

In constructing the reality they experience and know. Northern Aborigines treat groupings as the product of process and recognise an achieved grouping for what it is—a realization of the here and now ...

The Countrymen belong to a range or stamping ground ... The Countrymen call this range their country ...

Knowledge of country, and, hence, title to it comes only of experience ...

In Northern Australia, social identity is established with reference to the distribution of knowledge among persons and groups of persons ... Folk modelling in this region has always to do with the comprehension of emergent social states and forms—with an emergent and changing pattern of land occupancy and use, with an emergent population made up of Countrymen who are currently but not
permanently counted as such, with mobs or local groupings that are neither fixed in composition nor in membership nor location. ...

In the first instance, Countrymen are constituted as an ego-centred set ...

Social continuity is processurally achieved by organizing "companies for business" into whole mobs and drawing on whole mobs to recruit their members to form "companies for business". The "company for business" is a grouping recruited to a purpose and will disband as soon as its declared purpose is fulfilled ...

With reference to such people, the sociology of the corporation, the study of hierarchies of office, the ethnography of propertied family lines must all be put aside ...

In the Darwin hinterland, "continuity in the arrangement of persons in relation to one another" is uncharacteristic and the search for this order of continuity is pointless and unreal ...

Continuity in Northern Australia is in the perdurance of cultural forms of and for action.

(Sansom 1980b: 257, 259, 260, 261, 269, 273, 278, 279. emphasis added).

What is not made clear in Sansom's work is the extent to which these same people whose urban fringe-camp daily lives were dominated by discontinuity and fluidity also identified with enduring totemic estate-holding descent groups, and with descent-based language groups associated with mostly stable areas of country, on other days and in other places. Some of Sansom's 'Wallaby Cross' people have been among those who have advanced land claims under the Aboriginal Land Rights (Northern Territory) Act 1976 (Commonwealth) and appear in the relevant ethnographies as members of more or less classical kinds of land-holding descent groups. Some of them were from families with whom W.E.H. Stanner had also worked in the early 1930s. A number of these people told Stanner about the identities and countries of their own grandparents born a century earlier. Later in this paper I show that, contrary to the impression one might gain from reading Sansom's work, customary title-holding groups in at least one part of the relevant Darwin hinterland region, namely Daly River, can be shown to have been predominantly stable totemically, geographically and genealogically since at least the 1830s.13

The answer to this apparent contradiction seems to be that the Wallaby Cross mob's members led double lives. In the urban fringe-camp context they played down and actively suppressed their concurrent memberships of 14 different descent-based stocks affiliated with 14 different hinterland languages, and the mob's 'members could at any time reclaim original identities and so go separate ways' (Sansom 1980a: 11).14 But when representing themselves as the Wallaby Cross mob they 'generally submerge original ethnicities and present themselves as a grouping united in what they call 'that Darwin style we got" (Sansom (1980a: 11). Sansom describes all members of the mob as 'escapers'

22
(Sansom 1980a: 10), but fails to sketch for us the lives from which they were escaping and to which in many cases they continued to return.

So Sansom's sweeping statements about the nature of continuity, group composition and entitlement to country in 'Northern Australia', which I have quoted above, can only be justified as descriptions of one aspect of one particular kind of residential aggregate in one aspect of its members' lives. As generalisations about all Northern Australian Aboriginal groups over time and in relation to country, and even merely as generalisations about Wallaby Cross people as whole persons, the generalisations I have quoted above from Sansom's work are in my view unjustifiable.

The Wallaby Cross milieu was certainly one riddled with indeterminacies and a large amount of disorder, despite the fact that, as Sansom so ably showed, its residents did live according to a code that could be subjected to the ethnographic process and described in a series of generalisations. It is partly because of such works as Sansom's that in the 1990s we can apparently see the indeterminacies of social and cultural life with far clearer an eye than our order-obsessed scholarly ancestors. This has been a signal advance. The question I raise here is whether or not we may have gone too far and are becoming unable to place the determinacies and indeterminacies in accurate balance.

**Rules versus action: the case of prescriptive marriage systems**

For example, Aboriginal prescriptive marriage rules of classical type have long been famous for their precision and complexity, and also their regionalised variety. With our current attraction towards the recognition of indeterminacies and our suspicions about the neatness with which a people's rules match what they do in practice it is perhaps easy to treat such ideals as just another case of prescriptions which, as everybody knows, did and do get flouted or bypassed.

While it is historically the case that these elaborate prescriptive systems have collapsed partly or dramatically in large regions of Australia, this should not distract us from considering just how much of a match there was, during the earlier phases of colonisation, between marital theory and action. This kind of consideration is important if we are to place discussion of formations such as country-holding descent-based groups into meaningful context, and to get a handle on what kind of yardstick is used to characterise practices as systematic or anarchic or otherwise.

A number of scholars have compared traditional marital prescriptions and prohibitions with substantial samples of actual marriages. Under a subheading, one rather typical of its era in being titled 'Maintaining the System', Kenneth Maddock (1982: 70) wrote:

> There is evidently a strong sentiment in favour of the traditional regulation of marriage. Thus, in spite of the restrictiveness with which potential spouses are defined, infractions are unusual.
Maddock went on to cite case material as follows, giving the percentages of marriages which were licit unions according to local rules (Maddock 1982: 70):

- Pitjantjatjara (Yengoyan) 95.5
- Mardutjara (Tonkinson) 97.0
- Warlpiri (Meggitt) 95.8
- Kimberley (Kaberry) 85.5
- Groote Eylandt (Turner) 89.1

To these one could add Hiatt's sample of marriages from the Blyth River region of Arnhem Land of which 94 per cent were 'proper' and 6 per cent 'improper' (Hiatt 1965: 78), and Shapiro's figure of 95 per cent for the extent to which men of the Elcho Island (Galiwin'ku) area had married women of the prescribed kin-class (Shapiro 1981: 77).

The 12 specific cases given above yield an average of licit marriages of 90.5 per cent, and come from widely scattered parts of north and central Australia. Although six come from Kaberry's Kimberley work they involve both desert and monsoon savannah peoples.

In Western Cape York's Mitchell River area Lauriston Sharp found that 'The preferred marriage is with my own mother's brother's daughter, and the genealogies show that this ideal is realized in a large majority of cases' (Sharp 1934: 416-17). Sharp did not, however, provide figures.

From the Milingimbi region of Arnhem Land Lloyd Warner reported that:

- Each individual feels it is his right rather than his duty to keep his part of the system working; hence the proper functioning of the whole. A proper marriage is preferred because a Murngin man and woman usually feel that they have a right to each other, since their relationship has destined them to marriage Nevertheless, wrong marriages occur ...(Warner 1937 (1958): 105).

Ian Keen, who worked in the same region about 50 years later, also found that 'most marriages were between people who were in a correct [FZS/MBD] relationship' (Keen 1994: 90).

However, the latter statement occurs in a passage under a subheading which, also true to its times, is called 'Indeterminacies and Variation'. It begins:

- Let me conclude this brief outline of gurruwi [kinship] by stressing variation and indeterminacies; although some widespread common axioms could be isolated, there was no uniform Yolngu 'marriage system' (Keen 1994: 89, emphases added).

Coming after a masterly presentation of what must seem to many or most readers like a vastly complicated and in fact highly uniform system of kinship and marriage, one taken so seriously by its practitioners that most marriages actually conform to a specific and extremely narrow ideal pair of relationships, the passage may seem anomalous. So, in the material that follows it, one could
ABORIGINAL COUNTRY GROUPS

reasonably expect to find, perhaps, evidence to the effect that some Yolngu traditionally eschewed other Yolngu's ideal of cross-cousin marriage altogether, or, say, that Yolngu differed among themselves as to whether the cross-cousin a man married should ideally be a MB-D and not a MB+D. But it turns out that the 'widespread common axioms' which are not classed as subject to variations or indeterminacies are indeed just that: axiomatic aspects of how Yolngu reckon 'relations based on (although not restricted to) genealogical relationships grounded in beliefs about procreative processes' (Keen 1994: 79). What could be more foundational to the coherence and relative stability of the fabric of such a social field, than gurrutu, given the bedrock role of kinship in classical Aboriginal life?

But the evidence Keen provides for this foreshadowed 'indeterminacy and variation' seems to me mainly to entrench the view that exceptions, manipulations and variable degrees of knowledgability fail dismally to dislodge the prevailing impression of orderliness conveyed by the more constant and universally adhered to rules and practices of the region's people.¹⁷ The indeterminacies he cites are as follows.

• A person would emphasise or deny a real or close relationship on the grounds that the person nurtured them or because of a grievance.

• People would manipulate categories and rules in their own interests, for example by saying that a union that was improper on kinship grounds was correct on subsection grounds, or that a wife's group and country were of that of the man's mother just because his mother's and wife's countries were on the same river.

• There was some choice as to which kin terms to apply to people, because anomalous marriages meant that people ignored the paternal factor and computed relationships through the mothers only.¹⁸

• There were slight sub-regional variations in the use and semantics of some kin terms.

• There was perhaps variation between the coast, where there was formalised ZDD exchange, and the inland where apparently there was not.

• The Djinang people at the western extremity of the region appeared midway between the reciprocal marriage-exchange of their western neighbours and the asymmetrical exchange of Yolngu to the east.

• There were some variants in local meta-theories of marriage practice (Keen 1994: 89–91).

It seems to me that it is these pieces of evidence, not the greater body of basic kinship-related categories, rules and practices, that should be characterised as 'some' aspects of Yolngu society that 'could be isolated' as evidence for the point that Yolngu marriage constituted a less than perfectly neat, homogeneous and adhered-to system.

25
Part of the problem here is that while 'marriage system' is something Keen prefers to place in quotation marks, giving it something of the status of a dead cat on the dinner table, he is quite happy elsewhere to refer to 'Yolngu marriage-practices' (Keen 1994: 87). These are not a 'system' but a regional set of sub-regional variations on a theme, as we see in the list above. But there is a problem here that remains: namely, the 'Yolngu' category. As one gets close to the edges of the Yolngu region, variations between local usage and the usage of the north-east corner of Arnhem Land, both of marriage rules and kin terminologies, increase. But to characterise this as evidence for the absence of a uniform Yolngu marriage system is a doubtful solution.

Having emphasised a single large-scale reification called the Yolngu, one then proceeds to find they are not an island but have neighbours with whom they interact, to whom they are both similar and different, and thus that 'Yolngu' marriage-practices are not 'a unified system'. But on closer inspection these practices are uniform at one level and variable at others. This is how it is right across the continent. But since so much of this variation is successfully subject to generalisations formed by the anthropologist, why can it not be called 'systematic variation'?19

The use of the term 'indeterminate' for these circumstances is somewhat misleading. The Macquarie Dictionary defines it in major part as:

1. not determinate; not fixed in extent; indefinite; uncertain. 2. not clear; vague ...
3. not established. 4. not settled or decided. ...

If people subvert and manipulate kinship and marriage norms from time to time in ways that themselves are also subject to successful generalisations by the anthropologist, and these fudges or wrongs themselves have limits and also belong to a limited set of classes, and they are fudges or wrongs built precisely on the fact that some highly shared prescriptions are being flouted out of self-interest or conflict, then why cannot these exceptions and anomalies and fictions also be characterised as cases of 'systematic variation' rather than as 'indeterminacies'? One could say that what they show is that the regional marriage system has some exceptions and breaches that are of a generally predictable form—what is unpredictable, perhaps, is who will indulge in which exception or breach and when.

The Keen critique: north-east Arnhem Land

In north-east Arnhem Land Ian Keen found that earlier ‘segmentary’ descriptions, especially those preceding the work of Nancy Williams, were misleadingly neat. They emphasised units clustering into higher order levels of inclusiveness, and wrote of the ‘clan’ as a basic unit of Yolngu society. I will return to the clan question below.

Keen uses the image of ‘strings’ in ‘networks’ in preference to that of ‘enclosing sets’ in order to discuss the way groups are constituted in relation to each other in the region. He found that the identity and boundaries of groups
ABORIGINAL COUNTRY GROUPS

were often ambiguous; people also disagreed about their internal structure, including who was leader; and the groups did not sort into a taxonomic hierarchy of different levels of inclusiveness of the kind implied by 'clan' and 'phratry'.

Connections among groups were not those of enclosing 'sets' but extendable strings of connectedness ... Yolngu groups were not like the corporations in Roman or English law or corporate groups of anthropological theory, but 'kinds' of people with ancestry and attributes that both linked them to, and differentiated them from, others (Keen 1994: 63–64).

The kinds of groups which others might have described as 'patrilineal clans' are referred to by Keen principally as 'patrifilial groups'. Some may see 'filiation' as a weaker or 'lighter' basic recruitment mechanism than 'descent', for a group with collective interests which are supposed to exist over time, because filiation involves only one or two steps of genealogical reckoning and deals with 'the recent', as well as being focused on pairs of individuals rather than on lineages. 20

But one can also see this in reverse: descent from a known ancestor can only go back so far, while classical Aboriginal serial filiation is often thought of by its practitioners as being continuous back to an ancient time out of mind, and as contining to an indefinite future. Rather than 'serial filiation' one might more properly call it 'perpetual filiation' from an emic or insider perspective. Especially if historical evidence suggests considerable stability in the serial transmission of collective and property-related identities down the generations, such that living group members are seen as temporary embodiments of enduring spirits and their relationships to country, what impediment is there to referring to such groups by the structural, collective, diachronic and bodily metaphor of the corporation? Strings of patrifilial landed groups such as Cloudy Water, Mangrove, Sunrise, Thunder and others were described to Keen as 'one group' called Mātjarra or Bungunbungun, a set whose members had 'one ceremony' and had the Djang'kawu as common ancestor (Keen 1994: 65). But each country was connected to several such strings; a group had several string-oriented names, each of which linked it to a different string; and people often used their own group name to identify others of the same string of groups. So Keen (1994: 73–74) does not identify the strings as 'phratries'.

Yolngu themselves, in addition to using the proper names of groups, argued about whether or not the people referred to were 'same' or 'different' or 'one' or 'separate', not having discussions about specialised terms like 'clan' or 'phratry' (Keen 1994: 75). Mala is any kind of group. Ba:purru was a relationship between totemic ancestors, spirits of the dead and those yet to be born, and places and elements of ceremonies associated with the group, and implied a shared form of identity, through those connections, which came from one's father (ba:pa) (Keen 1994: 64).

Keen distinguishes 'least inclusive' from 'more inclusive' kinds of groups, rather than 'clan' from 'phratry', for example, because at any one degree of
inclusiveness the groups did not have uniform or common structures. For example, not all cases of these 'least inclusive, common ba:purru identiti[ies]' had subgroups with their own names, but some did (Keen 1994: 66).

Keen tells us people disagreed about the genealogical structure of a group in certain cases, but this principally refers to linkages between upper generations of deceased people and the proportion of disputed cases to the rest is not stated so it is not clear whether such cases were uncommon, common, or very common. For related reasons people disagreed with each other over whether, for example, there were three Crocodile groups with distinct countries, or one Crocodile group with common rights over three countries (Keen 1994: 68–71).

People also differed as to the proper forms of ceremonies, but Keen nevertheless shows how these ‘incommensurable traditions’ lay embedded in a ‘network of qualified agreement as to the constitution of ‘law’ or ‘right practice’ (rom)’ (Keen 1994: 164, 293). Differing understandings of myths and rituals did not prevent frequent and elaborate cooperation in ceremonial events by members of conjoined social networks. Although ‘[g]roups were not the bounded entities or fictive property-owning persons of corporation theory’, their members had ‘shared, though ambiguous, negotiated and hence open languages and frameworks’ (Keen 1994: 167).

Patrifilial group countries had definitions that were ‘not altogether agreed’, although their boundaries were marked by natural features ‘more or less unambiguously’ in ecologically rich areas, even if members of groups with adjacent countries ‘were likely to disagree about which mark was significant’ (Keen 1994: 105, see also Keen 1995b). The moiety and group identities of focal rich areas of Yolngu country were subject to much less ambiguity than those of less favoured areas, and indeed there is great continuity in the record of the last 70 years of the mapping of patri-group names onto core areas of country in north-east Arnhem Land generally. This fact is partially obscured because Keen has removed almost all of these names from his published detailed ethnography. One also has to bear in mind that the majority of Yolngu estates, perhaps as many as 90 per cent of them, lie in this richer country, and the majority of Yolngu people, both as groups and as individuals, therefore come from the areas of least ‘ambiguity’ and dispute as to the identities of tracts of country. These two issues directly affect the extent to which one can characterise the regional system as one characterised by indeterminacy, as against noting there is a systematic relationship between degree of determinacy and type of ecological context.

No corporations vs corporations

How strictly corporate does something have to be before it can be called a corporation? This again raises the age-old question of how long is a piece of string. In between the Mitsubishi Corporation and the local school working bee lies a rather large territory.

Like Howard Morphy (1997: 132–35), I am not persuaded that the patrifilial land-holding groups of north-east Arnhem Land should no longer be
ABORIGINAL COUNTRY GROUPS

described as 'clans', nor do I see evidence that they should not be described, as has been done by Nancy Williams, as 'corporate groups' (see, for example, Williams 1986: 94–98, and further index references). Were they property-holding groups of no consistently specifiable structure which failed to outlive their memberships, or enduring structural groups without any property, or groups with common voluntary identity but no particular social structure or property interests, then one could dismiss the claim that they are corporations. But Yolngu clans, both as targets and also as variably achieved states, do appear to have the elemental requirements of a corporation: an enduring group recruited on definable and predominantly consistent criteria, the members of which possess a recognised common identity, and whose members possess common jural status in relation to something valued, in this case country, sacra and so on.21

Morphy notes that it is the 'fuzzy nature of Yolngu clans that has persuaded Keen to simply use the word group rather than clan, which he sees as being indelibly contaminated with the connotations of a determining bounded corporate entity clearly inappropriate in the Australian case' (Morphy 1997: 132). Morphy points out that clans have a significant place in Yolngu ideology and while they are 'emergent, contextualised, and transforming', and are not 'rigid, pre-existing components of social structure', nevertheless:

there was a continuous process whereby people were divided into groups, and links were established or asserted between these groups, a set of ancestral beings, and a number of areas of land; and this process was part of the structuration which resulted in the reproduction of the regional system and provided the framework for individual action (Morphy 1997: 134).

In a narrowly technical sense, Keen's rejection of the term 'clan' for the patrilinal groups of north-east Arnhem Land may be regarded as correct, assuming one treats 'clan' as an international anthropological term of art rather than explicitly using it in the broader of its ordinary English senses or in some localised specialist usage. That is, 'clan' in a technical sense is usually held to refer to a unilinear descent group whose members can, at least theoretically, trace descent from a single common ancestor (the 'apical' ancestor).22 If people such as Yolngu don't have apical ancestors, they don't have clans.

I am not sure the picture is that simple. There is not space enough here to go into the evidence as to the extent to which certain singular Dreaming figures are sometimes regarded as having been founding clan ancestors in parts of Aboriginal Australia, including the Yolngu region (Keen 1994: 45). Nor is there space for a detailed discussion of the extent to which patri-group members' kinship organisation reflects at least a powerful metaphor of common patri-descent even in the absence of a traceable apical ancestor.23 There also are now some parts of Australia where historically recorded ancestors have become pivotal figures in the reckoning of patrilineal descent, including north-east Arnhem Land.24 Here I simply draw attention to the fact that it is not easy to say categorically that Aboriginal totemic, country holding patri-groups are
constructed in the absence of a notion of common ancestry, even where unconnected lineages subscribe to a common Dreaming and homeland.

Perhaps partly because of this difficulty in focusing the picture, Australianists have long been in the habit of using the term ‘clan’ in a looser sense than that which the technical dictionaries suggest, and given the range of variation in the way Aboriginal descent-based groups are constructed, the use of a reasonably flexible cover-term for them seems to me preferable to one that is narrow.

I struggled with the same issue in the Wik region of Cape York Peninsula:

I have been using the term ‘clan’ without defining it. It is a convenient cover term, rather than a name for a simply definable, locally universal social structure (Sutton 1978: 58).

I then described the modal form of the Wik clan as one or more patrilines whose members claimed the same land as primary country, and who had the same patrilineal totems and the same totemic names. I then referred to cases of adoption, clan fission, and incomplete estate succession, concluding:

In other words, ‘clan’ may be more neatly applicable in some cases than in others; not all clansmen are clansmen in relation to all the country claimed by any one of them, and not all territories have a ‘clan’ in possession of primary and unique rights over them. But it is fair to say that the clan as a patrilineal land-holding totemic unit with a unique country is the target towards which the flux of reality is continually pushed, and forms the model into which people attempt intellectually to compress the often somewhat ragged facts. It is the social and political facts which are ragged. The shape and content of the territories remain relatively constant and unambiguous, and provide a matrix for ecological and political stability (Sutton 1978: 59–60, emphasis added).

The ultimate Wik target in this domain was to belong to a descent-based group whose claims over a particular estate had been recognised by the relevant jural public since time out of mind. Another way of putting this, however, is to say that the desired state was one in which the present jural public repeated what their predecessors had said about one’s own clan predecessors. And one ‘repeated’ one’s patrilineal forebears by having the same names, totems, ceremonial identity, language affiliation and estate as they did, and even on occasion people would claim the same personality traits, body build, skin colour and hair type as such forebears from the same estate, at times linking these traits with the main totemic being present in the estate, and emphasising the repetition of ancestral essence in one’s living body and appearance.

To design the anthropology of such views about the importance of repetition within country-holding groups simply in terms of deconstructing the contemporaneous production of meanings that are concerned with an imagined past is in my view to indulge in a curious form of neo-scientism. That is, in the absence of any evidence that might affect the verifiability of what people think
about the past, such approaches seem to consider the past to be just an idea lodged in the present. This is too reductive and, perhaps, narcissistic.

Production, reproduction, repetition

It is a matter of concern, in this context, that all kinds of ‘production of meanings’ are sometimes lumped together in anthropological discourse by a common emphasis on cultural production without much attention being paid to contrasts between the continuities and discontinuities that characterise multiple acts of production over time. That is, the fact of ‘production’ has at times been allowed to overshadow perceptions of differential pattersnings of productions. Reduced to ‘production’, all more or less patterned or unpatterned cultural phenomena can appear equally solid or flimsy. But they are not. What the ‘cultural production’ metaphor tends to elide is the distinction between production and reproduction, that is, repetition of form and substance versus single events or series of unlike events. It is by finding patterns of repetition that the ethnographer finds longer-term order and is able to describe the local processes of structuration in a series of generalisations that transcend the moment.  

One sometimes sees, in anthropological writings, an Aboriginal view that the meanings of places are forever, being contrasted with an anthropological perspective under which such meanings are always newly constituted. Indeed, knowledge, in the neural sense, is constantly flashing into renewal or it would evaporate. But to contrast this academic view with Aboriginal perceptions of permanence may suggest to some people that the Aboriginal perceptions belong to the realm of the imagined, while an anthropologist’s emphasis on some combination of repetitious renewal, evanescence and innovation belongs to the realm of reason and, dare I say it, science. Thus there is now a folk version of all this which says that Aborigines encourage fictions of continuity, while anthropologists know Aborigines really indulge in constant fluidity. No doubt anthropologists would generally reject such a crude version of what is being asserted but it seems to me to be available from certain approaches.

The long view

It is of course wildly unfashionable to also draw attention to the fact that some kinds of social practices are adaptive and others are not. A society in which the economy produced a fairly dense and sedentary population, but which arranged its land tenure allocations on the basis of weekly contests at arms, would very likely be one that was seriously maladapted to creating a good environment in which to raise future generations. Even in the Western Desert of Australia, where the classical economy was one that wrestled with perennial unpredictability and terrible basic scarcities, and where rights and interests in country were more strongly individuated than elsewhere and subject to considerable short-term change by comparison with other parts of Aboriginal Australia, there is always a huge emphasis on country rights mediated by religious knowledge. In fact as a basis of tenure interests such knowledge perhaps reaches its greatest prominence in that region. The Dreamings (tjukurpa) and their sites and tracks seem to be
the most stable elements of the system, one that was demographically porous as individuals came and went over long periods.

Even so, Western Desert ideology does not locate country interests in the individual *per se*, however understood. One of the key values associated with enduring institutions such as the *tjukurrpa* is their very transcendence of momentary and egoist will. Whether internalised as the Law of the Dreaming, or merely respected or feared externally as a matter of determination by the polity collectively and in ways that are subject to negotiated 'consensus', though often based on both, Aboriginal country interests are typically conducted on the assumption that private ownership is not really possible.

**'The wisdom of these organic provisions'**

Ideally, the 'enduring institutions' of classical land tenure to which so many Aboriginal people remain committed, at least in principle, provide them with some ability to predict what will happen. They narrow the range of licit choices, they keep a lid on brute force, they make society a relatively safe one in which to hope to bring up children. They do things for people. To make a smart and insightful analysis of these cultural phenomena while ignoring what they might do for people, and for those people and their forebears and descendants as a population over long periods such as millennia, is certainly possible. Not all accounts of things have to look to what they might do or fail to do to assist people in the project of running their lives or those of their descendants. To make such functionality constantly the main plank in one's analysis is indeed to hark back to a Functionalism that has gone. But to reject thinking about the functionality of a social practice on the basis that that itself would be an act of Functionalism is to eject the baby with the bath water. And yet one comes across just such reactions from time to time when trying to teach anthropology in recent years.

The definition of a social group or institution that outlives its current members is not exhausted merely by alleging—truthfully as may be—that it is an illusion, a case of hypostasis or reification, the objectification and projection of the momentary as the long-lived and thus yet another kind of imagined community. One could go further and say that a perpetuable customary corporation is just another case of persistent delusion as to the existence of the machine-in-the-ghost. But while we are now highly resistant to reifying the dynamic process of repetition or near-repetition of social acts into a crudely objectivist notion of 'enduring structure', I think there are many of us who are reluctant to thoroughly embrace individual-focused and subjectivist 'agency-driven' synchronist theories of sociality at the expense of trying to understand the social and cultural sum that is greater than its combined parts, and which has a history that outlives its mortal practitioners—as well as, perhaps mercifully, the anthropologists who study them.

Lewis Henry Morgan said of the 'Laws of Descent of the Iroquois', that a crucial test of 'the wisdom of these organic provisions' was whether or not the people who tried to live by them could enjoy reasonable security as a result: 'for, during the long period through which the league [of the Iroquois] subsisted, they
never fell into anarchy, nor even approximated to a dissolution from internal
disorders' (Morgan 1858: 134).

How Morgan knew this about the more distant past of the Iroquois was
not revealed, and it may have been merely a speculation of Morgan's or a case of
just reporting the beliefs of his informants—or both. The point, however, is that
the Iroquois had law, not just kinship. This was even though their legal
institutions were 'founded upon the family relationships; in fact, their celebrated
league was but an elaboration of these relationships into a complex, and even
stupendous system of civil polity' (Morgan 1858: 132). What is not well developed,
in the Australianist literature, is a theory of how the various social institutions
articulate with each other, or not, to form regional 'civil polities' that are more
than the sum of so many domesticities.28

How stable have Aboriginal Country groups been?

In 1938 D.S. Davidson broached this issue in his paper, 'An Ethnic Map of
Australia', under the heading: 'Stability of Tribal Territories'. He concluded from
his survey that:

The tribal distribution as shown apparently represents the status quo for an
undeterminable but considerable period. There seem to have been no major
movements of population in late prehistoric times nor are there any obvious
indications that such have taken place at any time in the past. Australian
traditions not only do not emphasise migration legends for political or ethnic
groups but for the most part are quite deficient in them (Davidson 1938: 671).

He added that stories about the movements of legendary ancestors were myths
about the establishment of totemic centres and were not intended as, and could
not be interpreted as, tribal migrations. He was skeptical about evidence
suggesting that some tribal movements in the Lake Eyre region arose because
some tribes forcefully ejected others from their lands:

Our reasons for suspecting that warfare may not have been necessarily the cause
for such a change are to be found in the Australians' complete lack of interest in
land aggrandizement (Davidson 1938: 671-72).

One cannot, however, rest too much on such an a priori argument. More
convincing evidence can come from detailed records.

John Morton has been examining genealogical and other information
recorded for Western and Central Arrernte people of the Alice Springs region.
Using the late 19th century work of Baldwin Spencer and Francis Gillen, that of
Carl Strehlow and later work by his son T.G.H. Strehlow, and more recent
research of the land claims era, he has found that the Arrernte families of the
present have generally been associated with the same Dreamings and same core
sites and estates since at least around 1800 and in some cases the evidence goes
back further.29 One can, of course, say that this is just a conservative approach to
serial patrifiliation, and therefore that to hypostasise the existence of 'patrilines'
or 'patrilineal clans' in such a case might be taking things too far. Some might say that what we have here are conjoined but very short 'strings' of parent-offspring relations which extend backwards in time only in the sense that certain identities have been passed on repeatedly. But this repetition itself is done according to local ideology, under which such repetitions are considered truly ancient, and it is projected forwards as well, at least in the minds of the people concerned. The records show that this cultural construct of perpetual corporations has been strongly reflected in behaviour and history in this case.

Country-holding groups in Aboriginal Australia often have metaphors and idioms for these sets of filiative links that are not 'string-based' but rest on other kinds of images. In some areas the antecedent-descendant relationship is conceived as a circular and 'rolling' model of perpetual cycling of spirits. In others it may be thought of more as a unidirectional 'stem', 'spine' or 'tree trunk'. Wik ancestors are, in Wik-Ngathan for example, uuut mangk, thaameth mangk, literally 'old-man back/stem', 'old-woman back/stem'. The head of a clan, and the oldest of a sibling set, is the 'root person' or pam yuk, literally 'tree man'. In the Perth region of Western Australia, subsets of matriclans or 'great families' were described as being of Matta Gyn or of 'one leg' (Moore 1884).

In such metaphors, family trees are just that: while they stretch back to an ill-defined past, or to a remote past defined by a world beginning, and forward to an open future, and rest on parent-child relations, they are not conceived of essentially as unidirectional sets of single-chain links but as multiple outgrowths from a set of common sources. What is noticeable in such native models is their emphasis on perpetual repetition, combined with a plastic structural image drawn from a life-form, usually anatomical, and involving at any one generation sets of kin, the latter being unified mostly on the basis of commonalities of ancestry. Self-perpetuation, usually under some strongly constraining recruitment rules, is axiomatic for some such sets, which are often symbolised by totems, may be the locus of primary language affiliations, hold common property interests, are often formally named, and so on. There are other kin-sets based to varying degrees on filiation but which lack these features—for example, personal kindreds, and residential groups composed entirely of kin.

It is the theoretically 'perpetual' nature of land-holding groups, at least in ideological terms, that has been an integral characteristic of their definition as corporate entities by many scholars. That is, a corporation is something that, by intention, may or should outlive any individual member of the group. To attempt to reduce a people's conception of their corporations, no matter how they put them together, to merely a contemporaneous strategy for 'getting a slice of the action', for example, would be to suggest the absence of a prime consideration for the actors who put such strategies into place—the need to suborn potential eruptions of sheer new power to old and distributive ways of regulating society, ways which establish rights in country ultimately on an extra-personal and lawful basis.
ABORIGINAL COUNTRY GROUPS

But are the Hermannsburg-Alice Springs data just an isolated case? What evidence is there that the stability and predictability that might flow from all this structuration is actually achieved in a widespread way?

Luise Hercus's genealogical data for the Eastern Simpson Desert go back to the late 18th century and indicate similar continuities on a smaller scale, although the earliest data were not obtained from documentary sources but from living informants born as long ago as c.1888 and who were still alive in the 1960s. The named individuals in the genealogy of Mick McLean Irinyili, for example, include one at the great-grandparental level (his FFF), and there are four other great-grandparents whose linguistic affiliations were remembered but not their names (see Land Tribunal (Queensland) 1997: 62, 97). These people would have been born approximately in the period 1770–1830, assuming an average intergenerational gap as low as 20 years for women and as high as 40 for men.

Hercus's detailed knowledge of the comparative linguistic picture in the adjacent regions from Lake Eyre to Adelaide via the Flinders Ranges has led her to the conclusion that the language varieties of that large zone have been evolving more or less in situ, and in diffusional and other relationships with each other, over an extremely long period. The period involved here would have to be reckoned in terms of millennia, not just centuries. One exception to this general picture of enormous stability in the language/country relationship in the region appears to be Kukata, a fringe Western Desert language, whose people were actively pushing east and south at the time of colonisation (Hercus pers. comm. 1998).

In far north Queensland there is also relevant case material. We know that the Guugu-Yimithirr language recorded by James Cook and Joseph Banks at Endeavour River (Cape York Peninsula) in 1770 is, as far as has been ascertainable by linguists John Haviland and Gavan Breen, very largely the same language as that spoken in the same location in 1970, and the language is still in use there at the time of writing (see Breen 1970; Haviland 1974). The South Australian language Pamkalla evinced no significant change in vocabulary between 1844 and 1960 (O'Grady, Voegelin and Voegelin 1966: 26). Linguists Black (1997) and Alpher and Nash (in press) have argued in considerable detail that the rate of lexical replacement in Australian languages is not particularly rapid at all, that borrowing between adjacent languages proceeds at a modest rate, and the evidence suggests that a minimum lexical retention rate of roughly 80 per cent per millennium is not inapplicable. These conclusions add to the wider picture of long-term linguistic stability in Australia up to recent times.

R.M.W. Dixon (1997: 92) argues that Australia has been largely in a state of linguistic equilibrium for a very long time, by world standards. This is not to infer from the geographic stability of languages that population movement and stability simply match that of languages, since in Australia the memberships of language groups can change slowly over time and one might describe such language-group categories as being somewhat porous, in the sense that people may slowly pass into and out of them. The same may be said of lower-level country holding groups such as clans. In the native title context, continuity of licit connection to a country is not vitiated because a country holding group exhibits some dynamism.

33
in its membership, especially given the fact that this dynamism is largely restricted to shifts experienced by individuals and small genealogical branches and is not the equivalent of whole-group migration.

There are many examples of migration made evident in the distribution of languages in other parts of the world, migrations that occurred before the dramatic impacts of the colonial era. Indigenous languages of the Americas which belong to the same families are frequently distributed in a patchwork way, sometimes across very large distances. For example, the Algic family has an Algonquian subgroup in eastern North America, while its two other units, Wiyot and Yurok, are isolates spoken along the northern coast of California—they are a continent apart. The Athapaskan family contains over 30 closely related languages spoken in three areas: western Canada and interior Alaska, Arizona and New Mexico, and the Pacific Coast (Silver and Miller 1997: 305). Navajo, of the south-west United States of America, is related to widely separated languages in the Pacific west coast, as well as some in Alaska and western Canada. Prehistoric migration is given by scholars as the usual explanation for these mosaic patterns (Silver and Miller 1997: Chapter 13). Other cases can be cited from other parts of the Americas. Migrations may be long remembered in oral histories of some native American groups, for example the Gitksan of British Columbia.

In Australia there are extremely few examples of geographically separated members of the same language family, and thus very little evidence of Aboriginal migrations in recent millennia, apart from those coming after colonisation. Yolngu Matha, the language of north-east Arnhem Land, is cut off from other members of the Pama-Nyungan family by a set of languages of different stocks. Certain languages of the Barkly Tableland are related to, but geographically separated from, certain other languages near the coast to their north-west (Chadwick 1997). This evidence suggests either that some people of the same language family migrated, or people of some different language family penetrated a pre-existing area of relative linguistic homogeneity thus creating outliers. But in these cases the separation events are extremely ancient. In a third case, a language found at the mouth of the Murray River in recent times may be considered originally to have been on the Upper Murray in far earlier times. Interestingly, the people in the latter case have oral histories in which their forebears are said to have migrated downriver. With these three exceptions and that of the Western Desert (see above) there is no compelling evidence of significant Aboriginal migrations in recent millennia.

While such phenomena as languages are constantly reproduced, albeit with gradual change, rather than being fixed entities ‘out there’ in time and space, their geographic stability in Australia seems to contrast massively with known historic cases of migration and official deportation, of language extinction and replacement, and other dramatic forms of discontinuity, most of which are identified with the conquest period and its aftermath.

In the Princess Charlotte Bay area of Cape York Peninsula the evidence for ancient continuities in the naming of both estate-holding clans and also in a
significant number of sites seems quite clear, although much detail remains to be published. This is an area of great linguistic diversity where the people had a classical tradition of high linguistic exogamy and multilingualism, and their languages had a range of rather distinctive sound systems. While the languages are related, there have been many sound-changes in their history of divergence from a common stock over the centuries. To exemplify this material briefly, note that members of one Barrow Point clan were known as:

- *Ama Ambiilmungu* (in Barrow Point Language)
- *Aba Almpilmiya* (in Flinders Island Language)
- *Mba Almbiyilmakaram* (in Lama Lama Variety 1)
- *Mba Mamilmu* (in Lama Lama Variety 2)
- *Bama Gambiilmugu* (in Guugu Yimithirr)

The first element in each rendering is the term ‘person’, which descends in each case from the ancient proto-form *pama* after which the Cape York Peninsula language family Paman is known. The second element consists of the estate name plus a grammatical suffix which indicates that the person is from that country (-mungu, -miya, -makaram, -mu, -mugu respectively). The proto-form of the estate name in this case may be reconstructed as *KaLmpiil*. How stable was the relationship between such estate names and the country on to which the names were mappable in the 1970s and 1980s is not subject to strict proof, but it seems abundantly clear that many of the estate names themselves descend in a continuous line from past forms spoken several centuries or more ago.

### The stability of the Wik

On the opposite side of Cape York Peninsula the highly parochial, insular, boundary-focused members of Wik coastal groups long ago developed a complex system of patriline-totem-place-dialect associations, the high conservatism of which came in part from their maintenance of complex batteries of gender-specific (and dog-specific) clan member names and other practices that made clan/estate ‘fluidity’, on anything but a very modest and gradual scale, extremely difficult to get away with. While such complex brakes on change are constantly reproduced, they are reproduced on a pattern of continuity that stands in stark contrast to the discontinuous patterning of Western Desert people’s constantly shifting and heavily residence-based avenues to person/place/Dreaming identities (conception site, site of initiation, site of parent’s death, and so on).

Having said that, I have also taken the view that Sharp’s image of lower Mitchell River society as one consisting essentially of ‘an ego-centred set of societies’ is an apt description of an aspect of classical Wik society as well, albeit one that has to be reconciled with the fact that ego-centred networks do relate in various ways to regional and localised groups including corporate groups, and are in no sense independent of them (Sharp 1968: 159. emphasis original; and see Sutton 1978: 116). But the view I expressed in 1978 was essentially synchronic,
not diachronic, and was worked out from my position at the Cape Keerweer heartland instead of after having worked with other Wik subgroups and seen something of their different perspectives.\textsuperscript{41} I have now done so. One cannot take one’s own ego-centred network picture, formed after a couple of years, as a substitute for a more experienced and travelled ethnographer’s picture of the polity and society concerned. To do so is to repeat the mistake of ahistorical synchronism but to do so in spatial terms. It is to look at the here without sufficient recognition of the there, just as we have often looked only at the now instead of also looking at the then.

What impresses about the hundreds of different ego-centred networks in this case is their high coherence and mutual conformity at the level of principles, ways and means, as well as in many details of the symbolisms through which relationships are transacted. Individual Wik assertions about personal autonomy (‘I am me, I am different, Nobody is boss for me’ etc.), vigorous and repeated as they might be, must be understood against this background of collectively shared rules for belonging, of shared understandings of means of construction of various kinds of groups, and a high degree of intersubjective agreement about how these principles map sets of persons onto the landscape at any one moment in a corporatist tradition.\textsuperscript{42} All of this occurs in the presence of some rather frequent conflict between members of some extremely labile residential aggregates.\textsuperscript{43}

I regard this kind of coherence in the midst of uncohesiveness, this mutual commitment to system, as the factor most likely to account for long-term stability in the relationship between Aboriginal groups and country. As a result of recent research into Moravian and Presbyterian church records and the pre-World War II manuscripts of Ursula McConnel and Donald Thomson, during the preparation of the Wik native title case, I am now able to see the temporal picture of Wik social organisation in a rather different light from the view available in 1978. What is readily apparent from tracing the histories of a wide range of Wik clans and estates over a period as long as approximately 160 years is their great genealogical, totemic and geographical stability, the persistence of their structural commonalities, and the rule-governed character of changes they may have undergone as to content. I hope to present detailed evidence for this proposition at a later date (in Sutton and Hale forthcoming).\textsuperscript{44} In the meantime, a more limited excursion into some Aboriginal land tenure histories from the Daly River region of the Northern Territory is contained in the section below.

How continuous was serial patrifiliation on the lower Daly River?

It has been possible to trace a number of clan/estate histories for the middle Daly River in the Northern Territory. There is good empirical support for the view that this area was overwhelmingly characterised by continuity of landed identity between generations rather than by discontinuity, over a period of some 150 years. The principal device of this continuity has been serial patrifiliation.

In the Malak Malak claim book I wrote:
Genealogies elicited from claimants indicate that traditional rights of land ownership are inherited from the father. This is not to say that there is an ideology of patrilineal descent as such. That is, long lists of ancestors in ego's patriline are not assiduously remembered and handed on, there is no identification of a single founding lineage creator for each land-owning group, nor are forgotten ancestors in ego's patriline automatically assigned the same estate as ego. When older claimants were asked about the estates of their fathers' fathers, they said they were the same as their own only if they knew this about the grandfather in question, and preferably if they had actually seen him. The same applies to linguistic group affiliations and dreamings (Sutton and Palmer 1980: 47).

There is, however, an argument for describing the system as one in which serial patrifiliation yielded, or perhaps reflected, the long-term existence of a set of groups which may be said to be patrilineal. After reading a draft of the Malak Malak claim book, W.E.H. Stanner wrote to me giving his reactions to it, and one of the passages with which he disagreed was the one just quoted. He said in part:

The whole question of estates, places of residence, patrilineality and patrifiliation still seems to me to need clarification. I incline to think that Scheffler has not really made his point, or that you are wise in following him. My opinion is that there is a strong tradition of patrilineality: this is the why of patrifiliation. But there is insufficient time to go farther. Nor am I sure that Mr. Eames [Counsel for the claimants at that time] can safely draw the points into his presentation of the case. I trust you will not cite me as in agreement (letter from W.E.H. Stanner to Peter Sutton, Canberra 2/6/80).

The main reason why I have re-thought this issue, so that I am now more in agreement with Stanner's views, is because the historical evidence presented below suggests that the patrifiliation principle in this region, over time, resulted by and large in a set of continua which were structurally important to the society, and which were greater in temporal span than any one generation could attest to through personal knowledge. The patriline had in this sense a life of their own, something that is not captured by an analytic focus on one-step filiations to fathers.

A comparison of Stanner's 1932 field data with my own of 1979, combined with some intermediate data gleaned from the Register of Wards of 1957, reveals that the countries, patrilinial totems and languages of those living in 1979 were predominantly the same as those of their distant patrilinial forebears who were described by Stanner's informants in 1932 (see Registrar of Wards 1957). A number of totems and language affiliations were also recorded for members of the same groups by a patrol officer in 1957 and these intermediate data fill a chronological gap between the two main sets of records. The data are presented in a table at the end of this paper.

I found only two cases where the patrifiliation mechanism did not apply wherever it could. In one case the estate of a man called Lukana did not pass to his children for some reason. In another case one man, Nugget Majar, together
with his descendants, pursued as their primary estate interest an area different from his father's Madngele country, the latter being on the middle Daly. The area he pursued was on the Reynolds River to the north. His siblings remained primarily affiliated to their father's estate at Daly River and he also retained an interest in it. He was found to be a traditional owner of the Malak Malak/Madngele claim area by Justice Toohey in 1982 (see Sutton and Palmer 1980: 47-48; Aboriginal Land Commissioner 1982: 35).

In the middle Daly record to 1979 the relevant patrilineal strings were up to six generations deep and stretched back, on a very conservative estimate, as far as the 1840s, more likely to the 1830s or earlier. In constructing guesses about birth dates of 19th century people here, I have used 25 years as a conventional estimate for a generation, but in the case of father-child average age gaps it has to be regarded as a minimum. Many times in the data one finds the first child was born when its father was about 25, but later children were still being born when the man was in his fifties, for example. Overall it may be that 35 is a more accurate figure and the birth dates of the earliest recorded clan forefathers could thus be closer to the 1810s than the 1840s and 1850s.

In many cases even my most senior informants were only children or were very young adults in 1932, and Stanner's informants were by and large senior people from the same families who were deceased by 1979. I did not convey Stanner's information on these topics, nor that of the 1957 Register of Wards, to my informants. In that sense the record was greater than the knowledge of any living Malak Malak person, either in 1932 or 1979, and the continuities it revealed were 'innocent'. It is theoretically possible that Stanner's informants systematically guessed at the affiliations of the grandparents they had not known personally, but I regard this as unlikely, given that in so many cases no affiliations were recorded beneath their names.

Briefly, patrilineal totems and estate affiliations were more stable than language affiliations, although the latter were also very conservative in patrilineal transmission. Among the extinct totemic clans were one or two whose remembered linguistic affiliations were in dispute, a situation that presumably would not have been likely had they survived. Preferred estate names had sometimes changed over time, involving a shift of focus from one main site to another, but these sites generally can be shown to belong to the same continuing estate. This is in my opinion likely to have been a product of biography in some ways—key individuals and their entourages becoming identified with different base camps at different times. It suggests a nexus between use of country and the way it is constructed in terms of named units of tenure.

The picture is in this case complicated by the fact that some estates overlapped at major resource sites or shared a similar environment and thus in several instances two or three estates could be known by the same name, namely that of a major place or that of a species used as an ecological typifier. This kind of 'ambiguity' of group names may have been not so much a case of 'blurring' but a kind of polysemy, one that was both a reflection of alliances between
neighbours and, quite possibly, a device which lent itself to smooth processes of estate amalgamation, fission and succession.

To take one case as an example, the family tree for Malak Malak Land Claim Group 3, as remembered in 1979, and as is so often the case, only went back as far as the grandparents of the oldest living members, to their father's father. Stanner, however, had worked with the father of these oldest members, who was able to name and assign country, totemic and linguistic affiliations to his own ancestors to the grandparental generation also. As he was born in 1895, the birth dates of his grandparents could have been in about the 1840s, but probably earlier for males because of both their expectable later marrying ages than females and their capacity for a higher reproductive age. In this case the estate of Dek Dilk and its clan's principal totem of Red Kangaroo were thus recorded for all patrifiliative generations from the early or mid 19th century to 1979. There are a number of other similar cases.

But language affiliations were a little more unstable: the 1979 members of Group 3 identified their language as Malak Malak. Stanner's informant's language is surprisingly recorded as Marranunggu, but his own father's (and mother's) language as Madngele. In 1957 he was recorded as Malak Malak but this has long been used not only as a name of a particular language but also as a kind of 'nation' name for members of both the Malak Malak and Madngele language groups, so the evidence there is inconclusive.

For those 13 patrifiliial groups still extant at the time of my own research on the Malak Malak, Madngele and (part of the) Kamu areas:

| Estate same in 1932 and 1979: 10 out of 13; 3 uncertain |
| Totem same in 1932 and 1979: 8 out of 13; 4 uncertain. 1 same 1957/79 |
| Language same in 1932 and 1979: 9 same; 2 shifts. 2 unclear |

The details are set out in Appendix A.

Conclusion

For indigenous claimants to prove their native titles in Australia, among other things they need to show not only that they have rights in country according to their own system of laws and customs, but also that such a system is a rightful descendant of an organised society which most probably occupied the relevant area at the time when British sovereignty was established.

In the ethnographic writings of the colonial era and later, one can detect a certain relationship between sympathy for Aborigines as human beings and the degree to which writers took an interest in and informed themselves about the systems of social and local organisation of the people about whom they wrote. Detractors of Aborigines not uncommonly accused them of leading a Hobbesian kind of life, of being not only nomadic and propertyless but also capricious in decision, lacking in law and religion, and thus deeply unsystematic as a people. Their defenders often said very much the opposite, but the ethnographers tended
to do so in the context of providing evidence as to how local Aboriginal society was organised.\footnote{55}

A.W. Howitt, for example, said that the Kurnai people of Gippsland had 'an 'unwritten law' of extraordinary force' (Howitt in Fison and Howitt 1880: 186) and proceeded to demonstrate this in a series of publications covering kinship, marriage, inheritance of property, camping rules, social and local organisation, and many other aspects of what would now be called their system of customary law. But he also felt constrained to defend the Kurnai against 'the usual charges which are made against the Australian aborigines generally ... The counts of indictment may be said to be—Superstition, untruthfulness, selfishness, ingratitude, immorality, cruelty, and finally, disregard of human life' (Howitt in Fison and Howitt 1880: 255). And, he might have added, disorganisation, although this is hardly of the same order as these moral states.

In the jargon of earlier days, the more organised a society was, the more 'advanced' it was, and thus the more it had to be taken seriously by colonial powers. If a society failed to exhibit a certain ill-defined quantum of organisation—and especially if it failed to exhibit sedentism and horticulture—its lands might be regarded as \textit{terra nullius}. Curiously, this idea resonates again in the context of proof of native title, and at both historical ends of the process: the indigenous society at the time of sovereignty has to be shown to have a system of a certain order, and the claimants themselves do also.

So once again a certain mutually reinforcing relationship between support for indigenous interests and a stress on systems thinking in anthropology becomes possible, albeit in a different way. In making a defence of 'systems thinking' at this time, I do not wish to underestimate the evils of a temptation to exaggerate systematism at the expense of ethnographic honesty. But there is also a counter-temptation: an anthropologist who was politically unsympathetic to native title claims, at least those in areas where classical cultures had been most affected by colonisation, might be equally tempted to exaggerate the disorderliness and fluidity of evidence as to the persistence of customary tenure law among the claimant groups.

It is, however, a third temptation which has mainly been the subject of this paper. This is the seductive progressivism of certain recent developments in social theory, under which ethnographic evidence of fluidity and non-lethal forms of anarchy enjoys a rather more glamorous standing than evidence of regularity, regulation, stability and more or less continual repetition. Given all these temptations, and while none of us ever escape from our conscious and unconscious theoretical leanings, in a forensic context such as native title research and writing it is perhaps increasingly important for us to somehow separate ethnography from interpretation where we can.

One approach to writing anthropology, including that used in tenure cases, is to make a series of general or theoretical points, perhaps addressing some current issues or, in a forensic context, legal requirements, and in each case to draw on one's ethnographic knowledge in order to provide evidence or
illustration of the general point. I think this approach lends itself to the three temptations discussed above.

A rather opposite approach is to systematically and non-selectively lay out the ethnographic and other evidence that properly falls within the domain of the piece of writing, and then separately to raise the relevant theoretical points or legal requirements of proof, using the ethnographic and other evidence as a source against which to test various competing interpretations. This is, of course, no guard of itself against selective attention during the processes of fieldwork and literature research.

There is a popular argument that 'you can't separate ethnography from theory'. In some contexts this is true, but in other contexts a broad separation of this kind is common sense and common practice. One can easily point to vast bodies of evidence that demonstrate, for example, that while anthropologists may agree as to what terms and behavioural prescriptions are used among which kin in a certain society, at different times their theoretical interpretations of 'how the kinship system works' in that case can vary wildly.

It is at this level that I suggest practitioners consider the advantages of distinguishing evidence from argument, especially in the context of proceedings that may end up being litigated, for example, in the Federal Court of Australia. The guidelines for expert witnesses in that jurisdiction, recently released by the Chief Justice, require experts to, among other things, disclose the 'facts, matters and assumptions upon which their [opinion] report proceeds'. To that extent, Australian law is attempting to impose a separation of ethnography from interpretation in some of our work. Before engaging in reflex actions to this imposition based on our usual healthy distaste for legal positivism, we should consider the advantages of such separation for the enduring value of our work and its credibility when communicated to others.
### Appendix A

#### Group: 1

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<td>Mai 60</td>
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</tr>
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<td>Language 1957:</td>
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<td>Madngele, more recently MM</td>
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# Aboriginal Country Groups

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<td>Totems 1979: Fresh-water Crocodile, Water</td>
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<td>Language 1979: Kamu</td>
<td>Gen's to 1979:</td>
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## Notes

1. Acknowledgments: In particular I thank the Malak Malak, Madngele and Kamu people of Daly River (Northern Territory) with whom I worked in the period 1979-81, for their patience and attention to detail. I also wish to acknowledge the following people for their assistance in providing information or for helpful comments on drafts during preparation of this paper: Barry Alpher, Geoffrey Bagshaw, Kenneth Hale, Luise Hercus, Komei Hosokawa, David Martin, John Morton, David Nash, Bruce Rigsby, Patricia Stanner, the late W.E.H. Stanner, Marian Thompson, and James Weiner. The Northern Land Council funded the fieldwork and initial analysis in the Daly River case and gave permission for publication of certain materials.

2. Australianist anthropologists with a legal background have been rare until recently, although Kenneth Maddock is one notable exception. A number of the earlier figures such as Spencer, Thomson and Tindale, came from disciplines like zoology, a number came from dentistry or literature or even less related subjects, and some were thoroughbreds. In the last decade I have noticed a cohort of newer anthropologists emerging who have qualifications, if not practical experience, in the law. Whether this will have an impact on the character of anthropology here remains to be seen.

3. See (1992) CLR 1 at 42 per Brennan J., at 191 per Toohey J., and at 110 per Deane and Gaudron JJ., emphasis added.

4. Here I intend ‘practices’ to cover both rules and action and the often untidy mesh between them.

6. I think there is a similar and related tendency to project Western Desert approaches to kinship and genealogy on to other groups. This applies especially to the view that the degree to which Western Desert people downplay physical parenthood and the actual/classificatory distinction is typical of the whole continent. I would instead regard their genealogical thinking as at one extreme end of the spectrum, a long way from the degree of emphasis on elaborated and socially very significant distinctions between various kinds of physical and social parenthood which have been reported for groups in better-favoured parts of Australia, where people also maintain the actual/classificatory distinction between grandparents, for example, with what seems to be a great deal more robustness than do Western Desert people. A psychologically interesting question here is what would motivate certain anthropologists to prefer to think that all Aborigines are like the Pintupi in just these particular respects—the fluid social groupings, a land tenure system that focuses more on individual connections than any other does, the absence of a strong descent principle, and the least emphasis on the physical aspects of human reproduction when it comes to reckoning kin.

7. McLaren Creek station is not far south of Tennant Creek and straddles the Stuart Highway. The McLaren Creek claimants came from several groups which were affiliated (in various combinations) with the languages Warlpiri, Warlmanpa, Warumungu, Kaytej and Alyawarre. Of these, Warlpiri and Warlmanpa affiliates were linguistically and culturally those who most resembled Western Desert people.

8. It is useful to distinguish ranking by cultural importance or ideological prescription from ranking in terms of frequency of action. The two seem at times conflated in Keen’s account.

9. The archival resources probably exist that could answer the question of how stable McLaren Creek land-holdings groups have been from at least about the 1830s to the present, as T.G.H. Strehlow and W.E.H. Stanner worked in the region in the 1930s and Stanner, at least, recorded genealogies. The field materials of Baldwin Spencer and Francis Gillen may take the same family trees back to the 1780s or so, should they include sufficient linkable data.

10. McConvell (1996), using linguistic, archaeological and genetic evidence, estimates that the spread of the Western Desert language and its speakers east from the Hamersley Ranges began less than 3,000 years ago, and their intensive contact with people who have Arandic languages (for example, in the Hermannsburg-Alice Springs area) was probably only achieved in the last 1,000 years. There are multiple records of Western Desert expansion occurring on its eastern, southern and western fronts, at least, at the time of colonisation, including some evidence of the retention of place-names from predecessor languages whose areas had recently contracted. I hope to list and discuss these records in a later and more detailed overview of the Western Desert situation.

11. Cohesion may be structural more than interactive, and sometimes it is both. Even conflict can be a form of interactive cohesion, especially where those in conflict share large common grounds of culture and social organisation.
12. Here I am arguing for a more historical Australianist anthropology rather than just more historical studies. Francesca Merlan's recent (1998) book on the Katherine area is roughly in the genre I refer to. There is room for plenty more. Just to give one example, there is remarkable scope for an historical anthropology of the people of south-west Western Australia, given the area's rich archival sources, the records of various ethnographers including the formidable Gerhardt Laves, the ground work of Lois Tilbrook, Neville Green, Sylvia Hallam and others, and the amount of new family history research being generated there for native title claims.

13. This is not to suggest that the area had not been through serious demographic loss and upheaval in the colonial era and afterwards, nor that succession claims were undisputed, nor that the linguistic identity of one or two extinct clans was in dispute, for example. But what is in fact most impressive is the extent to which they had held to certain basics among their ancient principles of landed and group identity throughout this traumatic era.

14. In pre-colonial times there were also labile camps or residential aggregates of people with different languages, but it is unlikely they would commonly have been as heterogeneous in ethnicities as the Wallaby Cross mob.

15. To do so appears to have been a common or standard practice in the writing of ethnographies in the past, but has become very rare.

16. Kaberry's figures (1939: 115) are, in more detail: Lunga (1) 83.1 per cent, Lunga (2) 83.7 per cent, Djaru 80.7 per cent, Kunian 91.6 per cent, Punaba 85.0 per cent, Wolmeri 95.5 per cent. Other renderings of these language names include: Kitja (Lunga), Gooniyandi (Kunian), Bunuba (Punaba) and Walmatjarri (Wolmeri).

17. Here I leave aside the question of recent changes due to the impact of non-Aboriginal society.

18. Here as in some other cases one can take the evidence in two ways. One could read it as evidence of rule-breaking and thus of the indeterminate character of, say, patrimoieties exogamy. On the other hand, one could also read it as a powerful sustaining plank in the argument that patrimoiey affiliations and their relationship to the transmission of country interests are so vital to the stability of the social fabric that a firm and sacrificial method of dealing with intra-moiety (or other wrong) marriages has long been instituted that yet again removes or vastly reduces optation.

19. As David Nash has pointed out (pers. comm. 1998) this phrase is ambiguous between 'variation that is regular' and 'variation (possibly irregular) of a system'. I mean it in the first sense here.

20. Warren Shapiro (1981: 101-2), however, rejected the view that filiation is to descent as individuation is to corporation.

21. See, for example, the relevant definitions of corporate groups in Barnard and Spencer (1996: 599) and Barfield (1997: 86).
22. Keesing (1975: 148) has the rider that a clan’s members ‘do not know the genealogical links that connect them to this apical ancestor’. Barnard and Spencer (1996: 598) similarly say clan is ‘usually defined as a lineage or cluster of lineages in which the exact genealogical connections between all members cannot be traced’. Others do not suggest such ignorance to be a necessary part of the definition. Michael Rhum (in Barfield 1997: 62) says a clan’s members ‘may share a common name or ancestor, assume they are related, but not be able to trace the links among the component lineages’ (emphasis added). Interestingly, The Macquarie Dictionary (1991: 332) gives as its first definitions ‘a group of families or households, as among the Scots, the heads of which claim descent from a common ancestor. ... a group of people of common descent’, but gives an anthropological definition without any emphasis on apical ancestors: ‘an association of lineages which have certain interests in common, as the regulation of marriage, common territory, rituals etc.’.

23. The earliest remembered ancestors are often a set of siblings, their very status as such being something that rests on having a common parent, but the emphasis is often on this siblinghood rather than on a single (implied) apical ancestor.

24. This includes at least some Arrente in Central Australia (John Morton pers. comm. 1998). In north-east Arnhem Land, in the Laynhapuy region, Komei Hosokawa (pers. comm. 1997) has found that ‘it is often the case that several outstanding male individuals (charismatic leaders, warriors, or negotiators with Balanda [Europeans]), usually three or four generations up from the present, are regarded by the clan members as ‘No. 1 person of the tribe’. For example, Gumana in Dharlwangu clan, Wonggu in Djapu clan. It is important to notice that these recent ancestors are quite often the starting point of a new named lineage (sub-clan). Gumana is now a Dharlwangu surname and people tend to consider that Gumana Dharlwangu and non-Gumana Dharlwangu (e.g. Wurnungmurra family) constitute separate bapurru (clans, ceremonial groups). Both groups require representation in land rights talks such as Northern Land Council-organised meetings to deal with mining company’s exploration proposal etc.’.

25. There are actually some names that are not so shared between senior and junior segments of the same clan in some cases.

26. In a rather different sense I was forcibly struck during fieldwork, especially in the months I spent in a remote outstation area, by the extent to which so much of daily life, including conversation, story-telling work and recreation, for example, contained so much sheer repetition, and I seemed to be the only one who was unused to it. Fred Myers has written somewhere, as I recall, about having a similar kind of experience among the Pintupi.

27. ‘The ‘structure’ of an organism exists ‘independently’ of its functioning in a certain specific sense: the parts of the body can be studied when the organism dies, that is, when it has stopped ‘functioning’. But such is not the case with social systems, which cease to be when they cease to function: ‘patterns’ of social relationships only exist in so far as the latter are organised as systems, reproduced over the course of time’ (Giddens 1979: 61–62).
28. Ian Keen's work is now moving in the direction of filling this important gap (pers. comm. 1998).


30. For example, Mudbura (Sutton 1983: 85).

31. These 'one leg' sets were probably phratries, at least in the northern half of the south-west.

32. The comparison was restricted to lexicon and phonology as the Cook and Banks material did not include sentences or text. Barry Alpher has calculated that the 200-year vocabulary retention rate for Guugu Yimithirr has been 87 per cent, but even this is lower than it would have been if stable items such as pronouns had been included in the Cook and Banks list (Alpher and Nash (in press)).

33. For evidence regarding this in the upper Roper River region, see Merlan (1981).

34. Families such as Mayan in Mesoamerica and Arawakan, Tupian and Cariban in South America have their members scattered over vast distances, interspersed among languages of different families. Such discontinuous language families are graphically visible in a number of the maps in Campbell (1997: 353–76).

35. See, for example, Sterritt et al. (1998: Chapter 2) on indigenous migration histories in part of British Columbia.

36. This has been the conventional way of putting it since Hale's work of the early 1960s and as shown in the map in Dixon (1980: 20), although Dixon himself is now questioning the Pama-Nyungan genetic grouping; nevertheless he does say that there are only two exceptions to the statement that all members of genetic linguistic subgroups in Australia are geographically contiguous—presumably referring to the Yolngu and Barkly cases cited below, see Dixon (1997: 92).

37. See Bell (1998: 97–98, 617), where she relies in part on unpublished linguistic work by Maryalyce McDonald.

38. The mosaic geographic patterning of language varieties which are associated with sets of non-contiguous clan estates in the Wik region of Cape York Peninsula is only a partial exception to this, as the languages concerned are all of the same subgroup and the 'migrations' that would explain the pattern are highly localised cases of personal or small kin group succession at the estate level, not movements of whole language groups across the wider landscape.

39. Bruce Rigsby and I have overlapping data on over 150 named geographic groups, most of them clans and the relevant estates, for this area, and hope to publish an analysis of them at a later date.

40. Lama Lama data kindly supplied by Bruce Rigsby (pers. comm. 1993).

41. By contrasting the synchronic and diachronic in this paper I do not mean to suggest either is free of time, merely that the synchronic is an event or set of states belonging to a short time, relative to the question or project at hand, and the
CONNECTIONS IN NATIVE TITLE

diachronic is one belonging to a suitably longer time, again relative to the question or project at hand.

42. There is considerable variation in the construction of the individual across Aboriginal Australia, contrary to the rather unitary impression one might gain from reading Hoyt Edge's paper on the subject (Edge 1998).

43. The musical metaphor that seems most apt here is jazz, central elements of which may sound like disorder to some listeners, while insiders hear the musical sub-orders of syncopation, improvisation, and deliberate variations from harmony consisting of dissonances cast against the main melodic line. What is notable about much 'disorder', in my field experience, is its intentionalness.

44. Kenneth Hale will there present the results of a detailed study of linguistic evidence bearing on the question of the long-term geographic stability of Wik languages, prepared initially for the Wik native title claim.

45. This was probably a reference to Scheffler (1966: 543).

46. The estate of Lukana (from 'Lucanus') was numbered 6b in the claim materials; succession to this estate had been by Malak Malak and Madngele people collectively. Lukana's clan had been of the Malak Malak language and Magpie Goose totem, and its country name had been Wak Chirraymoe. The estate of the father of Nugget Majar was number 12, see below.

47. Time has not permitted a search of Jesuit and other records that pre-date Stanner's 1932 fieldwork.

48. Frederick Rose found at Groote Eylandt in 1941, where polygyny was high, men having up to six wives (1960: 69), that for wives aged approximately between 14 and 39 'the average age of the husband was almost constant at about 42 years and it did not vary with the age of the female' (1960: 475). The average age difference between a man and his wife was 17.75 years, the maximum being 41 years (1960: 63, 91). By contrast, at Angas Downs in Central Australia, where polygyny was very rare (only one case, a man with two wives (1965: 54)). Rose found the average age difference between husbands and wives to be only 6.8 years (1965: 82). At Daly River polygyny had been the rule, although it had fallen into disfavour with the Malak Malak by 1932, but the age gap between women and men on first marriage was still considerable, women getting married soon after puberty, men getting married only after reaching the third stage of initiation and often much later (Stanner 1933: 14).

49. The part of Stanner's material which I did put to my own informants consisted of the many site names which were useful in jogging memories of some of the more obscure places that were to be mapped.

50. A knee-jerk fluidist would remark that this shifting of the estate name between sites in the estate revealed that the naming of estates was 'labile' or 'indeterminate'. But if these shifts reflected changes of base-camp emphasis and the role of personal factors such as clan leadership, they were systemic and in that sense determinate.
51. Such estates which shared a name were not necessarily of the same language affiliation. While it is possible to argue that estates were nested hierarchically beneath a language identity, these estate clusters which shared names were not.

52. His FF's language was not recorded by Stanner. A shift in the record from Madngele to Malak Malak is not surprising, and is complicated by the fact that 'Malak Malak' has a second, perhaps now socially dominant, sense in which it refers to both languages. It is possible Stanner's informant actually said Nguluk-Wanggarr, which appears to have been an older name for what became called Malak Malak in post-colonial times (see Berndt 1965: 191; Birk 1976: 1–2) and may have sounded like Marranunggu, but this is drawing a long bow.

53. Of these eight, half were also the same in 1957.

54. Of these nine, three, possibly four, were also the same in 1957.

55. This is not to suggest that defenders of Aborigines in that era rejected terms such as 'primitive', 'stone-age' or 'savagery' in describing Aboriginal societies, and many used these descriptions at the same time as they explored the intricate local rules relating to descent of kin classes, totems and so on.

56. This is a not uncommon procedure in the writing of grammars of little known or previously unrecorded languages. Dixon (1972: xix) refers to his grammar of Dyirbal as being written as two 'levels', one consisting of a description of the mechanics of the language and the other, which is mainly in a separate chapter, setting up explanatory generalisations and describing the 'deep' grammar of the language. Frequently, linguists publish a 'reference grammar' which is mainly descriptive of a particular language and, if well done, not likely to be challenged very much or to change over a long period, and they separately publish theoretically informed interpretations of the data it contains. See, for example, discussion of this approach in Nordlinger (1998: xi).

57. This estate name is recorded a generation earlier also: Basedow (1907) refers to 'the Djiramô clan' of this area, i.e., Chirraymoe.

58. The estate includes the northern half of the focal site Chirraymoe (= Tjiramu, Tjiramur, Djiramô).

59. That is, wugurr, the Pheasant Coucal (in Malak Malak).

60. Possibly Malak Malak mel, the Green Frog.

61. One extant lineage in this group was in 1979 represented by a set of childless siblings, the father of whom was born in about 1892–1902 according to Stanner (1932). Elsewhere his birthdate is given as 1900 (Register of Wards 1957). Stanner recorded the genealogy back as far as his grandparents but details are lacking for his FF: his F was of the same country, language and totem as himself and his children. Members of the other lineage of this clan are descended from a man born in c.1892–1897 (Stanner 1932: Census) whose genitor was Chinese but whose country affiliations appear to be normal Malak Malak ones. It is not clear, however, that he followed the country of his Aboriginal stepfather, but as that of his mother is
given by Stanner as Pamaiak the balance of probability is that he did follow his stepfather for country. Both his parents were Malak Malak.

62. Although the genealogy is shallow, the earliest man in the extant lineage on whom we have details was born in about 1882, and a member of another lineage of the same affiliations who left no descendants was born in about 1872; the latter's father, estimated to have been born in about 1847, had the same name but his other details were not recorded (Stanner 1932: Census). Names tend to recur in the same patrilineage.

63. Stanner’s 1932 informant (born c. 1892) is shown as ‘M'nunggo’ language but gave his father's language as Madngele. His descendants identify as Malak Malak. His FF was of the same country and main totem but his language was not recorded by Stanner.

64. The earliest recorded person in this patriline would probably have been born in about 1840 or earlier.

65. Dek (Stanner's dag) in Malak Malak and dak in Madngele mean 'country', and wak in Malak Malak and wuk in Madngele (Stanner’s wak, wag, wog, work or wok) mean 'water, waterhole'. Dek and wak, for example, may alternate when used of sites which are e.g., lagoons.

66. The earliest recorded patrilineal ancestor in this clan was the father of Jack White, the latter being, at the time of Stanner’s 1932 census, 30-40 years old; his father is thus estimated to have been born in about 1867-77. As Jack White was not the first-born of his siblings this estimate is doubly conservative.

67. Stanner’s 1932 census shows two women under this heading, but in his genealogies their country is given as 'Koramb', i.e., Kuwarrangbayende (cf. group 10). Since Kuwarrangbayende is in the same western reaches of Malak Malak country as Pamayak, and Stanner’s (1932) notes state that Dagtimba is close to Dagwanit which is close to Pamayak, and the clan is recorded both in 1932 and 1979 as Possum, there is a good possibility that Dagtimba and Kuwarrangbayende were equivalent names for this group’s estate.

68. Although the extant lineage in 1979 had two members, both were elderly (the older born c.1902) and their FF Judburr would have been born in about 1850 or earlier. Stanner’s genealogies show that others of the same clan alive in 1932 included two women of 50 plus. The names of their fathers are in Stanner (1932), but no other details. Such ancestors would probably have been born in the 1840s or 1850s or earlier. Tipperary Jimmy Jarraranginy, also a member of this clan, was born c.1872 (Stanner 1932).

69. The last of this group was elderly in 1979, born in 1920 according to the Register of Wards (1957) but he seemed a lot older. and in 1932 only his father, on his agnatic side, was recorded by Stanner.

70. In Sutton and Palmer (1980: 51) I assigned this name, respelled Wak Kayirr, to this estate on the basis of Stanner (1932). I am now not sure how I made the connection between Stanner’s data and the living claimant remaining in this clan.
71. This is clearly Malak Malak *kurrwak*, the kookaburra.

72. There is a dearth of records in this case, the only information to hand being that one living person took this country from her father, by 1979 deceased, but nothing more is known to me and her line does not appear in Stanner's field data.

73. I have been unable to find a location for this in Stanner's notes.

74. One senior man held the view their language was Madngele.

75. A Pelican site. This estate also includes Kuwarrangbayende, Stanner's 'Korambaienda', a Red Catfish site formerly a base-camp.

76. This record goes back to the FF of Fred Marirrik, the latter born in 1905 according to the Register of Wards (1957), and to the FF of Barney Karar, born in 1900 (same source). By 1979 Barney and Fred had been long dead without descendants and were listed by my informants as brothers of two people who did have living descendants. Stanner's genealogies make it clear they had the same totems and country but came from distinct lineages, although one informant appeared to conflate their parentage, as my own did more consistently in 1979. This is a clear case of parallel cousins being merged as actual siblings in retrospect.

77. The oldest living member of this clan in 1979 was a man born in about 1929 (Stanner 1932) whose father Mickey Jarrwak Ngenpayp was also recorded by Stanner as being from Hermit Hill and was aged about 45 in 1932, i.e., born c.1887. The latter's father Jarrwak (or Jumunik) would have been born about 1862 on a conservative estimate. Jimmy Lermiri of the same clan was 60 plus in 1932 when Stanner recorded his father's country as having been Hermit Hill also (Stanner 1932). Lermiri's father would have been born about 1845.

78. Possibly given here in its broader sense as the cover-term for both Madngele and Malak Malak proper.

79. This is complicated by the fact that a senior patri-descendant of this group, Nugget Majar, called his language Weret, which is Ngankikiringgurr for Madngele (see Stanner 1933: 388) and pursued inceptive tenure interests in country north of Daly River in the Reynolds River area as well as his father's and siblings' country at Daly River. He retained his main totem as Freshwater Crocodile. His own descendants now call their language Weret ('Werat') and claim country in the Reynolds River area. He used to spend a fair bit of time, when in Darwin, based at the camp Sansom has called 'Wallaby Cross'.

80. Nugget Jurminy, FF of the senior members of the clan in 1979, was the father of King Dick Parrak who was 50-55 years old in 1932 (Stanner 1932). Attributed with the same country and clan totem as his son and sons' children ('Wogkaiyir' and 'crocodile' respectively), he would have been born in about 1852-57.

81. That is, Wak Ngulukmoenat, also referred to in Kristen (1899) as 'ngolloc munet', then also a name for the Aboriginal people of the Coppermine and Smelters area. This is the name of a focal site, the billabong and hills at the Coppermine. The site name was still in use in 1979.
82. In 1979 the Dak Milngin estate included the site Wak Ngulukmoenat.

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ABORIGINAL COUNTRY GROUPS


2. Generation and gender differences in genealogical knowledge: the central role of women in mapping connection to country

Introduction

An essential component of the preparation for native title determinations is the documentation of connections amongst claimants and to country. As one claimant explained to me: ‘You should have the songlines and the bloodlines for your land’.¹ Genealogies can be seen as providing in summary form the charter for both avenues of connection. In one respect, genealogies represent the bloodlines, and allow the diagrammatic representation of continuity of connection to distant ancestors. However, the links displayed encapsulate strands and levels of connection and affiliation, which are masked by the apparent simplicity of the diagram. Genealogies map not only the bloodline universe; they also contain in compressed form, information about birth, conception, death, and burial sites; spiritual affiliations with country, language groups, moieties and sections; marriage; and descent pathways. As such, the links depicted in genealogies often display the claimant population’s connections to both their songlines and bloodlines.

Because of their capacity to present a complex of data both simply and in a format that is understandable across professions, time and informant populations, genealogies are a powerful evidentiary tool in native title process. Anthropologists researching family histories are able to draw on genealogical material collected by Daisy Bates, Norman Tindale and the Haddon Expedition; information contained in government files; as well as requesting colleagues to access their research collections.²

Underlying all genealogical material are questions about its source. The regions where fieldwork has been carried out contained people living in a range of circumstances from small island villages to isolated government settlements to urban suburbs. Although there exists a widely held view amongst professionals working in the native title field that claimant populations can readily inform anthropologists about their genealogical histories and should therefore have little difficulty in identifying the membership of tradition-derived groupings, recent fieldwork experiences have demonstrated otherwise. There is a growing trend—heightened by the uncertainties associated with the current political climate—of division and argument in the formation of groupings and the construction of genealogies. Family history compilation in regional populations in Torres Strait, Cape York and Western Australia has highlighted differences among informants according to their gender and generation, with respect to the depth, breadth and detail of their genealogical information. Disputes about genealogies arise from these differences. Anthropologists researching family histories need to be
sensitive to the gender and generation divisions in knowledge and crosscheck their material accordingly.

Four recurring and related problems in the construction and documentation of genealogies have been encountered. The first concerns the fragmented nature and reliability of information; the second, the validity of connections; the third, issues of privacy and intellectual property; and finally, issues of choice in descent and filiation. Generation and gender differences with respect to the content, access and release of information underlie all four issues.

Gender and generation
Anthropologists constructing genealogies for native title claims need to consider the effects which the generation and gender of informants can have on the information obtained. There may be differences and divisions between older and younger people and between men and women with respect to the depth and range of their genealogical information; and with respect to their knowledge about spiritual connections to country. These differences can be seen as arising from different experiences of colonisation and later contact; from differences in exposure to European models of family structure; and from differences in accommodating to the current changes in the wider Australian society. Younger informants may offer family histories which are later found to be incorrect. Often, elderly people criticise genealogies compiled by younger generations, on the grounds that younger people do not know the details of their family histories and, more seriously, that they do not understand indigenous Family Law. Younger claimants sometimes evaluate genealogies given by their older relatives as unreliable because of the declining or confused memories of the informants. This particularly arises when younger claimants challenge classificatory relationships which they perceive as misrepresentations of biological links in genealogies. Older people stress that younger generations are not privy to information about secret adoptions, compressed genealogies, and the historical reasons for the preference of particular lines of descent over others. Some of this information is imparted to younger people during the resolution of conflicts and uncertainties in their genealogies. Such confusions are a recurring inter-generation problem in genealogical research for native title claims.

In addition, there are differences between men and women with respect to their access to, and knowledge of, both genealogical or bloodline history and religious or songline information. For a range of reasons, many elderly informants who are providing genealogical material for native title claims are women. These senior women have become the 'living encyclopaedias' of family and social history. Some also have rich knowledge of spiritual connections to country. They continue to participate in the religious sphere and to impart this knowledge to their descendants. However, changes in women's general participation in religious activities have affected their connection to the traditional sacred realm. Whereas formerly women, like men, had gender-defined participation in religious life, many younger women in claimant populations feel themselves divorced from the spiritual realm of their grandmothers and unable to access it. Young men also
have experienced this divorce from the traditional religious sphere, but to a lesser extent. These developments have had significant consequences for the mapping of social groups and connections in native title claims.

The fragmented nature and reliability of genealogical information

The fragmented nature of some genealogical information can bring into question its reliability as a source of evidence for connection. This is a particular issue for many claimants who are themselves or who have 'stolen children' in their family histories. Genealogies collected for people living on mainland Australia contain people who were removed from their families and placed in government institutions. Some are now the oldest living members of their families, and it is to them that younger members turn for family history information. These elderly people are forced to delve into what has been a repressed past, and pressed to recall the names and connections of deceased ancestors from whom they were often traumatically removed. Name recall itself can be problematic in those communities where the traditional prohibition of naming the deceased continues to be respected. Collecting genealogical material from such elderly people asks them to remember and make public what for many has been a continuous grieving: for others, unresolved traumas of sexual assault, seizure of children, physical abuse, separation from parents, maternal deprivation, death through hardships and neglect. Such disclosures during the collection of family history do allow opportunities for comfort, consolation and the re-evaluation of the person's contribution within their family circle. In many ways there is an opportunity for the beginning of a cathartic process for these victims of violence. However, the fieldworker is rarely able to do more than inadvertently open a window for this. Much will depend on whether the informant is able to continue the emotional exploration of the past. Conflict can arise when younger family members, who are ignorant of the past history of their grandparents, do not understand the older generation's unwillingness to inform younger family members of their personal history. The documentary requirements of the native title process can provide an opportunity for the sharing of this past history.

Another reason for incomplete and fragmentary genealogical information derives from the systematic undermining of Aboriginal family structures which has occurred with the forcible seizure of children and their subsequent isolation in institutions. Although many have sought reunion with their families of origin, some have discovered on restoration that parents and grandparents are deceased and, with them, information about family histories. Such persons feel they have been robbed of their history. For some, the genealogies recorded by Tindale, Bates and the Haddon Expedition have become the prime source of family history material. Some of this genealogical information allows people to trace descent from ancestors who were connected to particular areas and groupings before the first European intrusions.

However, not all elderly people had their ancestors' genealogical histories recorded by earlier researchers, and because of their own experiences of separation, do not have the knowledge of family history that would be expected of
persons of their age and seniority. These people feel they are disadvantaged in the native title process. In some cases, they have been under much pressure from younger family members to provide the information required by the native title process and this has led to incidents of incorrect connection. For example, during recent fieldwork a situation was encountered in which the apical ancestor of a large descendant group was classified by members of a particular tribal group as belonging to them, on the basis that she was remembered as able to speak the language of that group. Her descendants denied the classification and were in conflict with the group that claimed her as their own. Subsequent inquiries outside the immediate families resolved this dispute and led to re-classification of this ancestor into the appropriate tribal grouping; and to the appreciation by younger generations that their ancestors could be polylinguists.

The incomplete knowledge of people who are presumed to hold relevant information can lead to hurtful accusations of convenient genealogical amnesia and genealogical fiction. Disputes within and between claimant families can arise from what are perceived to be incorrect genealogies. Archival materials and welfare records may assist the resolution of some cases. For example, information collected by Tindale, Bates and the Haddon Expedition has allowed the completion of family histories and the extension of genealogies to pre-contact times. However, the reliability of European documentary sources needs to be evaluated on a case-by-case basis. This is particularly so with European descriptions of indigenous responses to their initial intrusions into Aboriginal territories. Any misinterpretation of European historical descriptions can have serious consequences for the descendants of those who bore the brunt of this contact. For example, misinterpretations and differences in understandings of European accounts can lead to differences in the constructions of connection and identities. This can have serious consequences for claimant populations. For example, different perceptions of the affiliations of common apical ancestors can be held because sections of the claimant population interpret European historical documents differently. On occasion, some presumed connections may not withstand wider scrutiny.

The need to provide reliable genealogical information requires the crosschecking of genealogies with a range of informants, allowing genealogies to be extended as well as errors and omissions to be corrected. In the native title process, however, it can be difficult to do this for several reasons. Claimants may refuse to allow, or may erect barriers to, the inspection of their material by members of what are perceived as competing claims. Where inspection is possible, genealogies often show a tendency to narrow rather than expand family links. The genealogies may appear to be restricted on purpose to avoid what some claimants feel will be incursions into their country of distantly-related persons. Genealogies may contain information that is disputed, especially in the more distant ancestral generations. Older people are able to assist in the clarification of this information in a process that becomes a series of social history lessons for the younger claimant population.
The validity of connections in genealogies

The validity of some links in the native title process is also a matter of concern when constructing genealogies. An issue in claimant populations whose ancestral women gave birth to mixed race children, is the status of white genitors as apical ancestors in the claimant group. Common descent from a white genitor can unite families in their upper generations and, in some communities, has led to the formation of large cognatic descent groups. However, descendants often query the relevance of such ancestors for native title claims. In some cases, this has led to the denial of relationships between what were once considered branches within a family group. Divisions within some families have arisen. One solution has been to use the indigenous husbands of these apical women or the women themselves as key ancestors. This has led to the reconfiguration of family groupings.

Such realignments, when taken through apical women, have opened debate on gender and descent. This is particularly so in communities where patrilineal descent is regarded as the traditional and preferred organising principle. In some cases, where unilineal and, preferably, patrilineal descent is preferred, apical ancestors become ungendered. Their historical placement rather than their gender is of salience in native title, enabling the descendant population to establish ancestral connections to the earliest European intrusion into their countries.

This has had the effect, in all fieldwork regions, of heightening the importance of women as apical and connecting ancestors. Although there is evidence that many of the groups defined in native title claims can be described as restricted cognatic groups, fieldwork in two of the three regions suggests that over time this may change. Already, limited matrilines are emerging within the restricted cognatic descent groups encouraged by native title preparatory documentation. Some of these are five generations in depth and are evaluated by claimants as 'more indigenous' than those traced through male ancestors who may never have taken responsibility for the rearing of the children they fathered, and whose participation in the descent group depicted in the genealogy is debatable. This preference for choosing links through female ancestors creates tension between the desire to be inclusive versus the security of having descent groups defined through what are perceived as valid, unilineal principles. Women in all three regions do not resist this trend, for it enables them to be acknowledged as traditional owners in communities where men, at least since contact time, have held public political office.

A second, related issue is uncertainty about the validity of patrifiliation in cases where women have had multiple partners and their children serial, short term stepfathers. It is possible to find siblings who separately identify with different ancestral groups, preferring to trace historical connections through different genitors. This itself leads to overlapping claims and requires sensitive consultations to tease out the commonalities in the genealogies. In other cases, none of the serial male partners has been involved in the rearing of the children. Attempts by these children to claim connection in their adult life to their genitors'
families can be resisted by those families; denounced as opportunistic; and seen as rejection of their mother's family which has taken full responsibility for their nurturing. To minimise intra-family disputes, some claimants resolve the situation by choosing those links where demonstrated indigeneity and responsibility cannot be challenged, and these are often connections through women.

With the status of white paternity questioned, coupled with the debate on the value of men generally as connectors to family, links through women are becoming increasingly important. This is having a significant effect on genealogical construction. The consequences for emergent forms of indigenous social and economic organisation are evolving, assisted by the native title process which requires the enunciation of rules of association derived from traditional precedent. In Torres Strait and Cape York communities, patrifiliation is recognised as being the dominating organising principle of connection to country in pre- and early contact times. However, its hegemonic role is challenged by changes in family structure. Communities in Cape York have experienced a decline in church marriages, an increase in short term and de facto relationships, an increase in single parent, female headed families, and increased population mobility. Children born from casual unions tend to be classified with their mother's and/or mother's mother's group. They may also be affiliated with their father's group, if he acknowledges his connection to them and takes responsibility for their maintenance. In the 1990s, men are not always prepared to play this role. A comparison of family structures and clan affiliations recorded for one community in 1970 and 1996 shows a trend towards the devaluation of patrifiliation in the construction of genealogies. Changes in family structure have occurred on a great scale in southern Western Australia. A second generation of women is now experiencing the major responsibility for raising children. It is not surprising therefore that women's role in the configuration of genealogical groupings is increasing in importance, with the tracing of descent through matrifiliation becoming more frequent, reflecting existing family practices.

The situation of some Western Australian communities is more complex than that observed in Cape York Peninsula. Since the 1890s, the indigenous population of the southern Western Australia areas has been overwhelmed by Europeans who have exploited the region's physical and human resources. This has had profound consequences for indigenous demography. Many mixed race children were born in the early contact decades. Their descendants are now constructing genealogies showing connections through both white and indigenous ancestors. Increasingly, in genealogies constructed for native title claims, matrifilial rather than patrifilial links are selected. Individual experiences of mixed race children of rejection by indigenous step-fathers and uncertainties about the status of indigenous 'step-fathers', even when these are acknowledged as serious child rearers also have influenced the choice of matri- over patri-filiation. Amongst Western Desert people, where traditionally both patri- and matri- filiation are important in tracing connection to country, matrilineal links are preferred by some claimants in the construction of genealogies. Belief in the
greater strength of connection through women, and in the continuity of connection provided by matrifiliation, influences these decisions. At the same time, links through men are very important, for men, more than women, have retained connections to the sacred realm and, more than women, continue participation in religious activities. However, while links through men connect people to the sacred landscape, it is links through women which are more likely to provide the historical continuity of connection to country required by the native title process. This is leading to the establishment of shallow cognatic descent groups resting on a matrilineal infrastructure.

Issues of privacy and intellectual property

The construction of genealogies frequently reveals biological and adoptive links, sometimes for the first time. The uncertain status of those involved in adoptive relationships, which by European standards are 'informal' but are embedded in indigenous Family Law, has become an issue for mothers and their children. Older women often control this knowledge: it is usually they who decide when and to whom to reveal this information; it is they who actively participate in the exchange of children. This is a matter in which there can be conflict between generations.

Genealogical research for native title is making some people feel they should 'set the record straight' by revealing these links. This has led some adopted people to re-arrange their genealogical maps. Anxieties have developed about the status of indigenous adoption in the native title process. Commonly raised are queries about the rights of people to claim connection to both their natal and adoptive families.

The native title process can be perceived as intrusive. Women, in particular, often feel that their right to control and continue participation in the adoption exchange system is under threat. In Torres Strait, the traditional secrecy surrounding adoption is being eroded as people find it important to document genealogical connections. This itself is affecting family structures and leads to complaints about what are perceived as pressures to formalise adoptions according to Australian law. Aboriginal adoption in mainland communities also encounters similar difficulties. The compilation of genealogies shows how children have been gifted within family groupings to replenish gaps left when adult children leave home; and to provide the infertile with children. The recording of genealogies can create conflict within communities as families compete with each other for the inclusion of such adopted persons within their groups.

Choice in recognising/documenting connection and filiation

In some respects, the native title process can be seen as another exercise in the social engineering of the Aboriginal population, with groups compelled to demonstrate the legality of their connections to each other and to land. Gender issues are of key significance because the composition of prescribed bodies corporate will be affected by decisions to prefer unilineal over cognatic descent;
and by decisions over the privileging of patrilifial over matrilifial links, especially in the lower generations. In the two mainland fieldwork regions where I have worked, the historical and ethnographic evidence suggests that women’s economic role was reduced during the contact situation from one of complementary independency to one of co-dependency. In both mainland regions, many women spent their youth in institutions and much of their adult lives as dependent mothers. In 1998, younger generation women in all three regions have rejected European models of family structure which were adopted during contact times, and increasingly seek participation in their local economies, including making decisions in land tenure matters.

There is resistance in all fieldwork regions to what is perceived by influential men as incursions into economic and political spheres once dominated by men. In at least two of the regions—Cape York and Torres Strait—there has been a tradition of patrilifiation in land tenure; and there are attempts to continue to adhere to this tradition. In Western Australia, the situation is different. The importance of matri- and patri- lifiation as organising principles is acknowledged as rooted in customary practice. Recent attempts to adopt a model of patrilifiation with respect to land tenure brought strong criticism from within and outside the particular claimant groups, on the grounds that it is not in keeping with tradition; that it denies women justice under both western and traditional legal systems; that it destabilises existing family structures; and that it does not reflect developments in traditional family structures and family law. Similar arguments have arisen in the other fieldwork situations, especially amongst those claimant populations where patrilines have been attenuated.

In all three fieldwork regions, communities have addressed the issue of privileging patrilifiation in the recruitment of members to land-holding groups. Those who prefer to adopt the principle of patrilifiation argue that since it is often grounded in classical models of social organisation, its adoption demonstrates continuing cultural practice. In addition, there is a concern that cognatic or matrilifiated descent groups may be problematic in the organisation of prescribed bodies corporate. Many women and some men consider the adherence to classical models of social organisation deleterious to existing family structures and as reflecting misunderstandings of indigenous traditions. They also express concerns that the adoption of patrilifiation as an organising principle could be influenced by European preferences for the simplicity and familiarity of patrilineal structures. Anthropologists attempting to transcribe classical and existing social systems need to distinguish between the preferred, the assumed and the extant systems. They should consult with claimant groups about ways of describing the system which best reflects continuing local traditions and current practices.

Conflicts in the genealogies

When compiling genealogies, anthropologists need to be aware of these issues and ensure that genealogical material is crosschecked with informants of both genders and from different generations. Regardless of their circumstances, elderly people have firm understandings of traditional principles of descent and
connection and of traditional models of land tenure. Resolutions about uncertainties in genealogical data should be guided by their advice.

Changes in procreation and residence practices have led younger generations to explore several different routes to trace connections to bloodlines and songlines. Differences between older and younger generations with respect to access to and knowledge about family history information complicates the situation. Women, through their central role in family life, often have a key role in resolving historical problems of connection. For a range of reasons, women tend to outlive men; and in their old age, to be in better health than men. Like men, many elderly women have experienced the destruction of family bonds. Unlike men, many in adulthood have assumed the responsibility for reconstructing these. Their intimate connection through conception, birthing and child-rearing to the life cycles of many descendants has allowed them to accumulate a detailed knowledge of physical and social connection which enhances native title genealogies. However, in all fieldwork regions, women more than men were found more likely to have been disconnected, through removal policies and European medical practices, from the sacred realm. Women's Business for many younger women has become a historical experience, something that their mothers and grandmothers participated in and which they themselves, were denied or taught to devalue by the zealous European welfare officers. Native title research is leading to the re-evaluation of such spiritual connections and rekindling interest in active participation in women's religious life in those regions where people have experienced severe European interference with traditional life.

For native title claims, genealogies are an importance source of data about these pathways of connection between people, places and country. While their construction might appear to be a straightforward exercise, fieldwork experiences in Torres Strait, Cape York and Western Australia have shown that such data collection can be problematic: that important issues of privacy and ownership of information can arise; that conflicts regarding the validity and reliability of genealogical material can undermine Aboriginal societies; and that models of imputed classical traditions can undermine current land tenure systems.

Implications
Some general conclusions can be made about the implications of the increasing importance of women in the construction of genealogies. Regardless of which classical principles of affiliation to group and country existed and are current, in all three fieldwork regions matrifiliation is of significance in the present day claim preparation process. This marks a change from classical models of social organisation in two of the regions. In addition, decisions by some groups to privilege patrifiliation in land tenure systems is leading to intra-familial dispute on the grounds that such a model does not reflect developments in the classical tradition.

In the regions where Europeans intrusions have markedly affected the biological composition of the indigenous population, the contact experience has created a situation in which women have become the main links in the tracing of
indigenous descent. Consequently, in these regions a case can be argued for the developing dominance of matrifiliation in land tenure arrangements. A comparison of genealogies collected in the fieldwork regions shows the formation of large kin groups organised through links which are believed to protect the integrity of indigenous 'bloodlines'. The result for some claimant populations is the construction of a restricted cognatic group within which a core of apical/ancestral cognates is recognised as the main 'stock' from which the 'bloodlines' flow. For others, lineal descent from non-gendered apical ancestors can be clearly demonstrated, with an increasing number of cognately-linked kin appearing in the lower generations. Still others display a marked preference for unilineal affiliation, with matrifiliation becoming the preferred option for those groups engaged in competing and overlapping claims.

Conclusion

While my data supports the emerging importance of matrifiliation for the documentation of genealogical connection to country, it also shows its limitations in establishing links to songlines and the sacred geography. Women, because of the intrusion of western welfare and medical practices into those areas of their lives once connected with the sacred realm, consider themselves more alienated than men from indigenous religious traditions.\(^{28}\)

Women more than men experience a disjunction between their 'bloodline' and 'songline'. Women, especially younger women, feel comfortable about speaking for their people; but often defer to men when giving information about spiritual connection to country.\(^{29}\) They consider that men have more opportunities to continue participation in religious traditions. Many younger women feel alienated from their grandmothers' songlines. This has led to the underpinning of women's genealogical history from the sacred world to one marked by hospitals, communal graveyards, orphanages and other white welfare institutions.

Despite this secularisation, the use of genealogies which privilege matrifiliation in their construction is crucial for indigenous people, who see them as the key documents that affirm historical and continuing connections and hence meet the evidentiary requirements that they 'belong' to country. People go to great lengths to show how they and their ancestors have been linked by birth, residence and burial to country. Although the collection of material to support such claims is often difficult and time consuming it is also rewarding as, for each family group, a social and cultural history is constructed whose value extends beyond the requirements of native title. Problems arise when there are no longer clear, or only loosely linked, correspondences between the bloodlines and songlines: where control and access to information about these discourses is held by differing groups; and where disputes over intellectual property with respect to genealogical information within the claimant community seem to threaten the progress of native title claims. For some claimants, knowledge about these spheres is incomplete, fragmented or uncertain. There may be misunderstandings about indigenous Family Law by younger claimants. In addition, the reliability
and validity of links to country and groups through genealogical connections can be disputed. Finally, some claimants feel that the native title process is intrusive, demanding the release of genealogical knowledge that should be kept secret or restricted. These are all matters of concern for claimant groups, researchers and lawyers.

Connections through women are perceived to be beyond dispute. Claimants of both genders and all generations perceive that the construction of genealogies using women's knowledge and matrifiliation provides a stable and strong basis to show continuous connection to apical ancestors. In this respect, women's role in the native title process is central.

Notes

1. A comment made during a recording of family history information, during fieldwork in 1997. By 'bloodlines' the informant was referring to lines of descent, traced through indigenous ancestors, and the network of kindred defined by these; by 'songlines' he was describing the ritual complex, including the song series associated with the sacred geography and sacred beings to which he and his family are connected.

2. The Daisy Bates collection held in the National Library of Australia has information that can be used for the genealogical histories of Western Australian people. The genealogies compiled by Norman Tindale in 1938-39 contain much valuable information and have enabled many families to construct their genealogies. The Haddon Expedition of 1898 recorded detailed genealogies for many Torres Strait Islander families (Haddon 1904-1935).

3. For example, family histories record how the enforced separation of family members coupled with enforced integration with non-related people have led some people to incorporate proxy relatives into their genealogies. For example, people who have gone through the rigours of dormitory life have formed classificatory relationships that have extended down the generations.

4. One informant described these women as 'our treasures'; 'our walking, living encyclopaedias'; and recommended that anthropologists researching genealogical history should always 'go to the Grannies—they are the ones who know the real stories'.

5. These observations are derived from recent fieldwork where men and women described these differences. They should not be applied to indigenous populations generally, but refer specifically to people whose parents and grandparents had experienced the dormitory system. Under the dormitory system, girls were more likely than boys to be kept secluded from their families' traditional 'camp' life. Boys were allowed more physical freedom than girls and in some settlements were able to rejoin their families for lengthy periods. Most girls entered dormitories when they were considered to be of primary school age; and many did not leave these institutions until marriage.
6. It will be argued that women not only act as custodians of family histories, but have become the most reliable sources of acknowledged indigenous connection. However, there are limitations to this role and the use of women’s genealogical material to support spiritual connections is explored. Establishing recognised connections in genealogies is a key issue for claimants in their social mapping and one in which women have an increasingly significant role.

7. The requirements of native title to provide genealogies that show evidence of connection to ancestors who were in the country at the time of first contact poses problems in communities where this prohibition occurs. The names of ancestors have often not been passed down to their descendants.

8. Several elderly people told me that they had not told their children and grandchildren of their experiences because they ‘wished to spare them all that grief’.

9. Genealogical amnesia is a technical term, referring to the process in some communities where certain genealogical links or ancestors may be omitted from genealogical reckoning. This can occur in communities where there is a tradition on the prohibition of naming the deceased. It can also occur when ancestors have no descendants and thus are not important in tracing descent pathways. Genealogical fiction occurs when genealogies are adjusted to reflect the interests of the descendant group. Actual ties may be overlooked or suppressed, and new ones substituted. This can lead to inter-claimant group dispute (see Seymour-Smith 1986).

10. Of relevance here are the descriptions of the nomadic wandering of Aboriginal groups to be found in government reports. The importance of mobility for the maintenance of the traditional life cycle, and for creating and maintaining extensive trading and exchange systems, was not understood by the first Europeans. This topic was discussed at a recent public lecture by Professor John Mulvaney (Mulvaney 1998).

11. A cognatic descent group is a group who trace their descent from an apical ancestor or ancestress through any combination of male or female links and who also ‘combine a certain kind of shared ancestry with a role as a body of people with defined and shared purpose, identity, or property, for example’ (Sutton 1998: 38).

12. Sutton (1998: 40) observes that ‘It is only the Aboriginal ancestors of such groups who are eligible to be apical or nodal ancestors. the key persons from whom common descent is reckoned in defining group membership, when the cognatic group is one defined in relation to some Aboriginal matter and Aboriginal identity’.


14. The effects of these changes for tracing connection to country are interesting, with each community finding its own solution.

15. Such acknowledgment is tantamount to the assumption of responsibility for rearing the child. And this implies that the man will bestow his filiative rights of connection onto this child.
16. Until the early 1970s, patrilineal descent dominated the determination of clan and moiety affiliations. Its traditional role was supported by the community's adoption of Christian teachings regarding marriage, and the patrilineal inheritance of surnames.

17. Many women head single parent families, which may contain grandmothers and great-grandmothers. Informants tended to know the family histories of their female relatives, especially their more distant ones. Women, more than men, appear as nodal and apical ancestors in genealogies.

18. Including a change to its racial composition.

19. In indigenous Family Law, a serious child rearer is regarded as a parent and has the rights and responsibilities of a parent. The children so reared should respect him/her as a father/mother.

20. On the grounds of their greater reliability and validity.

21. Often, adopted people have not been fully informed about their ancestral roots. Some adoptions have been kept secret for generations.

22. In this respect, the collection of Torres Strait Islander genealogies particularly is fraught with difficulties. Traditionally, Torres Strait Islander custom has required that adoptions be secret, to be revealed only when the adopted person is fully adult; or told prematurely only if there is the potential for an unwitting engagement in an improper relationship.

23. In addition, social security demands make it difficult to restrict the information.

24. They object to the attack on what they feel are private and cultural practices by insensitive and inept Australian administrative policies.

25. They are keepers of memorabilia and history, and also makers of family history such as in their roles as milk mothers, partners in serial unions, and participants in child-exchange.

26. Women's health is not as damaged as men's health because of the lower use of tobacco and alcohol abuse. In addition, it can be argued that women in general have been more protected from physical hardships that could undermine their health. However, the health of both men and women is a serious issue in Aboriginal communities, with anecdotal evidence, describing both genders as suffering from a high incidence of diabetes, heart disease, asthma and weight problems. Anecdotal evidence also indicates that both genders suffer from anxiety, stress and depression. Native title has provided one avenue for the release and relief of the emotional embedding of such psychological conditions.

27. In other fieldwork areas, members of younger generations are increasing their participation in the study of traditional religious law. This sometimes occurs as a consequence of assisting in the preparation of native title applications. In all cases, the participation has profoundly enriched their lives.

28. When collecting family history material from women, the secularisation of their life cycles is striking. Conception, formerly a matter of spiritual significance, may be
controlled and affected by European biological information. Birth site—once a locus of connection to the sacred realm—is removed to hospital. The navel string and afterbirth are no longer stored in the sacred landscape. For many women, residence in missions and Government Homes has excluded them from participation in women’s ritual life.

29. Younger women do give information about boundaries—but are uncertain about sites, sacred geography and sacred history: they defer to a core of older women; but more usually, to men.

References


3. Lumpers, splitters and the middle range: groups, local and otherwise, in the mid-Murray region

Rod Hagen

Claims made under the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA) provided fertile ground for the 'real world' resurrection of academic debates about the paramountcy of 'narrow' or 'broad' groups in indigenous territorial organisation.¹ Much of the disagreement between anthropologists in the course of these claims mirrored the earlier conflict between the 'clans' of writers such as Birdsell and Stanner, on the one hand, and the 'communities' of Meggitt and Hiatt on the other.² As is common in such situations, elements of truth could be found in both sides of the argument and the unfortunate tendency of us all to structure our thoughts in bi-polar 'either-or' terms undoubtedly played a significant part in the vigour with which the matter was, on occasion, pursued.

The ALRA, with a definition of 'traditional Aboriginal ownership' which recognised only those who were members of a 'local descent group' and who possessed 'primary spiritual responsibility' for sites and land, of course played a substantial role in the manner in which the debate unfolded. Although the definition proved more adaptable than many of us at first may have anticipated, it clearly focused primarily on a narrow range of interests and favoured narrow rather than broad interpretations. Those of us who grew uneasy with the narrowness of focus and who felt that it had the potential to cause unnecessary division within many contemporary communities generally found ourselves forced to develop complex argument to 'fit' our perception of the social realities of claimants to the legislative definition. Sometimes we succeeded, sometimes we did not. The easy road, in terms of the legislation, was always provided by a narrow 'clan focused' model and in general even those who favoured a broader approach also provided an analysis in narrow terms as a fall back position.

'Shoehorning' views of local organisation to fit the legislation was always easier than shoehorning the legislation to fit an understanding of indigenous realities. This owed something to the nature of the Act itself, but other factors also came into play. Lawyers in general are not renowned for taking holistic processes to their hearts. Expert hair splitters, the closer they come to atoms the closer they are to happiness. Narrow groups, easily defined by apparently concrete principles of recruitment by lineal descent, offered something inherently satisfying to such minds. And there is, of course, a level on which 'narrow group' interpretations clearly possess an objective reality. Highly important aspects of indigenous religious life do revolve around narrow group membership, at least in many of the more remote parts of Australia. In Northern Territory situations at least 'narrow groups' provide a sort of 'lowest common denominator' which
provide a shorthand way of understanding significant aspects of religious and social organisation.3

My aim here, however, is not to revisit at any length the arguments of Hiatt, Stanner or the ALRA hearings. While the Northern Territory legislation set the parameters for a great deal of anthropological work in the 1970s, 1980s and 1990s, the Native Title Act 1993 (NTA) provides a quite different set of rules and a much larger playing field. Anthropologists are already playing a significant specialist part in this new process and we need to look closely at how the rules have changed and at the far wider range of groups who are likely to be taking part.

The real issue for anthropologists involved in native title claims, in my view, is not to establish the primacy of one approach or another, but to the find the level of analysis most appropriate to the situation at hand. This requires both a consideration of indigenous structures and an understanding of the legislation under which claims are made.

In contrast to the Northern Territory legislation, the NTA is far less prescriptive about the nature of groups who may succeed in establishing their interests. There is no limitation to ‘local descent groups’, and no requirement of establishing ‘primary spiritual responsibility’ or ‘common spiritual affiliation’. Instead the critical definition of native title in s.223(1) of the Act reads:

The expression ‘native title’ or ‘native rights and interests’ means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and

b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and

c) the rights and interests are recognised by the common law of Australia.

Furthermore, s.223(2) of the NTA goes on to specifically include a variety of economic rights:

Without limiting subsection (1), ‘rights and interests’ in that subsection includes hunting, gathering, or fishing, rights and interests.

At its simplest level then, when looking at native title we are dealing with something much broader than the narrow ‘primary spiritual responsibilities’ of the ALRA. While the ALRA may have favoured the application of models proposed by the ‘splitters’ amongst us, I suspect that the NTA favours the ‘lumpers’.

If we are seeking to identify people who possess native title rights and interests in a particular area we are looking for all those who possess communal, group or individual rights in accordance with the traditional laws and customs of
LUMPERS, SPLITTERS AND THE MIDDLE RANGE

the area. When looked at using 'narrow' models, this is likely to mean a variety of different overlapping groups with a variety of different types of rights.

There is no limitation under the NTA to 'primary' claims. All indigenous interests 'possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders' which provide 'a connection with the land or waters' are effectively capable of recognition. To provide a more concrete example, clearly those who possess an interest in a particular area as a result of conception or birth (but not biological descent) would appear, in Central Australian communities at least, to fulfil the criteria of the NTA, though they have been rejected by Land Commissioners under the ALRA in cases such as Ti Tree.

Similar observations could be made about those who, though not members of relevant narrow descent groups, have recognised rights and interests in economic resources. It has been commonplace in Northern Territory land claims for findings to be made that the 'right to forage' is far more extensive than the rights of local descent groups with primary spiritual responsibility. Under the ALRA the necessity to satisfy all aspects of the definition means that those who have a right to forage but are not members of the relevant local descent groups are not found to be statutory traditional owners. Under the NTA, on the other hand, the interests of such people are clearly capable of recognition. The same could be said about those whose interests in an area are mediated by marriage, by interests in shared dreamings and so forth. The picture is made more complex by the fact that most people are likely to possess intersecting rights and interests of a variety of different kinds in any one area. One person will have a different conception site from her sister, another will have married a different group from his brother or have knowledge of a different ceremonial track and so forth.

If an exhaustive 'narrow' approach is adopted then the delineation of the interests of all of the individual members of a community of people with an interest in any substantial claim area will be a massive task indeed, for both the community and the anthropologists concerned. Alternatively we may see a host of fragmented claims, with people claiming interests on different bases represented by different lawyers, engaging different anthropologists and the like. Neither of these alternatives seem to me to be either necessary or desirable. Within reason, more broadly formulated claims are likely to make the claim process more efficient and less divisive. Certainly an 'ideal' framework for a claim under the NTA, with some possibility of encompassing most or all forms of indigenous 'native title' interest in any area will need to be drawn much more broadly than the clan. The narrowest kind of indigenous group likely to encompass all rights and interest of the type defined in the NTA would seem to have much more in common with Meggitt's or Hiatt's community than with narrower entities such as the clan or band.

Obviously the decision about such matters rests with the claimant groups themselves. However, given the likelihood of serious constraints on the funding of claims and the adverse social and political consequences of internal conflict between indigenous groups, it seems that anthropologists taking part in such
processes need to be cognisant of the implications of the different broad or narrow 'models' which may present themselves in any particular situation. Simply applying approaches which have worked under the narrower constraints of the ALRA may well be a recipe for substantial future difficulty. On a practical level this has various consequences.

Firstly, the descent-based, fundamentally patrilifial claims under the ALRA have perhaps been reasonably well served by the traditional 'family tree' diagrams of conventional genealogy, though emphasis placed upon them by both researchers and land commissioners has in my view artificially excluded many people with substantial traditional interests from lists of 'traditional owners' in many claims.

When one seeks to consider a broader variety of relationships and rights, however, 'family tree' genealogies rapidly lose their value. Genealogies have always been powerful documents in land claims. Those who appear on them end up in Aboriginal Land Commissioners lists of 'traditional owners'. Those who don't have generally been excluded, regardless of the reality of their interests within the indigenous system. Anthropologists need to give thought to overcoming this shortcoming by developing new means of graphically displaying the nature and basis of individual associations with a particular group and a particular area of land. How does one, for example, incorporate people whose interests derive from conception, or birth, or knowledge, into some form of graphic display? Models drawn from set or general system theory may be more appropriate than the biological metaphor underlying the 'family tree'.

Secondly, the process of attempting the enumeration of all types of association of all individuals with a particular area will become increasingly problematic. Though identifying specific 'traditional owners' or, in this case, 'native title holders' will inevitably remain a major task of anthropologists, in many circumstances it may be more desirable to focus on establishing the various principles of association and provide the court with a representative sample of examples rather than pursuing completeness of identification, particularly in larger claims.

Clearly, adopting such an approach needs the clear agreement and understanding of the community concerned, as well as from the lawyers and the courts. It is critically important, too, that we do not end up with a situation in the future where the fundamental criterion for legal or community recognition of interests is the presence or absence of one's ancestors on a questionable sample list. Equally importantly, we need to bear in mind that the NTA has application across a much broader area than the ALRA. Two fundamental issues arise from this. Firstly, there is the issue of traditional regional diversity. Secondly, there is the matter of differing historical experiences.

The Yorta Yorta native title claim

With the above in mind, I turn now to matters which have arisen in the course of the Yorta Yorta/Bangerang claim on the Murray River between Echuca and
Albury along the border between New South Wales and Victoria. This was the first contested claim to be dealt with by the Federal Court under the NTA. At the time of writing this case is still before the courts. I am limited therefore to an exposition of some of the evidence presented rather than a thorough analysis of it.

The claim was presented by the claimants on behalf of a single broad group, identified variously as Yorta Yorta or Bangerang. The group today encompasses some 4,000 to 6,000 people, the majority of whom still live within the claim area. (The commonly held notion that indigenous claimants in the longer settled parts of Australia are inevitably scattered remnants of once substantial populations is patently untrue today—there are probably more Yorta Yorta descendants alive now there were in 1788 (Hagen 1996: 2).) The applicants maintained that they were descended from a single broad community of people who occupied the area of the original lands at the time of white occupation. Most referred to this group as the Yorta Yorta. Some referred to it as the Bangerang. In evidence to the court the indigenous witnesses maintained that within the original lands different family groups had localised interests, but that these divisions had become of less importance than they were in the past. They maintained that there was always substantial interaction between the localised groups and that territorial interests at the broad level have always existed.5

I was engaged by the solicitors for the claimants to produce a report dealing with both anthropological and historical issues relating to the claim, and to prepare genealogies for the case. On the basis of an extensive examination of early ethnographic materials (especially those of E. Curr and G.A. Robinson), historical primary source materials, ethnographic and anthropological reconstructions of interests in the area, the oral transcriptions and beliefs of contemporary Yorta Yorta people, and secondary historical materials I concluded that at the time of first contact the area was, as they maintained, occupied by people possessing a broad confederacy of interest across the 'original lands' (Hagen 1996: 194–96).

The picture which emerged was a multileveled one,6 consisting of one or two broad groups, Yorta Yorta/Bangerang or Yorta Yorta/Bangerang and Waveroo, at the time of first contact, with extensive interaction and overlap between. Within this overarching framework were to be found a number of narrower interrelated local groups, approximating the anthropological description in Australia of 'clans' or 'hordes'. Some intermediate aggregations (such as Robinson's (n.d.) 'Quart Quart') also appeared to have existed in earlier days. Some narrower individual interests may also have existed within these groups (Hagen 1996: 194–96). It seemed likely to me that the narrow local groups were of greater significance at the time of first white occupation than they are today, but that these groups were, at first white occupation, already extensively interrelated within the over-all broad grouping, that individual members had affiliations with a number of any 'narrower' sub-groups and that these local groups were already united into a broader territorial unit through kinship, residence and political and linguistic ties (Yorta Yorta Transcript: 6731; Hagen 1996: 34–35, 194, 195; Hagen 1997: 5–18).
The earliest attempts to obtain information about group affiliations in the area were undertaken by G.A. Robinson (n.d.) in the early 1840s who visited much of the area as Protector of Aborigines in the earliest years of white occupation. Robinson variously speaks of groups as 'nations', 'people', 'tribes' and 'sections'. On occasion he divides his sections into further 'sections'. His diaries reveal extensive intermingling of local groups throughout the area from the earliest of recorded times. They provide no evidence at all of groups of the 'patrician plus spouses' variety postulated in some of the classical anthropological literature (Hagen 1996: 19–28). Instead, wherever he travelled through the area Robinson found mixed groups living together, the members of whom identified with a variety of more 'narrow' entities (Hagen 1996: 19–28; Hagen 1997). The historical record of the area also indicated the united action of hundreds of local Aboriginal people in opposing white occupation (Christie 1979: 63–66; Hagen 1996: 97–100).

Certainly the impact of settlement may have already had an effect on local organisation, but the very least that can be said is that the earliest evidence from this part of south eastern Australia provides no support for a view which sees some fundamental form of primacy in 'narrow groups', and that the indigenous system then in place enabled the apparently harmonious coexistence of people from within the broad Yorta Yorta/Bangerang area.

It has been fashionable for much of this century for anthropologists to dismiss the importance of 'broad level' tribal or linguistic groups of the type referred to by nineteenth century ethnographers such as G.A. Robinson, E.S. Parker, R.H. Mathews, and A.W. Howitt, in south eastern Australia. Perhaps this is because the focus of anthropological activity moved to other parts of the continent. My own view is that the historical and ethnographic data available for the south east region simply does not adequately support the fashion.

While narrower groupings were obviously also of substantial importance, and perhaps the broadest 'nations' were little more than aggregates of cultural and linguistic similarity (and sometimes plain wrong), the available evidence concerning both residence patterns and co-operative organisation are strongly supportive of the nineteenth century multileveled approach to the issue. The very least that can be said is that even in the earliest days of occupation, indigenous people were using broad group names and expressing their own individual identity to non-indigenous people in such terms.

There can be little doubt that events within the lifespan of indigenous people living at the time of white occupation of this part of south eastern Australia made greater emphasis on broader unities at the expense of narrow ones inevitable, if their society was to survive. Massive de-population reduced narrow groups' ability to continue as recognisable entities. Limitation on access to resources and differential treatment by different white occupiers made some places more appropriate places to live than others, with a consequent increase in the value in emphasising broader associations. Local marriage choices became more limited and official policy increasingly sought to create aggregations of indigenous people at missions and ration depots.
Nevertheless it seems that people followed pre-existing practices in dealing with such issues. By the early 1880s most of the indigenous population of the Yorta Yorta/Bangerang claim area were clustered at either Maloga Mission or Wahgunyah, yet the genealogical evidence indicates that the majority of marriages at these centres were between people from much the same narrow groups that Robinson (n.d.) had found living together in the early 1840s, a year or two after white occupation.9

Today, the unity of the contemporary broad Yorta Yorta/Bangerang grouping is abundantly clear. In the course of claim preparation I was able to obtain genealogical information for more than 1,000 people, all of whom are related either by descent or marriage within the last six generations. The Yorta Yorta today regard any person who is able to demonstrate that they are descended from an ancestor who belonged to the original lands as a member of the group. Most people are able to demonstrate a number of such connections from people known to have been living in the area at, or prior, to the time of white occupation, some from as many as seven or eight.

At the commencement of hearings more than 500 parties had indicated their intention to oppose the Yorta Yorta claim. Ultimately two anthropologists, Dr Ron Brunton and Professor Ken Maddock, an historian, Dr Marie Fels, and a linguist, Dr Bruce Sommer, were called to give evidence in support of the opponent's cases. Both Brunton and Fels argued that the case must fail substantially on the basis that 'clans' provided the basic unit of indigenous territorial organisation in Australia. In his initial report Brunton argued that the clan 'In the present context will be taken as the land-holding group', and much of his subsequent analysis depended on this supposition (Brunton 1997: 5).10 For Fels (1997: 52):

the tribe was not a land-owning unit at the time of contact with Europeans; a local group/clan/family belonged to a particular piece of country, and owned the rights to exploit that territory...

and,

the issue of rights and obligations to the land in the present claim is sought to be resolved by the claimants at a level of organisation other than the strictly correct level of ownership.

Fels later conceded however that she was 'not competent to analyse the anthropological terminology' (Yorta Yorta Transcript: 7633).

Sommer, on the other hand, appeared to unambiguously accept the importance of broad groupings, indicating that:

The overwhelming evidence is that the internal diversity of the Kulin and the Bangerang confederacies was in neither case anywhere near significant enough to dismantle the strong linguistic, cultural, social and political uniqueness of each of these. Each bloc maintained a coherent internal expression of identity. And each
bloc had its own unique territorial attachments, which confirmed their identity (Sommer 1997: 43).

Maddock accepted the significance of 'mid range groups' as a general proposition, though his definition appeared to contemplate quite a broad range of situations. Within it he included:

- the 'subtribe and division of Mathews' (Maddock 1997: 91);
- 'the local group of Wheeler and Thomas' (which appear to be closer to the 'clan' or 'band' (Maddock 1997: 91, 94));
- 'the horde or local group of Radcliffe Brown and Elkin' (the Radcliffe Brown version of which can approximately be summarised as a clan plus spouses, while Elkin's version varies between a description of a clan and 'horde') (Hiatt 1962, 1966; Meggitt 1962, 1966; Hagen 1996: 54–55; Maddock 1997: 91, 108); and
- 'the community of Meggitt and Hiatt' (which, according to Hiatt, may include 'up to 12 patrilineal descent groups' (see Hagen 1996: 54–5: Maddock 1997: 108).

At first glance, Maddock's general conceptual acceptance of 'mid Range groups' seemed to contemplate an entity which could readily incorporate the broad Yorta Yorta confederation (which consisted, on the evidence, of perhaps 12 to 14 narrower patrilineal groups identified by Robinson and Curr). Maddock, however, in disagreement with all other experts called in the case, regarded each of these narrower groups as analogous to a Meggitt/Hiatt community. His reasons for doing so were not explored in examination and remain unclear to me (Maddock 1997: 91; Yorta Yorta Transcript: 7395–96).

It is likely that those opposing claims in the longer settled areas of Australia will seek to argue for the fundamental application of narrow 'clan' based models of land tenure. While many communities (the Yorta Yorta included) may still be able to identify associations derived at this narrow level, to force claimants to operate at this level in my view does little justice to the realities of contemporary social organisation, or to the adaptations made necessary by the impact of white occupation, or, indeed to the evidence concerning the situation at first contact in this part of Australia.

No doubt indigenous groups in different places and with different historical experiences, will seek to put forward claims on a range of different bases. Anthropologists, and others working on native title claims, should be sensitive to the multileveled nature of indigenous social organisation and of the consequent multileveled approaches which may be appropriate under the NTA. There is no simple 'right' answer, whether it be broad or narrow, which will satisfy all situations. Any approach which seeks to focus on one 'level' of indigenous interest alone will inevitably be capable of being portrayed as simplistic. On the other hand, those claims which seek to emphasise breadth and inclusivity (while recognising internal complexities) are, I suspect, likely to proceed with much less
internal conflict and greater efficiency than those made solely on a narrow group basis.

Notes

1. In the earliest claims under the ALRA, 'patrilineal clan' centred approaches were favoured by anthropologists engaged by Land Councils to develop documentation and give expert testimony (see, for example, Hagen and Rowell 1978; Peterson et al. 1978). I call these 'narrow' claims. Interpretations were soon developed, however, which provided greater recognition of non-patrilineal interests (see, for example, the discussion of 'ambilineal' descent by Layton in the Uluru (Ayers Rock) Land Claim, and the introduction of Kwertengwerle in the Utopia land claim (Hagen and Rowell 1979)). These are perhaps best called 'extended narrow' interpretations, in that they maintained focus on local groups analogous to the 'clan' and their 'estate', though they accepted a broader membership, including those whose mothers were members of the local group.

In some claims the narrow clan centred local group gave way to broader descriptions in terms of the 'linguistic' or 'tribal' group (see, for example, Sutton and Palmer 1981; Merlan 1995) or of a 'community' (see Green et al. 1984).

The Jawoyn (Gimbat Area) Land Claim—Alligator Rivers Area III (Gimbat Resumption—Waterfall Creek) (No. 2) Repeat Land Claim (see Aboriginal Land Commissioner 1996) provides an interesting example of the simultaneous application of both 'extended narrow' and 'broad' approaches.

2. Hiatt's position was outlined in some detail (Hiatt 1962) (also republished in Hogbin and Hiatt 1966). Hiatt revisited the issue many times thereafter, particularly in 1984 and 1996. Megitt discussed Walbiri 'communities' (Megitt 1962) and general relevant issues (Megitt 1966). Stanner (1965) responded with a major and often cited paper which sought to clarify the use of terminology such as 'estate', 'range', 'clan' and 'band'. He argued that Hiatt's 'communities' were a product of post contact social change. Birdsell (1970) provided a controversial summary of 'clan' focused local organisation. The same edition of *Current Anthropology* contained extensive comments on Birdsell's paper in reply by a 'who's who' of male anthropologists of the day (including Elkin, Stanner, Berndt, Meggitt, and Hiatt).

3. On the other hand, those looking for a brief, but more satisfying and accurate explanation of such matters, should see Keen's (1997) interpretations of the situation at McLaren Creek (where the Alyawarre, Warlpiri, Warumungu and Kaytej come together), which is similar to that adopted in the course of the Ti Tree Land Claim (Green et al. 1984) and could be applied equally well to all of those parts of Arrente, Anmatyerre, Alyawarre, Warlpiri and Warumungu region in which I have worked. A further recently published resource of importance is Sutton (1998). Sutton appears to place greater emphasis on differences between 'Western Desert' and other groups, and greater stress on the universal primacy of patrifiliation outside of the Western Desert than I suspect Keen (or I) would accept, but, this reservation aside, the publication provides an excellent summary of many matters.
CONNECTIONS IN NATIVE TITLE

relating to group composition and indigenous interests in land. A further paper within the same volume provides an excellent introduction to the situation in longer settled areas (which Sutton describes as 'post-classical Aboriginal society').

4. We found ourselves having to confront such issues in the course of the Ti Tree Land Claim and provided a series of 'relationship charts' in an attempt to reduce emphasis on 'tree diagrams.' Contrary to claims by Stead (1995: 80) in a paper delivered in an earlier native title workshop in this series, however, extremely comprehensive 'conventional' genealogies, prepared by Elspeth Young, Jennifer Green and myself, were also presented. Despite criticism by the then Land Commissioner, Michael Maurice, the conventional genealogies as originally tendered in fact accounted for a higher percentage of those ultimately recognised as 'traditional owners' by the Land Commissioner than in any other Central Australian claim to that time. In fact those differences which did occur primarily derived from errors introduced by the anthropologist assisting the Commissioner in the proceedings, who, in the course of a brief period of field work, simply remade various understandable mistakes which we had already addressed prior to tendering of the genealogies. Unfortunately no opportunity was provided to raise this matter in the court. Again contrary to Stead's suggestion, it was the conventional genealogies, not the 'relationship charts' which were unable to incorporate all of those recognised by the community itself as legitimate claimants (such as, for example, those whose claims were made on the basis of conception).


6. It should be noted that although I refer to the situation as 'multileveled' (that is, visible at a variety of levels of integration), I do not mean by this that it was 'heirarchical' (that is, involving superior and inferior levels of interest).

7. Many of Robinson's journals have now been transcribed by Ian Clark and are available in published form. Unfortunately, of the relevant material, only transcription of the 1843 journal (Clark 1988) had been completed prior to the court hearings and the oral presentation of this paper. We were therefore limited to Robinson's excruciating handwriting on microfilm. Clark's transcriptions of this material are likely to provide a particularly valuable resource for those interested in indigenous interests in Victoria at the time of first settlement.

8. See, for example, Robinson's listing of individuals, firstly by 'nation' terms such as 'Pinegerine' and then by 'section' name, in his 1840 and 1841 journals.

9. Diane Barwick's observation that the people of the region 'through intermarriage and migration formed one population from pre-contact times to the present day' (Barwick 1972), is supported by my own genealogical research in the area.

10. Brunton does not make his reasons for doing so explicit. Presumably he depended upon his perception that his use of such terms followed 'ways that are widely, if not universally accepted in the discipline' (Brunton 1997: 3).
References


Hagen, R. 1996. Yorta Yorta Claims to Areas in the Murrway & Lower Goulburn region of Victoria & New South Wales pursuant to the Native Title Act 1993 (Cmth), Yorta Yorta Native Title Claim Exhibit A17, Arnold Bloch Leibler, Melbourne.

Hagen, R. 1997. Yorta Yorta—Claims to Areas in the Murray and Lower Goulburn Region of Victoria and New South Wales Pursuant to the Native Title Act 1993 (Cmth)—Supplementary Report Concerning Anthropological and Historical Issues, Yorta Yorta Native Title Claim Exhibit A17.


4. Sustaining memories: the status of oral and written evidence in native title claims

Julie Finlayson

Introduction

This paper explores the potential role for forensic history in the native title claim processes. Such a role might operate first, with respect to exploring and contextualising the depth of genealogies, and second, as an ancillary form of written record and thus verifiable documentation, at least in so far as Federal Court hearings of native title claims will require such evidence.

At the time this paper was delivered to the workshop my intention was to expose the existing ambiguity in the status of documentary sources. The paper addresses this issue by reference to written material used in support of the Yorta Yorta native title claim in south eastern Australia; and by raising questions of how future Federal Court hearings might manage the tensions, to paraphrase Sutton (1994: 20), between 'the relative strengths of oral and written evidence'. As one of the first native title claims in south eastern Australia to be heard in the Federal Court, the preparation of claimant evidence for the Yorta Yorta situation contrasts with research methodologies in land claims under the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA).

The new emphasis in native title claims on historical and documentary records has focused attention on earlier discussions of Aboriginal social memory. In these discussions a number of scholars, on the basis of their experience in gathering genealogical evidence for the ALRA, commented on the shallow historical depth of Aboriginal memory (see Beckett 1994; Neate 1994). The issue of time depth is not culturally specific to indigenous people, however, as oral historians have observed. Indeed, Curthoys reminds us that oral recall of genealogies by indigenous and non-indigenous people alike is denoted by limited historical depth (see Curthoys 1997).

Yet concern with documentation of past events and practices in context-specific local or regional histories was already an emerging trend under the Native Title Act 1993 (NTA). This trend has now hardened with a change in the rules of evidence under the Native Title Amendment Act 1998, such that written evidence is increasingly likely to be required in court and as a preferred form for presentation of evidence. In some States, written forms of evidence had crept into mediation contexts as a consequence of State government insistence that 'connection reports' document details of claimant social history, claimant identification, and the specific nature of their relationships to country.

Currently, the registration test outlined in the Amendment Act also requires increased documentation from claimants. It requires detailed description
of the basis and nature of their claim and the provision of the factual basis of claimed rights and interests, as well as the decision-making processes by which the claim is authorised for lodgment.

Such legislative changes have not emerged without harbingers of contestation from the political and policy arenas. Stirrings of the public imagination and conscience are not confined to challenges raised by claims of native title rights and interests in land. The role of the Council of Reconciliation, and the 'Bringing Them Home' Report of the National Inquiry by the Human Rights and Equal Opportunity Commission into the Separation of Aboriginal and Torres Strait Islander Children from their Families Under Commissioner Sir Ronald Wilson (1997) have certainly raised public awareness of many 'taken for granted' attitudes to Aboriginal people and their histories. The 'stolen generation' inquiry for example, investigated the circumstances of the state's removal of mixed descent Aboriginal children from their birth families and critically examined the previously unexamined notion that such action was in the 'best interests of the child'.

An on-going consequence of publication of the report's findings has been the ensuing public debate about how, in a post-colonial society, we should remember the past and acknowledge its foreshadowing influence on the present and the future. The nation-state, too, entered this debate by arguing a political position on representation of indigenous-state relations and the history of colonialism. Indeed, the relationship between indigenous people and the state erupted as an ongoing source of contentious interpretation about a range of indigenous issues; the socioeconomic status of indigenous people; their access to state resources and public accountability; resolution of native title issues such as just terms compensation and the co-existence of land interests; and, in general, the place of reconciliation as a community movement for social justice and new relationships between black and white Australians.

In the Federal policy sphere, Keating's Redfern Speech in December 1992 precipitated new policy visions for indigenous affairs. The vision he articulated in that speech culminated in political and policy strategies which broke with contemporary traditions and encouraged the development of reflexive narratives of Australian settlement and colonial relations with indigenous peoples in public debate. The symbolic significance of his Redfern speech was that it repositioned history as a central, rather than marginal, dynamic in the political environment. At the time, it also ensured that acknowledgment of the past would be a critical force in recasting the Federal Labor Government's future policy relations with indigenous Australians.

Keating's new policy visions mirrored a 'conviction that the Australian future is contingent upon our coming to terms with the Aboriginal past' (Attwood 1996: xxxi). Such themes resonated with research undertaken by academic historians who were also rethinking the prevailing orthodoxies that had characterised Australia's settlement history. Many of these orthodox positions either constructed a narrative of Aboriginal passivity to colonisation, or
ORAL AND WRITTEN EVIDENCE IN NATIVE TITLE CLAIMS

presented arguments of the devastating extent of frontier violence (see Reynolds 1993: 40).

However, the greatest impetus to rethinking the role and status of indigenous people in Australian history followed Eddie Mabo's successful legal challenge in 1992 to the entrenched belief that *terra nullius* was a fundamental platform of Australian settlement history and land law. Ultimately, his successful action in *Mabo No. 2* enabled recognition of indigenous title to land under Australian common law.

Historical documents had a crucial impact in the Mabo case. Historian Henry Reynolds' critique of Justice Dawson's dissenting judgment suggests not only the centrality of the documentary evidence, but Dawson's misreading of the available historical evidence and consequently, his failure to rigorously engage with documentary evidence of Colonial Office instructions explicitly recognising a form of native title rights (Reynolds 1996: 23-24).

Much public and political dissent surrounded the Mabo judgment. Nevertheless, in 1993 the Federal Labor Government introduced legislation to legally recognise and protect native title rights and to initiate a claims process through a national native title tribunal. In December 1996, the High Court in *Wik* reached a further decision with far-reaching legal and social consequences; that tenure of pastoral leasehold land did not necessarily extinguish native title and consequently, that potentially the rights and interests of pastoralists and Aboriginal people could co-exist on such land.

In these ground-breaking legal decisions, the associated social and legal changes have, in a large measure, depended on the evidence of historical records. Consequently, it is understandable that historical evidence is increasingly seen as a forensic lens through which colonial settlement processes generally, and classical Aboriginal relations to land in particular, can be critically revisited for their contribution to the 'resolution of complex public disputes' (Neate 1994: 105; also Sutton 1995; Attwood 1996).

Obviously, the role of historical documents can be illuminating and critical to native title claims. However, anthropologists researching native title research still face the need to evaluate the particular contribution of historical evidence in relation to the oral evidence of claimants. Essentially, they need to address questions such as what, in evidentiary terms, do written and oral sources show of (dis)continuity of association to country? Before looking at this question in the context of the case study below, two recently published books which address this question will be briefly outlined. Merlan (1998) and Bell (1998) both write about contemporary Aboriginal people and their life circumstances. Merlan examines the impact of town life on Aboriginal people from the Katherine region of the Northern Territory and finds that for many of them their 'traditional' associations with country (certainly as conceived of in clan terms) no longer have meaningful currency. Her point is not that town Aboriginal people have 'lost' their culture because of the dissociation from clan country, but that change and transformations rework attachments to country and the meanings of these in other ways.
Bell discusses the very complex case for a heritage protection application brought by some Ngarrindjeri women under s.10 of the Commonwealth's *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* in relation to the development of a bridge and marina linking Hindmarsh Island to the South Australian mainland.

One of a number of points made by Bell, in her comprehensive discussion of this very public and highly contentious heritage protection case, is that lack of written evidence or documentation of Aboriginal women's business prejudiced the credibility of the women's position. Her wider point is that often the only sources of evidence among people of an oral tradition, especially in contexts where secret knowledge may be differentially held and disseminated, is that which is available through oral sources. This observation resonates with the position of claimant history, and verification of that history, in current claims to land in the native title process.

**The ALRA experience**

However, the discussion of oral memory in the anthropological literature of Australian Aboriginal people raises interpretative problems and questions about the veracity and status to be accorded social memory.

Much has been written, for instance, of the apparent inability of Aboriginal claimants to describe from memory their family histories beyond the immediate generations. Some writers have discussed the role of social memory in the relationship between history and myth and the construction of indigenous narratives (Sutton 1988; various papers in Beckett 1994; Neate 1994; Rose 1996). Different explanations have also been offered to explain the limitations of indigenous oral evidence (Neate 1994: 98). Some commentators cite cultural explanations (such as a desire to avoid speaking the deceased's name); others suggest diminished oral knowledge is a consequence of physical separation from place, or other social or emotional discontinuities.

However, historians point out that collecting and verifying oral evidence is inherently difficult methodologically. They caution against uncritical acceptance of evidence in oral history, irrespective of the question of cultural differences. For example, in Curthoys' description of the methodological development of oral history she identifies a number of key problems:

Attention turned by the late 1980s to the problem of memory itself, so that oral history accounts were read not so much for the empirical detail they might give about the past, but for the evidence they provided about people's individual and collective memory, their sense of the past. Not only was it recognised that memory was encoded in language, and therefore in some important sense socially constituted, but also the narration itself: its genre, language, and discourse became an object of interest. ... It is important not to assume that all the characteristics of Aboriginal oral histories are due specifically to their Aboriginality. Oral histories in Australia, and similar societies, generally tend to be
important only for a short time back into the past, to be grounded by associations of place, smell, sight, and sound, to be characterised by uncertainty about the dating and order of events, to be secured by kinship associations and life cycle events (Curthoys 1997: 10).

But the issues of how memory, myth and history dovetail in oral traditions is likely to resurface with recent international interest in the acceptance of oral evidence from indigenous people and the relationship between oral memory, foundation myths and claimant history, in the Canadian land claim of Gitksan and Wet'suwet'en people of British Columbia, (or what is more commonly known as the Delgamuukw case).

Increasingly, Aboriginalists are looking to parallels between the Canadian case and the application of lessons learnt in this arena for similar issues in Australian native title claims. To varying degrees, all Australian land claim legislation assumes that oral and written records play a critical role in substantiating historical depth and continuity to country.

However, the degree to which oral and documentary records are critical differs as mentioned above and, increasingly, the impact of different legislative jurisdictions in which land claims and native title claims are heard also influences how these matters are dealt with. The role of historical and documentary research in land claims under the Northern Territory’s legislation for example was limited, although such documents were always included. In this jurisdiction, Land Commissioners generally preferred the oral evidence provided by claimants than to heavily rely on either written records or expert evidence.

In contrast, a landmark decision under the Queensland Land Act 1991 by the Queensland Land Tribunal in the Cape Melville National Park, Flinders Group National Park, Clack Island National Park and Nearby Islands claim, recognised that extensive written and oral records of the anthropologist involved were now an integral part of the claimants’ traditions (Land Tribunal 1994: 61-63). This finding gave legal assent to the fact that transmission of Aboriginal tradition can and did take different forms and that these forms would change over time. Nevertheless, the Tribunal cautioned:

that the relevant Aboriginal people must acknowledge, and possibly have some control over the use of, material in that form before it is accepted as part of the store of the group’s tradition ... The real issue is whether Aboriginal people who make a claim under the Act on the ground of traditional affiliation can establish the claim to the Tribunal’s satisfaction by relying on such records (Land Tribunal 1994: 63).

Both Neate (1994) and Sutton (1994: 20–5) contrasted the possible impact of new expectations in evidentiary requirements under the NTA with benchmark practices established in ALRA land claim hearings. They noted the emerging position of written records, especially the developing importance of historical documents. Neate argued that such a shift had the potential to renew the focus on indigenous understandings of time.
Issues about the shallowness of genealogies may become more significant in native title cases (if it is necessary to trace a group's links to land back to, say, 1788) than in land claim proceedings (where it is necessary to establish that people alive today have traditional or historical links to land) (Neate 1994: 99).

Native title claims in south eastern Australia are certainly challenging accepted notions of claimant roles in time and place, as I illustrate below. The changes in the evidentiary process outlined in the Amendment Act (1998) will again raise questions of the relative status of written and oral evidence in the Federal Court, and the rules of evidence under which indigenous relationships to land can be investigated and argued.

S.82(1) and s.(2) of the *Native Title Amendment Act 1998* stipulate that the Federal Court is now bounded by the normal rules of evidence; except to the extent that the Court otherwise orders. But:

In conducting its proceedings, the Court may take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait islanders, *but not so as to prejudice unduly any other party to the proceedings* (emphasis added).

The most significant change in this formulation is that the rules of evidence would prevent presentation of hearsay evidence.

The Amendment Act may also make it possible to directly include the claimants' anthropologist in proceedings. For instance, ss.84B(1) of the Amendment Act states that claimant parties may appoint an agent to act on their behalf in relation to the proceeding. Presumably, the anthropologist could assist with examination of witnesses and thus accommodate and incorporate the cultural structure of claimants' communication styles and their oral evidence in a manner whereby indigenous evidence could still be proficiently presented. However, the adversarial nature of many court hearings suggests that counsel for opposing parties are likely to see anthropologists as less than expert witnesses and more as claimant advocates (see discussion of these issues in Rummery 1995; Sutton 1995).

A case study: the Yorta Yorta claim

**Genealogies**

Notification procedures for the Yorta Yorta claim in north eastern Victoria were completed in 1994 with approximately 500 respondents listed. These included State governments and peak industry bodies with agricultural or commercial interests in the region, and special interest groups. Not unexpectedly, respondents wanted details of the applicants, and given that around 4,000 people have identified with the claim as either Yorta Yorta or Bangerang peoples, the question was of central importance to many parties.

To deal with the genealogies of such a large claimant group, the claimants' researchers identified a working figure of some 17 'original' or apical ancestors
and mapped in detail the genealogies of about 800 'selected' applicants. Peter Seidal, solicitor for the claimants, explained the reasons why this approach was adopted. To begin with, there was a deliberate and strategic rejection of any notion that the claimants would have to:

provide or prove all details of all ancestors who were ancestors of the claimants and all peoples who are Yorta Yorta peoples (Seidal 1998: 3).

This position was also designed to provide a 'snapshot' of the system and the mechanisms which operate and reproduce it. Seidal describes the role of the genealogies as a vital aspect of the wider argument of how the social system works:

We provided an overarching genealogy which, we say, shows the intermeshing relationships between people within the Yorta Yorta community and their relationships back to various named ancestors ... We then invited the court to make evidentiary deductions from the genealogical information that has been provided. Namely, that the present-day applicants have a very rich ancestral history and people's knowledge of that ancestry goes back six, seven and even eight generations ... Another question that we have attempted to answer is: to what Aboriginal group or groups did the identified ancestors belong? To provide an appropriate answer we have used, most importantly, the oral evidence of the Yorta Yorta community and their knowledge of where their peoples come from (Seidal 1998: 3-4).

The oral evidence of Yorta Yorta claimants was supplemented by ethnographic and written sources, including records of early squatters in the district; birth, death and marriage certificate data from State archives, protectorate records, and anthropological research by the anthropologist involved.

**Written vs oral records**

While genealogies and supplementary written records are said to be essential in establishing continuity with country under requirements of the NTA, the status of such material is, in my view, often inappropriately scrutinised by respondents.

This is not to suggest that historical sources be immune from critical examination; there are sound reasons for critical scrutiny in reference to, and application of, written evidence. Firstly, working with written texts requires an awareness that western history is deeply embedded in western intellectual and cultural traditions of knowledge, sequential and linear ordering of 'facts', notions of cause and effect, and particular methodologies and protocols for researching the 'content' of the past. Rose, writing of the ways in which Aboriginal evidence in land claims often blurs what western historical research sees as commonly accepted epistemological boundaries, argues that:
Western knowledge has a tradition of distinguishing between history and myth, but many Aboriginal cultures weave the two in such a way that in many contexts there is no essential distinction. Historical evidence inevitably touches on the mythic, often in ways that require the Land Commissioner to attend closely to that which is entirely unfamiliar (Rose 1996: 46).

Secondly, the public is often unaware of the need to critically assess the quality of primary sources in respect of indigenous issues. Many primary sources on Victorian Aboriginal people, for example, need to be understood in the context of their time and construction. For example, few 19th century Europeans who wrote about Victorian Aboriginal people had first-hand knowledge, nor had they observed their subjects. For instance, although R. Brough Smyth was a member of the Aboriginal Protection Board, he gathered his information from diverse sources by corresponding with missionaries, protectors and interested settlers for snippets of ethnographic information to add to his Australia-wide compendium of Aboriginal customs and practices. A. Howitt followed a similar process.

Sympathetic settlers were a further source of local and regional information. Many wrote of their own experiences of living and working with (and sometimes of subduing) the local Aboriginal community; although just as many, for example, E.M. Curr in north eastern Victoria, relied on memory and wrote long after the events occurred. Dawson too [in western Victoria], was a close observer of Aborigines living in the vicinity of his station; but as an apologist for Aborigines in the face of public criticisms, he had a tendency to gild information.

Apart from idiosyncratic factors and the quality of access to ethnographic material, variations in the interpretation of Aboriginal customs and practices are common to many of these historical sources. The kinship and marriage system and the indigenous system of customary law are two arenas in which misinterpretation was often a consequence of the field method involved, in as much as it resulted from subsequent interpretation in a particular intellectual milieu (see review by Attwood (1990) on approaches by contemporary historians to Aboriginal and colonial history).

Finally, there is often a tendency in the general community's view to believe that historical documents contain a kernel of 'truth' which overrides, even downgrades, the oral testimony of Aboriginal culture as the primary source of traditions and customs relating to land.

In late 1997, a decision of the Supreme Court of Canada concerning the status at law of native evidence in the Delgamuukw appeal reaffirmed the primary importance of oral evidence. Chief Justice Lamer insisted that serious consideration be given to aboriginal oral evidence, irrespective of previous legal disregard. The impact of the appeal decision is that it is now difficult in Canadian land claims to argue against oral evidence on the grounds that it could not be 'checked, cross-examined or otherwise verified'.

However, in the Yorta Yorta court hearings, some respondents and their legal advisers have adopted a forensic practice dismissive of claimants' oral evidence. In addition, some of the respondents' lawyers have tried to test the
truth/accuracy of claimants' oral evidence by pitting it against written records. The assumption is that these texts are an authoritative comparative source of direct relevance to claimants' evidence of customary traditions, group composition, and occupation of land.

**Occupancy and attachment**

In a fascinating twist of interpretation, some respondent parties to the Yorta Yorta claim argued that evidence of indigenous attachment fails to substantially differ from that asserted by themselves. Essentially, they suggest that white people have either the same or similar sentiments and historical relations to the claim area. To add weight to their arguments, these respondents have made statements to the Federal Court couched in exactly the same language claimants have used to describe their particular links to country. As Seidal describes it:

Some witness statements mirror-image those witness statements presented by Yorta Yorta peoples: 'I too want to be buried in country. I too fish. I too hunt. I too have a strong association with country' (Seidal 1998: 15).

Arguments that non-indigenous people had the same, or similar, sentiments to land first surfaced publicly in the wake of the High Court decision on Wik. Pastoralists and other landholders publicly asserted that they also have a sentimental, if not spiritual, attachment to country which can neither be denied nor ignored by Aboriginal claimants. Much political energy has been used to argue due consideration of these links, including the corollary that indigenous peoples' interest in country should be accorded neither more nor less consideration than that of their respondents.

Below are some examples of the mirror-image statements of attachment to country tendered by respondents in the Yorta Yorta case.

I would like to be buried in the Milawa State Forest because I spent all my working life there ... I think I have the right to camp, hunt and fish in the forests as I have always done. I do not believe anyone has the right to stop me doing these things in the State Forest ... My father taught me only to catch enough to eat ... My father taught me most about the bush ... Living so close to the Forest I do have a strong connection to the land and would like to be buried in the area some day (composite statements from respondents quoted in Reasons for Ruling on Admissibility of Evidence, in Members of the Yorta Yorta Aboriginal Community v. State of Victoria & Ors, 29 October 1997).

**Implications for claimants**

One reason why mirror-image statements are strategically adopted by respondents is the capacity of such statements to undermine claims to a particular (cultural) basis to indigenous occupancy and connection to land. Further, the mirror-image statements are often linked to respondents' public denials of any knowledge of Aboriginal activity or presence in areas of the claim. For example, in written statements and in reply to questions from counsel, some
members of the recreational users' group denied they had 'ever seen an Aboriginal person hunting, fishing or camping' in the specific area of river bushland.

By offering evidence of attachment themselves, respondents have strongly argued that their sentimental connections should be given evidentiary consideration in claim hearings and recognised as a central aspect of their opposing position. Indeed, during the Yorta Yorta claim, Justice Olney was requested by claimants' counsel to rule on the admissibility of such evidence.

Olney made two critical points in his judgment. First, that the primary requirement of the NTA is to prove the existence of a system of native title, and in so doing for the court to seek evidence from the claimants only. It is Aboriginal people's attachment to country under their traditional laws and customs which is of primary interest and scrutiny in the court. The nature of non-Aboriginal peoples' attachment to country is not the subject of this inquiry; except in so far as abandonment might be the case. Second, it is the analysis of what indigenous people say about themselves and their ancestors which is the proper focus of evidence.

However, although statements of non-indigenous attachment were deemed irrelevant, this did not prevent respondents from arguing further that:

- evidence from long-term non-indigenous residents of the region tends to show that such beliefs (as said to be distinctively Yorta Yorta) are not limited to the applicants and are widely held throughout the larger regional population (Olney 1997: 12).

The meta-message is that indigenous concerns about country, the nature of their association, and their desire to perpetuate this connection (through reproduction of site related knowledge; burials in country; cultural heritage protection, and so forth), fails to objectively differ in kind from that expressed by the general non-indigenous rural population. Beneath these accusations is the expectation that Aboriginal interests in land should be different from that of non-indigenous people's interests.

Respondents went further. In another twist to their argument, they suggested that the kind of concerns for country claimed by Yorta Yorta-Bangerang peoples were actually adopted explicitly from interests and concerns first expressed by their rural non-Aboriginal co-residents. Ironically, such assertions of the fundamental mutuality of land-based interests, sentiments and practices provided no basis for mediated solutions or regional land-use agreements.

Arguments of the kind offered by respondents counter the notion of native title as an indigenous system of traditional law and custom, and require the forensic use of history for evidence of authentication. Moreover, such arguments indicate why it is important for Aboriginal claimants to thoroughly research the available documentary evidence and archival sources in conjunction with comprehensive oral evidence of attachment, including customary practices, to country.
In the Canadian jurisdiction at least, decisions in the Delgamuukw case indicate that indigenous oral records cannot be dismissed by respondents as simply nothing more than confirmatory evidence to written records. In Australia, we have yet to have such a ruling. What has been argued in Delgamuukw, and applies here, is that there need not be an unbroken association between present and prior occupancy; although in Australia some sources initially argued that claimants had to show proof of occupancy back to the point when the Crown first asserted sovereignty over the land in question.

Even after the promulgation of the Amendment Act (1998), claims of indigenous prior occupancy to land will persist as a contentious legal and political issue. Ultimately, mirror-image statements of attachment, followed by denial of presence on country, sustain a pervasive view in southern, rural Australia, that Aboriginal people firstly, are an assimilated population, and secondly, because of assumed cultural discontinuities, should be treated 'like the rest of us'.

At the ideological level, many whitefellas argue that biological assimilation has wiped out any possibility of authentic cultural connections with the traditions of a precontact past. They further presume that cultural assimilation has successfully transformed Aboriginal communities to the extent that they are now indistinguishable from other (poor) rural folk. Consequently, Yorta Yorta claims of attachment to country are considered a calculated re-invention of history for opportunistic political and economic gains.

Allied, but additional, challenges to the Yorta Yorta claim have come from critics opposing the suspension of normal rules of evidence in the Federal Court, with the accusation that these represent unnecessary concessions. Yet the terms of the NTA require the Court to perform its duties in terms of procedural fairness; that court conduct be 'fair, just, economical, informal and prompt' (NTA s.82(1)) with due consideration to the 'cultural and customary concerns of Aboriginal and Torres Strait Islanders' (s.82.(2)). Moreover the court will not be 'bound by technicalities, legal forms or rules of evidence' (s.82 (3)). On the other hand, the *Native Title Amendment Act 1998* anticipates that future native title cases in the Federal Court be heard in accordance with the conventional rules of evidence. Such a move has the potential to reduce and limit the primary role of (hearsay) oral evidence in favour of documentary evidence and increasing legalism.

**Conclusions**

The central proposition of this paper, drawing on the Yorta Yorta case as an example, is that written records in native title claims are likely to gain greater status and credibility as evidence under the general provisions of the *Native Title Amendment Act 1998* and directly as a consequence of changes to the rules of evidence. In addition to the impact of these procedural changes, the challenges Yorta Yorta people faced in presentation of their oral evidence about occupancy is indicative of rural public scepticism of Aboriginal identity and claims of continuities.
When non-indigenous respondents' make statements of the kind cited above, claimants have an onus to demonstrate a distinctive quality to their connections; simultaneously, such claims challenge their claimants' credibility. Mirror-image statements are designed to instil doubts as to the authenticity of Aboriginal peoples' claims in proceedings; a doubt of the kind foreshadowed by Justice Brennan in *Mabo No. 2* that the 'tide of history' can wash away native title (through the principle of abandonment as opposed to extinguishment). Public scepticism about the extent of Yorta Yorta continuity and evidence of occupancy are thus made questions about due process and the conduct of the Federal Court, and what the proper focus of evidence should be in this arena.

Immediately after enactment of the 1993 NTA, some lawyers argued that written records should provide the major evidentiary proof of claimant occupancy back to first settlement. Yet in the final analysis it may be a question of the indigenous system and its operation and whether the operation of the system can be dissected into its operating mechanisms such as 'core and contingent rights' (Sutton 1996); and whether the native title interests form an intact and on-going system of indigenous law.

If native title is the common law recognition of indigenous law, then written records can only ever be simply one source for interpretation. A crucial source must remain what claimants say of the principles of their traditions in regard to group recruitment, descent reckoning, social reproduction and the cultural landscape. However, the Amendment Act suggests recognition of this point may face a rough passage.

**Notes**

1. Along with many other researchers, I am indebted to Professor Bruce Rigsby for alerting many Australian anthropologists to the Canadian case law material and its application in the Australian native title context. Rigsby has been foremost amongst researchers to recognise the importance of the Canadian material to Australia. Other papers by him discussing the role of anthropologists as expert witnesses in Canadian land settlement claims have been presented at previous native title workshops (see Rigsby 1995, 1997).

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5. Norman Tindale and me: anthropology, genealogy, authenticity

Ian Keen

As the result of the Mabo case, native title applicants appear to have to demonstrate genealogical ('biological') connections to the early colonial Aboriginal population, as well as continuity of traditions in relation to country. In preparing native title claims in Gippsland, Victoria, genealogies compiled by Norman Tindale in 1938–39 at Lake Tyers have proven very useful. Felicita Carr and I have been able link oral genealogies, collected by me (some of which draw on claimants' own research), to 'archival' genealogies, compiled by Carr on Reunion software. These bring together census data, mission records and genealogies such as those compiled by Tindale in the 1930s and Alick Jackomos in later decades. It has in many cases been possible to link claimants to the (Aboriginal) names of Gunai/Kurnai people who appear in early censuses, blanket returns, and the like. We have compiled genealogies relating to some 30 core surnames, linking more than 20 to individuals named in the earliest records as indigenous inhabitants of Gippsland.

Tindale's genealogies

It is ironic, given Tindale's research program, that the genealogies he so carefully and industriously compiled for a quite different purpose are now proving a wonderful resource for many Aboriginal people, especially those whose ties with their families were broken, and in the preparation of native title claims. Tindale's genealogies are useful in a way that Tindale could not have foreseen, writing as a strong advocate of assimilation and the dispersal of Aboriginal communities in the southeast, at the time of the White Australia policy.

Tindale prepared genealogies in January 1939 at Lake Tyers in Gippsland, eastern Victoria. They include a variety of kinds of information: the genealogical basics of names and relationships of marriage and descent, with the occasional ethnological note. However, attached to many names are carefully worked out calculations of the degree of 'Aboriginal blood' for example:
I must confess to experiencing a sense of shock on seeing this. But it was occasioned less by Tindale's enterprise as such, than by a sense of recognition. Here were traces of the work of an anthropologist working in the same community as I have been over the last two years, but 60 years earlier. Like Tindale, I have been using one of the founding techniques of social anthropological research—the genealogical method. The research of both of us relates very directly to current social policy. It is this recognition that occasioned these remarks on doing genealogies for a native title claim. But first, a little more on Tindale's research.

**Tindale's research program**

Tindale explains in a 1953 paper that, as part of the program of field studies of the Harvard-Adelaide Universities Anthropological Expedition, 1938–39, he and J.B. Birdsell carried out a series of studies 'on the constitution and development in Australia and Tasmania of the full-blooded and hybrid aboriginal populations' funded by the Carnegie Corporation. Birdsell was responsible for physical examinations of the people, Tindale gathered population data and detailed genealogical information (Tindale 1953: 2–3). He published papers and a lecture summary on 'hybridisation' (1940, 1941, 1953); Birdsell, however, seems not to have published on this subject.

Tindale described some of the highlights of the Adelaide-Harvard Universities expedition in a lecture to the Anthropological Society of New South Wales. The summary states:

> The work included the study of full bloods as well as half-castes. The principal aim of the expedition was the study of the factors governing inheritance of bodily form in human crosses. The party, consisting of Mr. J.B. Birdsell, representing Harvard University, and Mr. N.B. Tindale of Adelaide, with Mrs. Birdsell and Mrs. Tindale, travelled 16,700 miles by motor car and 600 miles by steamer and plane ...  

> The method adopted was to tabulate and record the history of each person, and then to work through the individuals, family after family. Difficulty was sometimes experienced in securing data regarding illegitimacies, but when the purposes of the work were known the people proved to be helpful. An average of fourteen people was studied each day in order to ascertain this sociological and genealogical data, while Birdsell measured all subjects of whom an accurate ethnic assessment could be made from their family history (Tindale 1940: 282).
They tested for the effects of environment, and the possibility of differences in mental ability, including among 900 school children.

It was of interest to note the apparently greater adjustment to white life [on stations] of F1 [these are offspring of an Aboriginal person of full descent and a ‘white’ person] men over F2 individuals [the children of two F1 individuals]. They showed greater ability to adjust themselves even when reared in aboriginal communities. The meaning of this is at present obscure; some light, however, may be thrown on it when the data on mixed-blood children have been analysed. (1940: 282)

Tindale and Birdsell garnered very complete data on Tasmanian families. Tindale’s 1953 article gives the results of the study on Cape Barren Island of ‘the growth of this population of di- and tri- hybrids to the fifth and the beginning of the sixth generation of crossing’. the descendants of British sealers and Tasmanian and mainland Aboriginal women. Tindale (1953: 2) concluded (in summary) that:

In the sixth generation, now beginning, they will tend to become a Tasmanian x Australian x white trihybrid type whose mean constitution can be expressed by the formula

\[ 22 \text{Tas} \times 6 \text{Aus} \times 36 \text{white} \]

Tindale thought the size of the Tasmanian population, which had grown rapidly, would stabilise at about 400 unless the Government allowed movement to the mainland.

What seems odd about this enterprise 60 years on is the assumption of a genetically homogeneous ‘white’ race, as well as the quaint terminology of ‘blood’ and admixture. It assumes that racial characteristics came as homogeneous and partible qualities, like paint. The arithmetical calculus can be interpreted as indicating averages of genes shared by descent, but apart from the complement taken from each parent by a child (I do take half my genes from my mother), giving a number such as 5/8 to an individual is misleading. Such a figure does not take into account the random effects of meiosis, or of the genes shared by all humans. It is actually a calculation of the ‘racial’ complement of ancestors at the generation where they were racially distinct. In the case of 5/8, for example, five great-grandparents are deemed to have been ‘aboriginal’, while three were ‘white’.1

But Tindale’s work was not exclusively biological and demographic; he wrote also about policy, specifically ‘the half-caste problem’. He presented his ‘Survey of the Half-Caste Problem in South Australia’ as a report of results of the Harvard-Adelaide Universities expedition (Tindale 1941). The general argument was that policies of ‘half-caste’ administration developing under the control of six different States and the Commonwealth employed varying, often conflicting, principles. He offered a more consistent policy direction.
Tindale (1941: 68) proposed that a 'solution of the half-caste problem lies in the dispersal of all artificial aggregates of mixed-bloods and the real training of the rising generation to take their place in the general community'. People 'should not be shut away in segregated (almost caged) communities'. Closed communities are difficult to control, and dispersal will mean rapid dilution of 'dark ethnic pockets' of isolated 'groups of near-aborigines, possessing the physical vigour of whites'. He thought the desert tribes should be isolated in the desert: 'It would enable the control of faunal pests and the effective occupation of a desert area which is a menace to the pastoral areas', and would favour their survival (Tindale 1941: 68).

Above all, Tindale sought to reassure his (white) readers that assimilation would not be detrimental to the white population: a low percentage of 'Aboriginal blood' would not introduce any 'aberrant characteristics'; there was little likelihood of 'throwbacks'; evidence overseas suggested the possibility of 'hybrid vigour'; and, moreover, 'the Australian aboriginal is recognised as being a forerunner of the Caucasian race' so that Aboriginal blood is distantly similar to ('remotely the same as') that of white Australians. Unattractive types would be eliminated by natural selection as they would fail to marry (Tindale 1941: 118). In the settled districts the half-caste population is a small proportion of the whole and 'it would appear that wide dispersal would, on the basis of evidence in our possession, inevitably lead to the decline of the less assimilable elements' (Tindale 1941: 120). The most 'absorbable types' are 1/8, 1/4, 3/8 and F1 crosses. However, 'economic stress, especially with the incidence of large families, causes F1 and some 3/8's to be less adaptable' (Tindale 1941: 120).

Tindale went on to warn against the dangers of segregation in light of the White Australia policy. The mixed-blood populations were increasing, so that delay in putting assimilation policies in place would result in there being a larger pool to assimilate at a later date.

Tindale's genetic reductionism is striking. Difficulties of social adjustment, for example, are attributed to the type of cross, not to historical, social and cultural factors. From the perspective of the 1990s it is not hard to set Tindale up as the target of self-righteous indignation and outrage. My purpose is not to demonise Tindale, however, but rather to contrast my impressions of Gippsland Koories with his predictions, and to use his employment of the genealogical method as a foil for our own use of the genealogical method.

The tenacity of Koore culture
Tindale celebrates examples of Aboriginal people managing farms, and entering trades and professions as successes of assimilation. But I think the results of assimilation policies were not what Tindale would have expected. Gippsland Koories have often said to me that they have not assimilated—'We're still here'. An impression quickly gained after only a brief visit, and reinforced with longer acquaintance, has been that of a people with a distinctive culture. The kinds of features documented in Being Black (Keen 1988) display similarities with the institutions of Aboriginal peoples in other regions, and continuities with the pre-
colonial past. I agree with Marilyn Wood that it is not correctly designated a 'sub-
culture', but is rather the complex product of the interaction of Gunai/Kurnai
and non-Aboriginal people and institutions.

This distinctiveness has been maintained partly because Kooris filled a
particular economic niche, working as families in the bean and maize paddocks,
with some men in the timber mills, and until moved and rehoused, living on the
riverbanks and near the beach, and exploiting resources of the bush, rivers, lakes
and sea for subsistence. Older people look back on that time with great nostalgia
as the best of times. Variation is evident, for example, between the culture of
people who, like their parents, grandparents, aunts and uncles, still live at Lake
Tyers, and those who live at Numerella and Orbost, and some of whose
antecedents were evicted from Lake Tyers as 'half-castes'. Like Lake Condah
mission (as was) in the Western District. Lake Tyers continues to be a symbolic
centre for many who do not live there. For some, 'Lake Tyers is home, will always
be home'.

Among the more obvious features of a distinctive Gunai/Kurnai culture,
many have continuity with the past. Beliefs about harbingers of death (such as
the mopoke, and the west wind), ghosts of the dead, and dangerous beings of the
forests, are pervasive. Feather-foot men and the Devil are ever present dangers
from outside. Elements of Gunai vocabulary, as well as wider Koori argot occur in
everyday speech. The syntax, and at Lake Tyers the pronunciation, of Aboriginal
English is distinctive, showing features in common with indigenous languages
(such as elision of the verb 'to be', and of the final 's' plural marker, cf. Eades
1988). Kin terms are extended to people between whom no genealogical link is
known, and there are certain distinctive features of terminology. The terms 'son'
and 'daughter' can be applied to any child depending on gender; 'aunt' and 'uncle'
are terms of respect applied to any older person of the appropriate gender. People
of a similar age are one's 'brother', 'sister' or (less frequently) 'cuz'. An interesting
feature of Gunai/Kurnai kinship is the asymmetric reversal of reciprocals
between parent and child or grandparent and grandchild, so that a father may
address his son as 'dad', and so on. This seems to be the prerogative of the older
person and not the younger. It is not clear at this stage whether this derives from
a pre-colonial practice.

Most Gunai/Kurnai people find themselves enmeshed in very extensive
networks of kin, with the strongest ties to people living in the region 'up the line'
and 'down the line' between Drouin and Cann River. But these links extend
outside the region as well, following the history of movement from missions in
other regions, for farm and forestry work, and migration to Melbourne. A strong
ideal against marriage to a close relative persists, especially among older people.
Households tend to be extended and fluid in structure and size, with the
grandmother often involved in child-rearing, and informal 'adoption' of relatives'
children very common. Older sisters frequently have the role of looking after
younger ones as quasi-parents (see Sutton 1996 for comparative material).

Principles of identity display strong continuities with the past as recorded
by Howitt (1880, 1904) and Bulmer (1994). First, is the strong identification with,
and attachment to, particular localities within Gippsland, such as Lake Tyers, or Drouin. This is often, perhaps usually, the place where the person was born and grew up, and to which a person wants to return when they die. People identify themselves and others in terms of place, contrasting, for example, the Lake Tyers ‘mob’ with the Bairnsdale and Orbost mobs. Second, is the importance of the surname as an identity. Like the personal totems of old, these serve as a guide to the people whom a person should not marry. Third, the most salient identities that differentiate locals from outsiders is the broad regional identity of Gunai, or Kurnai (the proper form varies), or for some people, ‘Gippslander’ (implying Koori Gippslander). The use of nicknames is just about universal, as it was in Howitt’s time.

Tindale ignored, and would perhaps have discounted, people’s own concepts of blood and identity. What counts is the ‘blood line’ to indigenous ancestors rather than skin colour, although light-skinned children certainly used to be teased by darker-skinned ones at Lake Tyers. And this is where genealogies come in.

**Genealogical research for native title claims**

Given the stress by the High Court on genealogical connection as a criterion for the continuity of native title, which parallels rather the centrality of the ‘local descent group’ in the *Aboriginal Land Rights (Northern Territory) Act 1976*, the preparation of genealogies has become a central feature in the preparation of native title claims. In order to convince a State government of the validity of a claim during the mediation process, or a Federal Court judge in a hearing, the claimants and their representatives are required to provide evidence of genealogical connection to members of the indigenous population at the time of colonisation.

The research related to native title applications in Gippsland, Victoria, has included genealogical inquiries on two fronts. During fieldwork in 1996 and 1997, I have been compiling hand-written genealogies from information provided by Gunai/Kurnai people, some of whom had already drawn up substantial family trees. As mentioned earlier in this paper, these oral genealogies have been merged with archival genealogical information.

These genealogies show that more than 20 of the family names with long term associations with Gippsland (derived originally of course from European surnames) are connected by descent from individuals recorded in Thomas’ 1860 census of Gippsland. This is in spite of Aboriginal people moving and being moved into Gippsland when other missions in Victoria were closed (by 1923), or in search of work. These people have married into the local community, so that their descendants trace Gunai/Kurnai descent. Very many more family names are linked in turn to these core surnames through recent marriages and de facto relationships.

In spite of the common anthropological methodology, our research seems to be very different from Tindale’s activities. After all, he thought that he was
doing 'scientific' research which would produce results to be drawn on for the purpose of giving advice on government policy, regardless of the opinions of the Aboriginal people concerned. Native title research is, by contrast, in the interests of Aboriginal people, and matches their aspirations. But the moral position is not so simple. Some Koories take the view that native title is yet another act of colonial oppression—why should they have to prove who they are? White people do not have to reveal details about their lives and relationships in order to prove their identity and ownership of land. The representative body is simply an arm of government, and the research is intrusive. Some seek redress through the courts on grounds other than native title, while some seek alternative routes to resources. Others, however, see the representative body as an ally, and the researchers as working on their behalf and in their interests.

Confidentiality is also an issue. Mirimbiak has procedures in place to keep genealogies confidential, although we will make copies available to families concerned. Even here there are hazards, for details provided by some members may prove offensive to others. Some Gippslanders are cautious and have declined to provide genealogical information out of concerns over confidentiality, or have provided a bare skeleton of their family tree. The majority have expressed great interest in the results, especially of the archival research, and in several cases the relationship has been more collaborative than that of informant-anthropologist.

Notes

1. I thank Robert Attenborough for his advice on the biological implications of the calculus of blood.

2. As Tindale notes (1941: 128), it was Victorian government policy to disperse people out of missions and stations into the towns. However, as Robert Foster (1989), shows, it was also an arm of policy in South Australia, where many people had been moved into the wider community.

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In Australian Territorial Organization, Nic Peterson (Peterson and Long 1986: 84) noted that there was very little information available about local group organisation in the published literature or in the unpublished fieldnotes of anthropologists. He found that only a dozen anthropologists had lived or traveled beyond the frontier before the 1960s, and that few of them had done detailed census work or written much about local organisation in their notes. After searching through their notes as well as going through patrol reports from Arnhem Land and the desert regions of Western Australia, Peterson was able to assemble a small series of census data sets, then analyse them for basic dimensions of group size and composition. He commented it seemed that most researchers, apparently under Radcliffe-Brown's influence, had assumed that local organisation had disappeared with European contact. We might think that assumption led our predecessors to ignore local organisation wherever they worked in post-contact situations.

I distinguish local organisation\(^2\) in the classical situation from the clan-based system of tenure (or ownership) which defined people's rights and interests in land, waters and incorporeal property. I take local organisation to subsume at least three kinds of land-using groups which are attested in the ethnography. These are:

- The camp or band, which occupied a single location and whose members shifted locations as a group. It was also a higher level commensal unit within which people shared meat and other such items.
- The household or hearth group, which focused on a single hearth and was a conspicuous constituent of the camp or band.\(^3\)
- The various task groups, which people organized to accomplish a range of tasks, such as hunting, fishing, foraging, ceremonies, etc.

In a modest way, I want to use a range of older and newer primary materials to tackle the reconstruction of some features of local group form and composition at Port Stewart on the east coast of Cape York Peninsula, at the northeastern point of Princess Charlotte Bay. There is an Aboriginal community (a local group, if you will) at Port Stewart which displays more or less continuous occupation in the known historical period. Its members are the Lamalama people, and they are the direct descendants of Thomson's (1934) 'Dugong Hunters of Cape York'. The frontier passed Port Stewart before the turn of the century, so we
do not know the Port Stewart people in quite the same way, say, that Lauriston Sharp knew the Yir Yoront and Thaayorre on the west coast. The main materials I focus on here are two sets of pedigrees which Norman B. Tindale and Donald F. Thomson recorded in 1927 and 1928, respectively. Tindale also recorded a few pedigrees at Flinders Island in 1927 which centre on Port Stewart people or include Port Stewart people. Both sets of pedigrees are records of the people to whom particular propositi considered themselves to be related and of how these propositi considered themselves to be related to their alters. By using that data together with other more recent information and by drawing inferences, we can gain some idea of the kin (including marriage) links which played a role in people's being there then.

Some readers may not like my use of the term 'pedigree' here and, until recently, I myself resisted the term because I associated it with the documents which detail the bloodlines of thoroughbred horses, dogs and the like. But not long ago, I reread John Barnes' (1967) paper on genealogies and found some of his terms and points to be useful for our current practice. Barnes (1967: 103) distinguishes pedigrees from genealogies in this way. A pedigree is 'a genealogical statement made orally, diagrammatically, or in writing by an actor or informant', but a genealogy is 'a genealogical statement made by an ethnographer as part of his field record or its analysis'. In other words, a pedigree is our first-order record of someone else's statement of their kin relations to others, but a genealogy is our second-order anthropologist's statement of other people's accounts of their kin relations among themselves. We need to keep the distinction clear, for the two kinds of documents have different evidentiary value and weight in anthropological studies and in land claims and such matters.  

This strategy of working through old pedigrees cannot give us the same results which detailed census surveys might have done, but it can tell us a fair bit about the people we know to have lived at Port Stewart at one time or another during the 1927-28 period. We cannot hope to learn now who was in the camp, say, on 28 June 1928, but we can get an idea of who lived at Port Stewart at one time or another during parts of 1927 and 1928 and how they were related to other residents. People were not there from no cause or for no reason. Some significant changes took place in the Port Stewart local community then which set it on the trajectory to become the focal settlement of the Lamalama people, and study of the older pedigrees provides us with more background for understanding their history. This essay is in the way of a progress report, not in the way of results from a project completed.

Port Stewart is the name which local Aboriginal and non-Aboriginal people use for the area of the lower Stewart River mouth and estuary. It is most likely that Port Stewart people—men, women and children—got caught up in the marine industries from about 1865, a few years before William Hann's party passed through the area in 1872, but we know of no primary written records from then. It was Hann who named the Stewart River after a member of his exploring party. It is not clear who named Port Stewart nor when they named it, but it gained importance when the town of Coen sprang up in 1887 after a prospector discovered Lankelly Reef and larger scale mining opened up there. The port
enabled non-Aboriginal residents of the region to get supplies more cheaply by water from Cooktown and points elsewhere, rather than be dependent on dearer overland transport. Despite the name, Port Stewart never was gazetted officially as a port. In its heyday a few years around the turn of the century, there were two wharves near its mouth and three hotels strung out along the first mile or so of its estuary. Mrs Minnie Lauder, one of my early oral history sources said that the local Aboriginal people were kept out from the early settlement, but we know that by the Great War, they were able to return and camp nearby along the beach esplanade and the sandspits at the river mouth. By then, regional economic development had slumped, and the wharf-keeper remained the only permanent non-Aboriginal resident at Port Stewart. He was prepared to pay the rent, but he commented there was not enough cargo to support a business and he complained that 'somebody must be here [at Port Stewart], if not the blacks would very soon have it' (QSA LAN 13/18).

The first professionals to visit and do anthropological research at Port Stewart were Herbert M. Hale and Norman B. Tindale of the South Australian Museum. It was Tindale's second major ethnographic fieldwork. Hale and Tindale spent 16 days at Port Stewart (22 January to 6 February 1927), but they were mainly occupied with natural history research (marine and terrestrial zoology, but mainly entomology). They spent no more than two-and-a-half or three days visiting and talking with the Aboriginal people there. Just previously, they had spent three weeks with the Aboriginal people on Flinders Island, and they spent another day and a bit at Flinders on their return southward. There were some Port Stewart people living at Flinders, who also provided them with some information.

The following year, 1928, Donald Thomson arrived at Port Stewart with his companion, Bob McClelland, towards the end of May. It was Thomson's first major anthropological fieldwork, and he too did natural history work, mainly zoology and ornithology. There were few Aboriginal people at Port Stewart, so he decided to shift to another field venue. Once their packing gear arrived at the end of June, Thomson and McClelland made a difficult trip by packteam 80 miles north to old Lockhart River Mission at Bare Hill. After a month or so at Old Lockhart, they then made their way by packteam via Coen southwest to the Mitchell River Mission. They returned to Port Stewart in November for another month or so. Thomson returned to Lockhart again in 1929 and 1932, but he evidently did very little fieldwork at Port Stewart after 1928. He may simply have stopped off there briefly on his way to and/or from Old Lockhart.

Thomson was the first to publish academically about the Port Stewart people; he included material on fire and mourning ceremonies there in his paper (Thomson 1932). His papers on religion and marine hunting presented much material about the Port Stewart people, whom he called the Yintjingga (Thomson 1933, 1934). To my knowledge, Thomson never mentioned in his publications that Hale and Tindale had preceded him and worked at Port Stewart.

For their part, Hale and Tindale published the first part of their 'Aborigines of the Princess Charlotte Bay, North Queensland' in 1933, and they
identified the people at Port Stewart and thereabouts as the 'Barunguan'. They cited and deferred to Thomson's (1932) paper on fire and mourning ceremonies in the supplementary notes at the end of their second part (Hale and Tindale 1936: 172), but they made no other reference to his work and papers. Later, Tindale (1974: 165) simply cited Thomson's (1933, 1934, 1946, 1956) papers on the Port Stewart people. As we might expect, Tindale and Thomson met and worked with some of the same people (including Tjamintjinyu/Tommy Nebo/Tommy Thompson (Rigsby and Chase 1994). It was a missed opportunity that they did not consult and compare notes with each other because they reported fairly different perspectives on the community there and the peoples of the region.

For several years I have been working with Hale's, Tindale's and Thomson's journals, fieldnotes, photographs and other materials in order to gain some time depth and develop an ethnographic baseline for when people were still leading a relatively autonomous self-scheduling way of life. These primary materials provide a richer picture than do the publications alone, and in the light of our more recent knowledge and analysis, we can reinterpret them and gain further insights into a range of topics, although there are limits to what we can hope to learn.

Settlement pattern and local group form and composition are such a matter. Hale and Tindale were there at the beginning of the wet season, and they found the Aboriginal people living in camps out on the sandspits at the river mouth. There was one camp of people from south of the Stewart on the south side, and there were two adjoining camps on the north side. The larger north side camp was of local Stewart River (Yintjingga) people, while the smaller one was of Umpila people from the Massey River area. Thomson arrived at the start of the next year's dry season and he found all the people living together in a single camp upstream just beyond the tidal reach. Thomson (1934: 241) remarked on how this camp made only short moves as a body during the dry season just upstream or downstream, then shifted out to the sandbeach at the river mouth as the wet approached. He also wrote, 'especially during the northwest monsoon season, they live in settled camps for weeks or months at a time' (Thomson 1972: 1). The people also put on Bora ceremonies (led by a ceremonial leader from Dinner Hole, about 45 kilometres south of Port Stewart) late that year, which they permitted Thomson to attend and photograph. That may have been the last Bora at Port Stewart. Thus, Thomson witnessed the seasonal change in occupation of the area, and he also apparently saw the result of previously separate local groups which had amalgamated into a single community. His and Tindale's pedigrees also provide background to understanding how a single camp/local community emerged from what had previously been separate camps.

Tindale (let me drop reference to Hale henceforth) and Thomson did not do any census work in 1927–28, so we have no systematised knowledge of just who was there, or when, and so on. However, they recorded pedigrees, mentioned a number of people by name as being there in their fieldnotes and photographed people whom we can also identify. Not everyone who was there was willing to talk with them and give them information. Tindale recorded five pedigrees at Port Stewart, but two of them focus on the same two men. He also recorded the
pedigree of a Port Stewart man, Captain, who was visiting Flinders Island, and another four of his Flinders pedigrees include Port Stewart and other Lamalama people, some then living on Flinders. Thomson, for his part, recorded 15 large pedigrees at Port Stewart. Three of them were slightly later revisions, so they are of 12 people.

Tindale wrote his pedigrees in ink in a single five inch by eight inch sewn notebook, which has now been photographed. They are generally quite well laid out and the handwriting is legible with few exceptions. They follow a conventional format, and the sex/gender of persons is indicated by Mars and Venus signs. Tindale generally identified the people in his pedigrees by one or more indigenous language names. We can generally identify the people and make out their names in the light of our later knowledge of the languages of the region. Peter Sutton knows the languages from the Marrett River eastward, and I know those to the west. The standard of Tindale's phonetic transcriptions of names and other indigenous language words was not good, and it was worse for the phonetically more difficult languages, such as Lamalama. Tindale also wrote out a listing of (most) of the people he encountered on Flinders and at Port Stewart, and he included their alternate names there, including people's English names, where he knew them. This is very helpful.

The Thomson pedigrees are quite fragile; they are written in pencil in two soft-cover field notebooks on paper which has grown dry and brittle. They are fuller and more complete than Tindale's Port Stewart pedigrees. They follow a conventional format too, with Mars and Venus symbols. They were laid out across two open pages in most instances, and display all the difficulties one can imagine of trying to plot complex genealogical data onto a single plane. These are the problems of spacing and arrangement which arise where there are large sibling sets and children sets, as well as plural and serial marriages.

This leads me to take up a point of technique which Barnes remarked on. My own practice is to record genealogical information in prose and short phrases in my field notebooks, and not to try to draw genealogical charts at the same time. I have argued with colleagues about the practice of recording pedigree information directly onto a genealogical chart. My position is that one can't draw the appropriate chart until one has all the relevant data to hand. Barnes (1967: 105) wrote:

> In the field, it is better to record fresh genealogical information in a notebook in narrative form rather than attempt to draw a genealogical chart at the dictation of an informant. A chart can be set out neatly only after it is known how many generations the genealogy covers and how many individuals have to be fitted into each part of the chart. Furthermore, for orderly presentation, each of the constituent cognatic stocks in the informant's kindred should be first entered on a separate chart. Later, information about kinsfolk belonging to several stocks can be extracted and combined in an illustrative genealogical diagram.

Before leaving the point, I want to say also that many of us doing native title and other land claim work are now using genealogical software programs (such as
Reunion or Brother’s Keeper) to store and present our genealogical data. But such programs have a built-in programmer’s bias towards vertical descent lines, and they are hopeless at representing kindreds and groupings which include classificatory kin. I suggest that we need to learn to use simple graphics programs which allow us to construct genealogical charts with greater horizontal complexity. That way we can present more compelling graphic images, which represent how the members of a local community or a regional population are related to one another.

Thomson’s handwriting is harder to read than Tindale’s, and the faintness of some entries increases the difficulty of interpreting what he wrote. But as with any epigrapher or palaeographer, familiarity and sudden flashes of recognition sometimes brighten the day and I win a new piece of information that previously eluded me. For example, one afternoon I was able to make out an entry near a married woman’s name as ‘(pregnant in Dec 1928)’ and then much fainter beneath it I could read ‘child born July 1929’. That is firm information for the date of birth of Bobby Stewart, a senior Port Stewart man.

Thomson’s 1928–29 phonetic transcriptions are of about the same poor quality as Tindale’s, but it is generally possible to tell which language he was recording. It is unclear what previous linguistic training he had had, and recall too that this was his first fieldwork.

The major distinction that sets Thomson’s pedigrees apart from Tindale’s, apart from the greater number of people recorded in them, is that Thomson systematically asked his informant for the kin terms which propositus and alter reciprocally used for each other, and he recorded these faithfully. So indeed Thomson followed the classical genealogical method first developed by Rivers (1910), and the kin term data he recorded is very rich. He often queried his informants about the kin terms they and their alter used for each other: for example, how or why they tracked their kinship in a particular way, and he made small notes nearby when he did. Six of Thomson’s informants used only Umpila kin terms, five used only Ayapathu kin terms and one used Ayapathu on one occasion and Umpila on the other. The kin term data alone are valuable in their right as a record of two terminological systems, Umpila and Ayapathu.

Thomson also generally identified persons in the pedigrees by using their several indigenous language names. He had learned that each person had at least two names, one got at birth and the other acquired later upon tooth evulsion or other significant life event. He labelled these respectively as manthala and nyuchuruu names (these are the Umpila words for ‘name’ and ‘navel’, respectively). Some individuals had more than two names, and we know now that some people had other indigenous language names which Thomson did not learn for whatever reason. Nicknames and ‘substitute names’ also were and are common in the region, and Thomson recorded them when people told them to him: e.g. thaku ‘left-handed’ and yi’almu ‘second-born’ (Thomson 1946: 157, 159; these are Umpila terms). Many, if not most, of the people whom Thomson worked with or heard about had English names by this time, but he was less diligent than Tindale in recording them. They often appear written in lightly near an indigenous
name. He also evidently considered the use of certain English names as demeaning, and he wrote them in the pedigrees and elsewhere in ways that disguised their origins. So Charcoal became ‘Chako’, Monkey became ‘Mungi’ and Pompey became ‘Bambi’.

Some of the same people appear in both Tindale’s and Thomson’s pedigrees, but they appear under different names. We depend on more recent external knowledge in some cases to judge that two or more names represent the same person. And in Thomson’s pedigrees and notes, several people appear under different indigenous language names in different pedigrees. Sometimes we think that we can interpret the differing names as reflecting the several primary clan and language identities of the propositi of the pedigrees. For example, Old Frank Port appears most often as Nanggayunumu in the pedigrees, but sometimes he is Wurrapinta. Also, people changed their names when a namesake died. Thomson recorded that Tommy Nebo’s daughter’s name was changed from Wu’untarnu to Almpanhu when the old man of the same name died.

Personal names present great difficulties in our attempts to connect the older pedigrees with the contemporary pedigrees which several anthropologists have recorded. The old multiple naming system has not operated for some years: people no longer practice tooth evulsion, and women do not birth children now at birthing trees attended by older women kin, so those contexts for naming are gone. Most living people know their old people only by their English names, and if they know indigenous language names, they generally know just one. So it is not unusual for people not to recognize their close forebears when they are identified only by the indigenous names used in the Tindale and Thomson pedigrees. For example, three elderly sisters did not recognise their father’s indigenous name, Tjamintyjinyu, when I talked with them about it in May 1997. They knew him as Tommy Thompson and Tommy Nebo (or Nipu). As one might expect, genealogical knowledge does not accumulate over the generations, but people know who the members of their kindred are and, of course, the general rule is that every person has a different kindred. By and large, as we move down through the generations, people forget the names of men and women who did not leave descendants and slough them off, as they also do the names of persons who died as infants or children. And we can see that people today group together some ancestors as full siblings who knew themselves to be parallel cousins or whose parents called each other ‘brother’ or ‘sister’ (that is, classificatory siblings).

Neither Tindale nor Thomson recorded instances or, perhaps better, identified instances where the genitor of a person differed from their mother’s husband-at-the-time, yet there are a few such people in the pedigrees. This is to be expected in short-term fieldwork. I recall one piirma ‘father’s younger sister’, now deceased, whose precise relationship escaped me for years until Diane Hafner told me that the old lady’s genitor was a man I called puula ‘father’s father’ and not her mother’s husband. Such cases are instructive because they give individuals a greater range of options for taking up rights and interests as members of landowning groups.
After Thomson’s death in May 1970, Harold Scheffler edited and prepared his Cambridge PhD thesis on kinship and social organisation on Cape York Peninsula for publication as Thomson (1972). Scheffler also worked through the pedigrees, paying close attention to the reciprocal kin terms which Thomson recorded for most propositi and their recorded kin. Scheffler (in Thomson 1972: 37) wrote, ‘[t]he most elementary and significant point to be made about the data presented in this report (and in Thomson’s earlier reports) is that they demonstrate quite conclusively that what we have to deal with here are systems of kin classification’. That is, the pedigrees provide evidence of two different language-based systems of kin classification, as distinct from other kinds of social classification.

Sometime later, Thomson’s secretary, Judith Wiseman, worked with the original pedigrees again. She extracted much information from them and transferred it onto larger sheets where she redrew the genealogical links and typed in the names and some other data. But she was unfamiliar with the indigenous language material in them, and she could not decipher nor make out Thomson’s difficult handwriting in many places. The Museum of Victoria has made photocopies of these copies available to family and researchers in the past.

These Tindale and Thomson pedigrees give us the best material to work with in reinterpreting the fuller features of the social organisation of the time. Tindale wrote of ‘clans’ or ‘local groups’ and ‘tribes’, but his fieldnotes make it clear that his use of the terms was not based on detailed observational data nor on analysis of pedigrees. Tommy Nebo at Port Stewart evidently told him something about who married whom in the region, and Tindale assumed that he was talking about marriage patterns among local groups in the region.18

With respect to tribal and local groups, Hale and Tindale (1933: 70) wrote:

The Barunguan19 tribe extends along the coast from Running Creek in the south nearly to Cape Direction... There are at least five local groups or clans that claim this tribal name. The southernmost is the [1] Yuinbata,20 who frequent the country south of Stewart River, on the southern bank of the mouth of which they make their northernmost camp. Their main camps are on Balclutha Creek...

The [2] Entjinga [Yintjingga]21 live along the banks of the Stewart River, the mouth of which is also known as Entjinga. Formerly they ranged inland, in search of honey and small game, for some thirty miles, but since the stocking of the main range with cattle [just before the turn of the century] they have been compelled to confine themselves to the relatively infertile sand beaches, coastal swamps, and mangrove-lined foreshores. At Entjinga they camp only on the north bank of the river.

The [3] Apowana22 (also called Konanunuma)23 clan have their main camps along Massey River. In recent years they have become greatly diminished in numbers, and have linked themselves with the Entjinga survivors, although they still keep their camps about fifty yards apart.

114
The [4] Ompeila [Umpila] range from Rocky River (Ompeinganama) [see next bracketed place name] northward to the Nisbet River. Some of their main camps are on the Rocky River, and a permanent lagoon one mile north of the river is also an important camping ground [Ngumpingunuma] ... North of the Ompeila is the [5] ‘Night Island’ group, about which little was learned, except that they intermarry with other clans of the Barunguan and speak practically the same dialect as the Ompeila. North of the Night Island people were other tribes, the language of which was not known to the informant, a Night Island woman named Oreji, who was married to an Entjinga man.

Thomson, for his part, considered tribes to be defined by common language, rather than by endogamous marriage pattern, and he published similar maps of tribal distribution in several papers (Thomson 1933: 455; 1934: 239; 1935: 461; 1972: vi). His fullest listing for our region of interest includes these groups:

- Koko Lama Lama [Lamalama], located along the southern margins of Princess Charlotte Bay from the Normanby River west onto Annie River.
- Koko Ompindamo [Umpithamu], located on the coast and inland around Running Creek.
- Yintjingga [Yintjingga], located on the coast and inland along the Stewart River southward.
- Ompeila [Umpila], located along the coast north of Massey Creek.
- Koko Ai’ebadu [Ayapathu], located inland west of the Range and south of Coen.
- Kandju [Kaanju], located inland west of the Range and north of Coen.

Although he spoke of ‘clans’ as units of social organisation, Thomson more often wrote about and described ‘hordes’ or local groups.

There were, indeed, named land-owning groups in the region whose membership was typically by serial patrilinial, but Tindale’s fieldnotes contain no evidence that he was aware of them, and Thomson’s notes and publications are not really definite. These are the groups which we call clans today, and they are exactly the kind of units which the conventional view of classical Aboriginal social organisation leads us to expect to find. It was not difficult to learn of their presence and significance. Within the first hour of our linguistic work together in August 1972, Daisy and Frank Salt, two elderly Lamalama people, volunteered the names of patricians in the Princess Charlotte Bay region and, over a week, we assembled a respectable listing. Not long after, Peter Sutton's Flinders Island and Barrow Point informants quickly offered him regional clan names too. Today, only a few old people still know and use clan names much. But 25 years ago, good language speakers used clan names extensively and frequently to refer to the
people they were talking about, in much the way that Central Desert people use subsection names to refer to people.

It is unfortunate that neither Tindale nor Thomson recorded clan names nor people’s clan identities. However, my older consultants and relations have told me the clan identities of a good many of the people in the pedigrees. I have been very careful to elicit people’s clan identities directly or to let them emerge in the course of talk; I have not simply assigned clan identities to people by assuming they result from serial patrilineal descent.

To anticipate some results of this project, I can talk a bit about the pedigree which Thomson recorded from Harry Liddy or Nongorrli, who was the leading dugong hunter and who became his mate, see Rigsby and Jolly (1994). From our contemporary perspective, Harry Liddy figures as an important ancestor of one of the main Lamalama families or cognatic descent groups. We know from contemporary sources that he and his family acquired primary rights and interests at Port Stewart when his mother’s younger brother, Monkey Port Stewart, left no children to take up responsibility for his clan estate. His mother’s younger brother lived at least the latter part of his life at Port Stewart on his own clan estate. As well, Harry Liddy married two daughters of a man of an immediately neighbouring clan. This was Old Man George Balclutha, the recognized founding ancestor of another, overlapping, main Lamalama family, whom Diane Hafner and I called the Balclutha/Peter family in the Lakefield and Cliff Islands land claims documents. To make a long story shorter, Harry Liddy was a central figure in the emergence of the modern Lamalama people and all that implies.

The Thomson pedigrees provide confirmation of all this. They show Harry Liddy’s genealogical link through his mother to her younger brother. They show his affinal links to his two wives and their parents, and they show his links of blood and marriage to other known men and women of his time. They also go back to his great grandparents’ generation in some instances, which gives us time depth we did not have earlier.

But the Thomson and Tindale pedigrees cannot simply be reconstituted and accepted as they were recorded without further analysis and interpretation. They need to be transformed into genealogies, and that requires also that we compare them with contemporary pedigrees. Contemporary pedigrees, however, are not frozen and immutable. As Anthony Giddens (see, for example, Giddens 1991: 75–76. 1995: 197) often reminds us, we humans are self-reflexive actors. We learn new things about ourselves and the world and then we act on our new knowledge. I have passed copies of some Thomson and Tindale pedigrees back to my Lamalama relations and discussed some of the information with them. I am sure that they are going to be constructing new pedigrees and genealogies with me and for themselves too. I think that it is generally a good thing to break down the role distinctions between us analysts and the people we study, so I look forward to talking some technical anthropology and kinship with my relations in the future.
Notes

1. The research on which this paper is based extends over many years and has had many sponsors, but I alone am responsible for the views expressed and for any errors. I am ever grateful to my Lamalama relations at Coen and Port Stewart for their help and support, especially Sunlight and Flrorie Bassani, and Bobby and Daisy Stewart. I also want to thank Lindy Allen, Mary Morris and Judith Wiseman at the Museum of Victoria and Kate Alport, Chris Anderson, Philip Clarke, Barry Craig and Philip Jones at the South Australian Museum for their assistance and support. Peter Sutton is my constant interlocutor, and I thank him for that.

2. Peter Sutton has suggested that the term local organisation has changed in its signification among Australianists over time. The usages of earlier anthropologists tended to include matters of tenure together with residence and other land use, but it is not clear that most contemporary anthropologists would draw the distinction exactly as I do here.

3. Peter Sutton has drawn my attention to the fact that my usage here does not take account of the complexities which can often be observed between groups' and individuals' daytime and night-time use of cooking, implement-working and sleeping fires, nor their use of shades and other domestic space, etc. Here I rely on Thomson's descriptions and my own more recent observations of households at Port Stewart.

4. Barnes (1967: 103, 105) also wrote:

   In ethnographic inquiry it is often necessary to collect genealogical information about a much wider range of connexions than the people concerned normally include in their pedigrees. A pedigree is normally a contemporary statement, making assertions about connexions between people, many of whom died long ago, whereas in a genealogy the ethnographer seeks to establish how these people, during their lifetime, were thought to be connected to one another, as well as how these connexions are viewed now.

   Pedigrees have to be accepted for cultural and sociological analysis in whatever form they happen to arise in the field, but the ethnographer has a choice when organizing his genealogical information. A genealogy may be simply a transliteration of a pedigree, using universally recognized rather than local symbols; or it may be a record of the genealogical knowledge and assertions of a single informant; or it may be a construct made by the ethnographer from information supplied by several informants who may disagree with one another in a number of particulars. It may include a record of all the known connexions of a set of individuals or it may be limited to certain connexions regarded as important in a given context. It may mention only the name or sex of individuals or it may give dates of birth, marriage, divorce, and death, residence and changes in residence, type of marriage contract, occupation, or other personal characteristics. Deciding what social characteristics and what genealogical connexions are relevant at any stage in the analysis may be difficult, but for sound deductions there must be first a full systematic record of characteristics and connexions from which the appropriate extract can be made...

Peter Sutton has reminded me that there are several differences between our informants'/consultants' productions and our anthropological ones. First, there is a
difference of genealogical scope or range such that ours may have greater
genealogical depth and range out more widely to include more collaterals. Second,
our anthropological interests or problems may lead us to ask for or elicit different
sets of kin from our informants/consultants; say, we might ask about the members
of a particular household group or about the members of a larger descent group.
Third, we have meta-genealogical interests which transcend those of individual
actors and coalitions of actors. Different accounts of upper-generation links among
people and differences between older records and current memories are grist for our
mills which seek to construct genealogical accounts which accommodate such
variability, whereas our informants/consultants might dismiss other versions as
mistakes and the like. No doubt other differences could be added here.

5. I interviewed Mrs Lauder in Cairns on 12 December 1978. She was born in
Cooktown in 1886 and was taken to Port Stewart as a baby. She remembered the
time before the Aboriginal people there were made ‘quiet’.

6. Tindale did his first ethnographic fieldwork on Groote Eylandt in 1921–22.

7. Thomson offered no numbers for the total population of the Port Stewart camp, but
he estimated the members of the Yintjingga tribe to be no more than 15–20 people.
It is possible that this figure reflects his estimate of camp numbers.

8. Yintyingga is the coastal Ayapathu word for ‘boxwood tree’, and it is also the proper
name of a site inside behind the mangroves on the south side of the river. Aboriginal
people also use the name for the general area as the indigenous language equivalent
of Port Stewart. I have never heard Aboriginal people use Yintjingga as a group
name.

9. I have not been able to identify this name or its source. None of my Aboriginal
consultants and relations recognise it as a word or proper name in any of the
regional indigenous languages. It is significant that Thomson did not record it
during the course of his longer time in the area. This leads me to doubt that it was
in fact the group name which people used for themselves in 1927, notwithstanding
Tindale’s (1974: 165) strong statement that it was.

10. Peter Sutton transcribed Hale’s journal in early 1994, and I was able to make use of
it in the Lakefield and Cliff Islands National Parks land claims. I transcribed the Port
Stewart section of Tindale’s diary entries in his Princess Charlotte Bay field journal
in September 1995, and the two of us acquired photographed copies of his entire
journal in August 1997. I first accessed Thomson’s fieldnotes at the Australian
Institute of Aboriginal Studies in the late 1970s, then worked briefly with the
originals at the Museum of Victoria in 1990 and December 1996. Mrs Dorita
Thomson, Professor Thomson’s widow, has kindly facilitated Lamalama people’s and
my access to the Thomson Collection, and she has passed along significant passages
from Thomson’s personal diary and papers. We are grateful for her support and
help. She told me that her husband had regarded this first fieldwork with some
doubts as to its accuracy and worth. He had been daunted perhaps by his
experience there when he returned in November to find the community preparing for
Bora ceremonies and speaking a different language than they had been speaking in
May–June. I have myself not found his notes to be at all unclear or obviously inaccurate or confused. To the contrary, they generally confirm what my oldest consultants and relations have told me from their independent memories, and they extend and deepen our knowledge.

11. Their clearest description is found in a newspaper article (apparently the Sydney Morning Herald, 11 March 1927 (Hale 1927)), a clipping of which Tindale placed in his field journal. They wrote, '[t]he aborigines of the Point [sic] Stewart tribe occupied two large camps on extensive sand spits near the mangrove swamps at the mouth of the river.

12. Nonetheless, the linguistic work that Tindale did in 1927, published as the comparative vocabularies in Hale and Tindale (1936: 160–71), is important. He was the first person to record several regional languages, including Flinders Island, Bathurst Head, Barrow Point, Lamalama, and Umbuygamu/Morrabalama. For several of these, his are the only records.

Here is a guide to Tindale's vocabularies:

- His 'Mutumui' (or 'Eibole') is the Barrow Point Language, and the parenthesised 'Ongwara' forms with it are from Margaret River, known locally as Muck River, and may represent a separate language.

- His 'Walmbaria' (or 'Yalgawarra') is the Flinders Island Language, and the parenthesized 'Tartali' forms with it are from the Bathurst Head area and represent a separate language.

- His 'Kokolamalama' is indeed the language which its speakers and linguists call Lamalama, while the parenthesized 'Yeteneru' forms with it represent the separate Umbuygamu or Morrabalama language.

- His 'Barunguan' and the parenthesized 'Ompela' with it are both Umpila; the different forms perhaps represent local variants. There may be some coastal Ayapathu forms mixed in, but that needs to be checked.

I thank Peter Sutton for providing some of the information above.

13. The current physical state of the pedigrees raises concern and questions about their use as evidence for land claims actions. They are too fragile to sustain much handling and use, so they have been photographed. This yielded clear iconic reproductions which can serve as standards to check later reconstituted, reformatted versions against.

14. Thomson did not know that what he labelled as Yintjingga was in fact a coastal variety of Ayapathu, a language known earlier only to have an inland distribution. I made that connection in 1990 when I worked with Rosie Ahlers at Coen. We went through Thomson's (1972: 28) listing of Yintjingga kin terms: she confirmed they were the same as the inland Ayapathu terms, she pronounced them for me and I transcribed them (see Rigsby 1992: 357). Thomson's recordings are all we have of coastal Ayapathu, but Philip Hamilton recorded more inland Ayapathu vocabulary from Hogan Shortjoe at Pormpuraaw in 1997. That wordlist is available at
The task of assembling Thomson's coastal Ayapathu forms and comparing them to their inland equivalents remains to be done. Although there were at least four Ayapathu-speaking clans with coastal estates, they were Sandbeach People (Rigsby and Chase 1998) and thus ethnically distinct from the inland-speakers of the language, who were Inside People or kanichi. Note that Thomson (1934: 240-41) spoke of 'the atmosphere of mutual fear and distrust that formerly existed between the [Sandbeach People] and the [Inside People]' with specific reference to the Yintjingga and the inland Ayapathu peoples. Thomson (1934: 239) translated kanichi as 'Bushmen', but Inside People is better.

15. There were people at Port Stewart in 1927-28 who were speakers of many indigenous languages. The indigenous language with the widest use seems to have been Umpila, notwithstanding that Port Stewart is situated in the estate of the coastal Ayapathu-speaking Mbarundayma clan and that the neighbouring coastal estates to the north and south were also coastal Ayapathu-speaking.

Elsewhere, I have described the institutionalised personal multilingualism that pervades the region and, indeed, much of Cape York Peninsula (Rigsby 1980, 1992, 1997). Most Aboriginal people were multilingual and spoke several languages in the course of their daily lives. People chose to speak particular languages when they did for various social and political reasons. As well, it is conventional among some older speakers I know to quote or reproduce reported speech in its language of origin.

16. While people used kin terms frequently in address and reference, they also used personal names with and for some alters in daily life. However, men did not freely use personal names. Thomson (1946: 157) wrote:

Under no circumstances would a man of Princess Charlotte Bay mention the name of a sister, yapu ['older brother'] or ya'adu [ya'athu 'younger brother'], or of a piloba [piupol] (wife's brother). Instead, because the white man does not understand his customs and because he does not wish to risk giving offence, he supplies a substitute, thus avoiding the danger of 'bad luck' or other ritual violation.

17. In this regard, the older pedigrees preserve family heritage which the present and coming generations might wish to make use of, in the same way that many people now want to have and use indigenous language names.

18. Some examples in their fieldnotes make it clear that the Aboriginal people on Flinders and at Port Stewart spoke to Hale and Tindale in Pidgin, which became widely spoken along the east coast of Cape York Peninsula as Aboriginal people got involved in the marine industries from about 1865. That Pidgin variety is the ancestor of the Creole variety which is the Lockhart vernacular and the one still spoken by older Port Stewart people.

In turn, Hale and Tindale spoke to Aboriginal people using Pidgin-like interlanguage varieties—see Hale's diary entries for:

Page 50: Jan 5th Wednesday
I questioned Charlie Monaghan concerning dreams. Charlie is a very intelligent aboriginal & I

**Page 51**: Jan 5th (contd)

said to him 's'posin sometime you sleep. & when you sleep you thinkit you walk about. Bimeby wake up'. Charlie "savvied" and said the abos. often dream. Sometimes he dreams he sees a dead man come out of the ground and walk about. When he tries to run his knees double up & he can only crawl very slowly. Sometimes he has dreamt he is dead & by and by awakes & wakes his mate & tells him he dreamt he was dead. & they laugh. At other times he dreams of runaway horses (yarraman), goanna, wallaby alonga rocks, kangaroo, canoe & other associations of his everyday life, including bandicoots & dugong & their capture. Dreams

**Page 52**: Jan 5th (contd)

of the arrival of boats etc. Sometimes dreams that he is chased by a bi-i-i-g fellow & that his legs are weak & he cannot run.


20. I have been unable to identify this name or its origin over the course of my research.

21. This is simply his transcription of *yintjingga*. See note 7.

22. I have been unable to identify this name or its origin over the course of my research.

23. *Kunangunuma* is the name of a place near (the north side of) Massey Creek, and I have never heard it used as a group name.

24. The primary signification of *Umpila* is as the name of an indigenous language, but it metonymically also names the people who own and speak that language.

25. *Ngumpingunuma* is a large site on the foreshore, north of the Rocky mouth. It backs on the lagoon. People still visit there and camp there for periods of time.

26. Thomson, of course, spent more time in the field than Hale and Tindale, and his language learning skills were excellent. He evidently came to understand Umpila well and to speak it acceptably. I would judge that he came to understand Pidgin well too, but I do not know whether he spoke it. His classic paper on joking relationships and attendant speechforms attests to his sensitivity as language speaker and sociolinguist (Thomson 1935). Peter Sutton has told me that Thomson (1946) demonstrates its author's 'very good grasp of [Wik Mungkan] language structure, phonetics and semantics', which much exceeded that of Ursula McConnel.

27. *Lamalama* is the name of the indigenous language owned and spoken by about 25 clans whose estates were situated in the lower Princess Charlotte Bay. By metonymic extension, it is also the name of the people of those clans. Over the past half century or so, it has also come to be the name of the larger 'new tribe' or 'language-named tribe' (Rumsey 1989, 1993; Rigsby 1995) of people many of whose significant forebears were Lamalama. The term has its origins in the Umpila language, where it is derived from the simplex adjective form *lama* 'dry'. It signifies 'a
dry country, [or] a person from a dry country', namely, the dry saltpan-dominated country of the lower Bay area.

28. **(Uuk-)Umpithamu** is the name of the indigenous language owned and spoken by one clan whose estate included Goose Creek and Goose Swamp, south of Running Creek.

29. Thomson recorded some Umpila clan names, which are conventionally formed by compounding with *-thampanyu* as their second element, but he took them to be the names of clan territories (see Thomson 1934: 261). Thomson (1935: 462–63, fn4) makes it clear that he distinguished hordes or local groups from land-owning clans in the abstract, but in practice he did not record clan names nor the clan memberships of his informants on eastern Cape York Peninsula. Similarly, his use (Thomson 1935: 462) of the term 'localized totemic clans with patrilineal descent' indicates his awareness that senior, older men often were members of local groups whose range included, if not centred on, their own clan estates. However, that formulation implies a greater degree of autonomy and separation than is attested in the recorded local groups, which always include older men from several or more clans.

**References**


Hale, H.M. 1927. 'A museum quest. Naturalists in tropical Queensland', *Sydney Morning Herald* 11 March 1927. [Tindale wrote in the margin of his journal near the clipping, 'I contributed to the articles which were ascribed to Hale alone as I was the junior! This was rectified in the SA Mus[eum] paper'.]


Rigsby, B. 1995. 'Tribes, diaspora people and the vitality of law and custom: some comments', in J. Fingleton and J. Finlayson (eds) *Anthropology in the Native Title Era*, Native Titles Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.


7. The relationship of genealogical reckoning and group formation: Yolngu examples

Nancy M. Williams

Kinship is the cornerstone of traditional Aboriginal social organisation ... In an explicit sense, kinship-based institutions and authority roles were central to maintaining the reasonably orderly distribution of country as cultural and material property, and to providing regular methods for dealing with conflict and grievances. Thus the reckoning of land tenure interests, for example, on the basis of genealogical relationships is itself an implicit instance of customary law. That is, where they apply, the laws of descent and of other kinds of relatedness practised by a particular group are themselves part of customary Aboriginal land tenure law (Sutton 1998: 11).

My discussion focuses on how Yolngu people use the idiom of kinship to express their relationship as individuals to groups in order to define particular groups and to indicate their interests in land. To begin, I can do no better than to quote a Yolngu writer, Merrkiyawuy Ganambarr, who prepared the entry on Dâtiwuy, her language, for Macquarie Aboriginal Words. She wrote:

I want to explain to you what yothu yindi really means. You have probably heard about the rock band Yothu Yindi. Yothu yindi is really a relationship term. The relationship holds for people, land and all that we see about us, for things such as animals, plants, wind, water and many more.

Yothu means ‘child’ or ‘baby’ and yindi means ‘big’ but in the expression yothu yindi, yothu refers particularly to the mother. This expression always involves two things in a relationship to each other. So if I am someone’s or something’s yothu, they are my yindi. I am in the Dâtiwuy clan. For the Dâtiwuy clan the Wangurri can be the child (yothu) or the mother (ngondi) (and vice versa). This relationship is shown to us by the mingling of the waters from two rivers coming out from the Wangurri and Dâtiwuy lands.

We can also use yothu yindi to talk about relationships between different things, about people, tribes, ceremonies, land and so on. For example, I am the yothu (‘child’) of the tribe Gumatj. Gumatj is the yindi (‘mother’). Why? Because my mother is a Gumatj woman. So all Gumatj people are my yindipulu (-pulu is a suffix used to describe people, clans, etc., related through the mother’s side). Also I am the next yindi for my yothu (‘child’), but I am also yindi for anyone who has a Dâtiwuy mother. So we see how the relationship extends from the immediate family to cover whole tribes. Because of this, men are also considered yindi (‘mother’) and men can be yothu yindi to each other. All the members of the rock
band Yothu yindi are in this relationship to each other, and that's why they chose the name.

Another group of people who are closely linked with the yothu and yindi are those we refer to as maripulu (grandmother's group—in the kinship system māri refers to your grandmother on our mother's side and all her brothers and sisters). The māri is the 'head' of this group since the māri is where yindi and yothu come from. This is especially important in ceremonies. These groups all join together, with the yothu and yindi having the manager role on behalf of the māri.

We all have our own links as yothu, yindi, and māri to many different tribes. My own links will be different to those of my children, and my mother and my grandmothers, binding us and the tribes in this area all together in a complex way. This contrasts to our father’s line where we are a single group (Ganambarr 1994: 235–36).

I comment in the concluding section of this chapter on Merrkiyawuy's distinction between relationships reckoned through women and those reckoned through men. But here I comment on her use of the phrase 'binding us all together', because it recalls a pertinent conversation I had with Dula Nguurruwuthun many years ago. I was trying to work my way to some understanding of the frequently used phrase 'same but little bit different', and was apparently emphasizing 'different' in my attempt to disambiguate lines and lineages and attributions of linguistic variation as well as totemic affiliations. Dula cautioned me that I should always remember that Yolngu are 'all bundled together, just like a bundle of sticks'. That metaphor has remained powerful for me and is germane to one of my aims in this paper, which is to examine Ian Keen’s (1995: 520) argument that 'figures of network, focus, and extension, and strings of indeterminate length' are the most appropriate 'metaphors' for describing certain aspects of Yolngu social constructs rather than 'complex terms such as 'clan". I argue to the contrary that Yolngu people use constructs that may be mutatis mutandis more appropriately likened to the English-labelled concepts 'descent group', 'lineage', and 'clan', and that 'clan' does less violence to Yolngu concepts than 'strings of indeterminate length' and the like.  

In order to argue that clan is not an appropriate label for a certain kind of group in Yolngu societies, Keen (1995) has to imply that its use by ethnographers has always and only rested on a very rigid and narrow definition that relies on a determinate and limited set of assumptions appropriate only to other non-indigenous? latinate? common-law-based? societies. The evidence is to the contrary. I turn first to several levels or aspects of relationships between individuals and groups that are entailed. The first one to make explicit is that between genealogy as denoting biological relatedness and the classes created by applying the names (kin terms) to those classes. As Bouquet (1997: 375) comments in her analysis of trees in genealogical diagrams, genealogy is methodologically prior to category, and has been ever since Rivers transformed it into an explicit method of anthropological inquiry. The genealogical method is an instrument or tool for collecting information with the visualization of
genealogy in diagrammatic form one of the crucial steps in that transformation. It is indeed one of the steps in moving from the concrete level of named individuals to the abstract level of social relations. That transformation can be seen in the difference between diagrams in which named individuals are present and those in which triangles, circles and other symbols have already replaced them—for a variety of purposes (composition of households, inheritance of property, names, etc.) and not just terminological analyses.

Sutton (1998: 8, fn 7) too is right to point out that,

Kinship in general rests ultimately on presuppositions of physical relationships of some kind or another. To say that kinship is not about biology but about cultural constructions is to oversimplify, and perhaps to miss the point. Kinship is at essence the cultural construction of relationships arising in the first place from human reproduction.

Sutton (1998: 26) also remarks that ‘it is useful in ... technical contexts to distinguish descent from descendedness’. Thus, he says:

Descent ... refers to a mechanism of the jural system by which being descended from a certain ancestor provides the foundation for constructs (e.g. clans) and rules (e.g. how the acquisition of property rights is properly done). Descendedness, by comparison, could be defined simply as the relationship of a person to a forebear regardless of whether or not they derive any particular jural standing, such as membership in a country-holding group, as a consequence of that relationship.

Scheffler (1986: 342) goes further and asserts in terms of the logic of his analysis of kinship systems that only unilineally constituted groups should be described as descent groups. Although he is here writing in the context of comparative studies of law, he is categorical in his opinion:

A rule that specifies that patrifiliation is the necessary and sufficient condition for inclusion establishes a patrilineally constituted group, that is, a group the members of which are all agnatic kin of one another and which includes all persons who are agnatic kin of one another (at least within a certain range). Membership of such a group is prescribed; a person has no choice with regard to affiliation. The only choice open to a person is whether to be an active or an inactive member of the group of which his father was a member. That is, he can choose whether or not to exercise the rights or to fulfill the duties entailed by membership, but he cannot choose between groups in which to exercise such rights and duties.2

Keesing's (1976: 150) definition of lineage is also appropriate to the analysis of Yolngu groups: lineages are descent groups based either on matrilines or patrilines, and membership is reckoned from an apical ancestor.

Sutton (1998: 26) argues for consistency in using 'ancestor' to refer to 'particular antecedents ... recognised as founding figures for particular sets of
their descendants’ and antecedents or forebears as ‘[a]ll people to whom one is linked by parent-child relationships ... regardless of whether or not one belongs to a society in which there are ancestor-focused descent groups’. These distinctions are also appropriate in the analysis of Yolngu groups.

In the analysis of Yolngu groups, I find Morphy (1990, 1997) and Morton (1997) aligned with me in criticising Keen’s (1995) argument; moreover, my reason, like theirs, is not simply ‘academic’ (although I am prepared to defend it in those terms as well). I also join Sutton (1998: 40) in emphasising the material consequences that anthropologists’ analyses have for Aboriginal people in pursuing legal recognition of their interests in land:

These are not arguments about words, but about the adequacy of descriptions and analyses. They have implications for the way ethnographic accounts are treated as evidence in native title cases, since they raise again a central question confronted by Justice Blackburn in the Gool case in the early 1970s: to what extent do Aboriginal land interests in any case rest on a ‘system’ of ‘rules’ and ‘laws’ of a ‘society’ or ‘community’? To what extent are these interests controlled ego-centrically rather than collectively? Are individual versions of them too idiosyncratic to constitute, even together, a communal system?

In his 1971 decision in the Milirrump case, Blackburn (1971: 267-68) in fact did answer the central question posed by Sutton, although he could not find the existence of ‘communal native title’. Blackburn said:

If ever a system could be called ‘a government of laws, and not of men’. it is that shown in the evidence before me ... I hold that I must recognize the system revealed by the evidence as a system of law.

Blackburn (1971: 267) also said that the Yolngu ‘social rules and customs’ were:

a subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence.

Sutton (1998: 40), however, is right to argue that the questions he suggests Blackburn had to answer

have to be answered on a case-by-case basis [and] the issues themselves require a great deal more thrashing out not only among anthropologists but also in legal contexts. Aboriginal land tenure cannot now be treated analytically in isolation from the national legal and political context in which it sustains itself.

Keen’s (1995: 502) criticism of other anthropologists’ characterisation of groups is based on the assertion that:

Ethnographic description involves substituting terms in an anthropological metalanguage, which may incorporate other quite misleading metaphors, for indigenous concepts based in one set of constitutive tropes.
Thus, he argues:

when terms in the metalanguage such as ‘clan’ and ‘clan subgroup’—expressions that retain their currency in northeast Arnhem Land ethnography—are substituted for the Yolngu terms mala (‘group’) and baapurru (patrilateral identity), this leads to problems in the description of the ways in which Yolngu construct social identity.

In pursuing his critique, Keen (1995: 502) says that he draws on recent discussions of metaphor in order to reveal both the role and the kinds of metaphors embedded in the anthropological concepts and to compare these with the place and nature of tropes in the constitution of Yolngu ‘group’ identity.

Keen (1995: 502) contrasts the concepts underlying the terms anthropologists have used with those he attributes to the Yolngu. He says:

like the enacted [Yolngu] cultural constructs on which they draw, anthropological terms such as ‘clan’ depend on relatively simple central metaphors. In contrast, the constitution of Yolngu ‘groups’, as analyzed here, involves complex imagery that cannot be reduced to a few key metaphors. Nevertheless, the kinds of tropes that are embedded in the framing of groups and group relations—as well as the metaphors that Yolngu people themselves employ to describe relations among persons and groups—are quite different from those on which the anthropological constructs depend.

Keen’s (1995: 502) prescription for improvement immediately follows: ‘Anthropology’s descriptive language should reflect [Aboriginal] tropes more closely’. His (1995: 502) analysis of the flaws in the terms and of anthropology’s use of them is that:

Concepts such as lineage, clan, descent group, and corporate group depend on images of segmentary structure, external boundaries, and taxonomic hierarchy. These constructs go hand in hand with concepts of land and country, which also entail spatial metaphors of enclosure and boundaries and which imply hierarchies of small bounded places contained in larger ones of a different type.

Keen then asserts that none of the anthropological ‘tropes’ fits Yolngu modes of ‘group’ identity and relations, which involve images drawn from the human body and plants, and beliefs about ancestral journeys and traces. Far from being constituted by enclosure within boundaries, Yolngu ‘group’ identities, like those of place, extend outward from foci. Connections among such identities are not those of enclosing sets but open and extendible ‘strings’ of connectedness.

This argument and the set of assertions upon which it rests, immediately raise questions, none of which Keen answers directly in the pages that follow. In what ways do concepts of lineage, clan, descent group, and corporate group depend on images of segmentary structure, external boundaries, and taxonomic
hierarchy? Is it necessarily the case that linked concepts of land entail metaphors that imply enclosure and boundaries and hierarchies of small bounded places?

Keen does not satisfactorily explain how the Yolngu metaphors can be used in place of English terms; moreover, he distorts and oversimplifies other anthropologists' analyses of Yolngu social organization (mine in particular) so that he has straw men to knock over. He (1995: 503–4) concludes that 'whatever the differences between people of the western desert and northeast Arnhem Land, the concepts of 'clan' and related terms are hardly more appropriate for Yolngu ethnography than in the Western Desert'. And, he entreats, 'We must free ourselves from the final vestiges of the orthodox [presumably patrilineal descent group] model of Aboriginal local organization'.

Keen (1995: 504; emphasis added) asks, 'If cultures are framed in their own terms, how do indigenous concepts and symbols relate to the descriptive metalanguage?' and he finds that 'an extended concept of metaphor makes it possible to capture something of the particular relation between aspects of anthropological description and the constitution of Yolngu social realities'.

Because Keen relies heavily on indigenous language terms and concepts, not only from English but also from Yolngu languages, it is pertinent to point out here that his research was conducted, beginning in the mid 1970s at Milingimbi, toward the western extremity of the Yolngu cultural bloc. My research (beginning some five years earlier) was focused on an area at the most northeasterly part of the Yolngu culture bloc. Linguists (Wilkinson pers. comm.) studying the Yolngu languages have found substantial lexical and semantic differences among the languages spoken at Milingimbi, Galiwin'ku, Gapuwiyak, and Yirrkala—now all Yolngu towns but separated from each other by several hundred kilometres.

Keen (1995: 521, fn 10) alleges that my description of the Yolngu use of the term matha ('tongue language') plus the name of a particular matha variety to identify the maximal membership of a land-owning group reflects the 'idiosyncratic' practice of the clan with which I worked most closely:

This view may originate in part from the particular practice of the Rirratjingu people with whom Williams has worked most closely. This group seems to apply the word matha (tongue) consistently and somewhat idiosyncratically to group and country, a practice reflected in Berndt's analysis; he, too, worked most closely with the Rirratjingu.

To clarify this issue, a number of points need to be made. To begin, shortly after I arrived at Yirrkala in 1969 I was given a social identity as a Rirratjingu person (I am not sure about Ronald Berndt), and my relations with people of other groups and languages were (and are) premised on this identity. I have indeed worked closely with Rirratjingu people, and it is through this identity that I have been able to work extensively with peoples of other clans in both moieties—Djapu, Gumatj, Ngaymil, Marrakulu, Dhalwangu and Manggalili, in particular. My understanding of Yolngu social organization relies as much on the practices of these clans as on those of Rirratjingu, and my understanding of how
people negotiate identities and interests among all Yolngu groups (at least in the northeastern-most part of Arnhem Land from 1969 to 1988) and my generalizations are based accordingly. I do not believe that I see the Yolngu world through Rirratjingu eyes, despite my loyalty to Rirratjingu people.

Keen (1995: 505) says that ethnographers’ descriptions:

often substitute terms in the anthropological metalanguage for indigenous concepts and use other terms with no indigenous equivalents ... This is done not only because we are usually writing in a language different from the one used by the subjects of the ethnography, but also because we are trying to describe and explain—rather than to enact—aspects of a mode of life that is usually a mode of life very different from the ethnographer’s own ...

The anthropologists’ constructs, which are based on metaphors within the dominant languages, are substituted for enacted constructs that may be based on quite different tropes ...

Keen (1995: 505) criticises anthropologists’ use of the concepts of descent group and corporation because, he says, 'Theories of descent groups and corporations depend on certain concepts with clear and compelling metaphorical bases'. This is presumably because '[t]he idea of enclosing things within definite boundaries is pervasive in Western thought'. Moreover, 'boundary' and 'enclosure' are used metaphorically to express unambiguous criteria for membership of groups, classes, or sets'. Yet some anthropologists have been at pains to avoid these connotations by defining terms such as corporate and boundary where they are used in order to exclude such connotations and to show how notions such as corporateness and boundary are appropriate or adequate in the contexts in which they are used. For example, I wrote (Williams 1986: 96) about corporateness that

The concept of corporateness in English law has followed its own course, one that differs from what one may infer about the development of a Yolngu concept of corporateness. As an Australian legal scholar has it, ''the classical development of English law ... has not been in search of juristic persons [to define corporations], but in search of separate property entities ...'' (Stoljar 1973: 182). In contrast, Yolngu begin with "separate property entities" in defining their relationship to land. In English history, changing social and economic factors are related to the shifting cluster of ideas that jurists regard as historical developments in the notion of corporateness. By the twentieth century this cluster, containing some ideas that were modern and some that were ancient, defined formal incorporation in terms of its now "classic" incidents ... namely, perpetual succession, the right to hold land, the right to a common seal, the power to make by-laws, and the capacity to sue and be sued" (Stoljar 1973: 96). Although their histories are not parallel, those "incidents", with appropriate alterations, characterise Yolngu land-owning groups. 

Defining a group as corporate with respect to the ownership of land facilitates the understanding of how stability and continuity can be maintained while change occurs. It also focuses on the processes that enable social and economic viability in terms that are consistent with Yolngu explanations of land ownership.
occurs. It also focuses on the processes that enable social and economic viability in terms that are consistent with Yolngu explanations of land ownership.

I went on to explain (1986: 96–97) how Yolngu use names (from many domains) to indicate the boundaries of groups:

Yolngu have many ways of defining groups ... In discourse they frequently wish to convey precise information about groups of people in relation to land. They can draw on a large number of lexical items and combine them to signify the composition of groups, their location in space and season, and their activities. Yolngu use names to cultivate, maintain, and strengthen items that are of the greatest importance to them in interpersonal and intergroup relations. Those ties have practical effect in long-term social and economic viability, and they can be enhanced by emphasising connectedness through shared names or names that show a relation because they are drawn from a common myth. Since that relationship is the basis for calculating shared rights in land, it provides a legitimate basis for negotiating changes in the right.

... A large number of names of differing orders of inclusiveness and relatedness and from different cultural domains are available. Principles also exist by means of which new ones or recombinations of old ones can be created to indicate particular sets of people. The result is that inclusion or exclusion can be very precise.

Keen (1995: 506) relies on a concept of corporateness on the basis of which he concludes that 'for some [scholars]':

the idea of group as a 'corporation' owning an estate entails thinking of a group of people as 'one body' and as an undying fictive or even real 'person' owning property and having collective responsibility [and the] idea of an estate as the property of a corporation derives from its use to denote wealth and especially landed property as well as rank or position.

Keen (1995: 506; emphasis added) then asserts that:

These are some of the metaphors embedded in the language of clan and corporation that ethnographers have consistently used to describe Yolngu and other Aboriginal groups. The descriptions have thus necessarily incorporated these tropes, more or less modified by particular usages and by specific disclaimers. In so doing they have generated recurrent anomalies.

I do not believe, for reasons set out above, that these conclusions and assertions are defensible. A major thread through my essay on the Yolngu system of land tenure is an attempt to explain an appropriate way to conceptualise Yolngu notions of corporateness in terms that do least violence to what I understand of the Yolngu concepts themselves.

Keen (1995: 507) says that I emphasise the corporate characteristics of matha as defined by the ownership of land, and that this characterisation occurs in 'a discussion of ways in which the application of anthropological models and
legal concepts in the Gove land case failed to make sense of Yolngu evidence'. In fact, I say (1986: 63) that Yolngu use matha [tongue; language] to indicate the maximum potential membership of groups whose corporateness is defined by joint ownership of land\(^3\)... Although matha may be used, and in many contexts is now used, to define the maximum potential membership of a single land-owning group, it is secondary to the determination of control of the most sacred ritual objects, hence of land'.\(^4\) Moreover, this discussion of corporateness is in the context of the first part of the essay, in which I am concerned to lay out the basic principles of the Yolngu system of land tenure before dealing with its 'fight for recognition' (the subtitle of the book), that is, its reception in an Australian court of law.

In dealing with the social entity 'clan', Keen finds ethnographers wanting (1995: 508) and he cavils (1995: 521, fn 10) at my replacing 'clan' for 'land-owning group':

To designate groups as 'clans', even as points in a social process, requires consistent criteria of similarity and difference in order to recognize attributes as markers of 'clan' identity and difference. Ethnographers do not agree about these criteria.

Keen (1995: 509, borrowing from Wagner 1988: 42) recommends that what he defines as the deficiencies of previous Yolngu ethnographies be remedied by using Yolngu tropes. He says, 'the 'case for the meaning' of Yolngu social existence 'devolves upon an indigenous imagery'.

Keen (1995: 509) says it is not 'useful to look for an elementary group of which all other groups are composed'; he refers to 'aggregates' and 'people', but he does use group as a gloss for mala and some uses of ba:purru. (Curiously, he goes on to assert that a country has 'a group identity'.)

Finally, Keen (1995: 520) advises, after providing numerous instructive and unexceptionable examples of the tropes by which Yolngu indicate their individual identity and their relationship to each other as individuals and as aggregates or groups, that.

Connections among groups of any scope extend from nodes in a complex web ... 'Group' identity has an open quality: there may be other people, as yet unknown, who share connections and identity, and new links can be made through the exchange of sacra ...

Many of the difficulties over Yolngu 'clans' can be avoided by not construing mala and ba:purru names as the proper names of organizations classified as corporate groups or sociological groups. If ba:purru is construed as identity in relation to wangarr ancestors and other beings, we no longer need seek uniform or even modal organizations of political units ... The relationship between the assertion of identity in ritual and other kinds of discourse on the one hand and the politics of ritual and land on the other no longer depends upon the assumption of homologous 'clan' organization.
... the difficulty with substituting complex terms such as 'clan' for Yolngu constructs is that they embed many inappropriate metaphors. Rather than covertly substitute constitutive terms in the metalanguage for indigenous terms, it does seem possible in principle to describe the images that others use and the ways in which they use them, albeit within the limitations of the language at one's disposal ... It is one thing to make covert substitutions; it is quite another to deploy tropes in order to describe the way in which people frame their lives. A range of metaphors ... may be more apt than those that are embedded in the notions of corporation, boundary, and taxonomic hierarchy, and that are implicit in the use of 'clan' and related concepts. They are figures of network, focus, and extension, and strings of indeterminate length.

With respect to boundaries, and in view of Keen's allegation that the use of a concept of clan in describing Yolngu social organisation is misleading, it may be apposite to quote one remark (of many) I have made about boundaries (Williams 1986: 223-24):

As Yolngu usage demonstrates, boundaries of social groups are not blurred by the various factors that ... can affect relations between groups, except in cases when that is the Yolngu intention. Rather, for varying purposes, boundaries are always capable of short-term and long-term definition on the basis of differing criteria of inclusion and exclusion. This capacity also not merely accommodates but facilitates change over time. It does not, of course, preclude disagreement about particular inclusions and exclusions, nor disputes that can themselves become instrumental in change.

If Yolngu choose to subscribe to the use of strings to refer to entities within their society, and if they are willing to designate a land-owning group as, say, a Gumatj string, then they might also want to speak comparatively of Dhalwangu networks and Rirratjingu webs.

**Filiation or lineages?**

The Yolngu groups that I argue can appropriately be called clans are patrilineal land-owning groups. They are corporate by virtue of the joint interests that the members have in particular lands and waters. Members may be said to be recruited through a process of serial patrifiliation, yet they hold a lineage ideology. In fact, each clan has an account (myth) of named founding ancestors, although its membership is at the same time assumed to extend further back into the past, into a real time that merges with the time of the founding travels and acts of the spirit beings. Clan members' interests are not identical, members are ranked individually by birth order and gender, and lineages within clans comprised of more than one lineage also tend to be ranked.

These features characterised Yolngu social organisation as I understood it from the view of Yolngu at Yirrkala almost 30 years ago, and this continues to be the case in 1998—at least among people who are now middle-aged. The view from Galiwin'ku I suspect may be different, and from Milingimbi, different yet again.
This does not mean that Yolngu people throughout the Yolngu-speaking area cannot establish their kin-defined relationship with each other—they can—nor does it mean that on the basis of that, they cannot negotiate interests in ceremony or land. But there are substantial differences.

Yolngu society is hierarchical. My first recognition of this feature of Yolngu society came when, quite early in my study, I was eliciting what were ostensibly simply lists of clan members, and subsequently realised that the lists were given in hierarchical order, an order based on birth order, gender, and absolute age. Moreover, I no longer dismiss comments Yolngu make in distinguishing various families or lineages in terms of class (drawn from popular characterisations of socioeconomic class).

There is an ideology of hierarchy in clan structure, although not all clans conform to a simple hierarchical model at any given time. It is, however, a model or a template that people use in the process of structuring or restructuring when demographic or other historical factors operate to produce a situation in which the composition of clans on-the-ground does not conform to the ideal. This description of clan organisation does not require basic building blocks or segments nor does it require impermeable vertical or horizontal boundaries, nor does it, on the other hand, imply fuzziness. Yolngu have a vast store of terms (including names and pronouns, as widely inclusive as half the universe to the narrowness of a dyad) for indicating both the nature of a group and its composition. Their use is context dependent and can change very rapidly. But whether explicit or implicit, genealogical reckoning is always root and branch. A useful example may be that Yolngu at Yirrkala use the term *mala* in a way that may convey the qualities of band as that term has come to be generally used by anthropologists. I have suggested (Williams 1986: 219–20) that in northeastern Arnhem Land,

It could be argued that band is an appropriate translation of *mala*. Specifically band there would refer to those people whom Yolngu could reasonably expect to find together at a particular time, place, and season engaging in a particular activity. Thus 'band' would denote a named group defined on the basis of the following criteria:

Men associated on the basis of having

- agnatic links (usually lineage segments within *matha* groups in long-term exchange relationships).
- contiguous (or otherwise related) estates (or parcels of estates).
- religious bonds ('co-ritualists'),
- related patterns of resource utilization (seasonal, annual, and secular).
- uterine and affinal kin relationship rationalised through any or all of the above features.
and found within an area of mutually intelligible dialects, or where some members of the groups, being multilingual, could enable communication among the members of the group.

Names and other requisite qualifiers used with *mala* convey all the information indicated above.

To return to Merrkiyawuy Ganambarr's explanation of *yothu yindi*, we can see that *yothu yindi* refers to an egocentric genealogically reckoned set. It is based on uterine links, and may be characterised as constituted by single step matrifiliation; in certain contexts, the set may be constituted as a group by complementary serial matrifiliation. In contrast, the aggregate form of serial patrifiliation is a patrilineal clan—the 'father's line', she says, forming a 'single group' (Ganambarr 1994: 236). This surely constitutes a most convincing case for the use of the term clan to refer to this entity in Yolngu society.

I can see from looking at my 1986 essay that I should perhaps have provided more explicit explanations of my conceptualisations of corporateness and of group. By corporateness I meant (and continue to believe this is an appropriately descriptive term for a particular social form that carries no excess connotative baggage and conforms to its generic usage among English-speakers) a set of people whose identity as a set arises from their common interest in an estate in land and/or water such that the set has a jural existence distinct from that of its individual members. A corollary in the Yolngu case is the assumption that land and waters exist and people make themselves corporate with respect to particular parts of land and waters.

My conceptualisation of group, and the useful distinction between group and category I drew from Keesing (1976: 231); as I have explained (1986: 74, fn 1), where I use the terms 'set', 'social category', and 'social group', they have the following meanings:

set refers to a collection of entities that are classed together for some purpose because of one or more attributes they share; a social category is a category of people grouped conceptually because of some socially relevant features they share; and a social group is people grouped through regular interaction and who are corporate in one or more respects.

With respect to a Yolngu title-holding group's relationship to land, that is, the constitution of the clan, it is corporate (in the sense defined above) with respect to the joint interests of its members in an area of land and/or waters, and their interaction is predicated on their joint interests.

The only further thing I could add is that my method in explaining my understanding of the Yolngu system of land tenure has been to set out the principles (sometimes it seems appropriate to call them jural principles) that people use in referring to, or acting in regard to, their interests. That is, the principles can be seen to exist in terms of people's use of them. That so many and such diverse principles exist means that individuals have great scope for
pursuing personal ambition as well as public good—in all of which they may invoke right, duty or obligation. Yolngu are not mindlessly constrained by the principles; rather, the principles are a rich resource which together have the force of law. Morphy (1997: 131) remarks that, with the recent emphasis on 'cognatic' relationships and the focus on individuals' entrepreneurial activities (his reference is most specifically to Keen and Shapiro), the Yolngu system 'bears more than a passing resemblance to the Melanesian 'Big Man' system' in which, at its logical extreme.

the clan almost disappears as a meaningful unit of political organisation since it ends up with no rights, no corporate identity, no collective responsibility and no criteria for membership. It takes the form of a shadow in the background whose main purpose seems to be to mislead the analyst (Morphy 1997: 131).

Morphy immediately adds, however, that:

The shadow of the clan is cast in part by the way the Yolngu talk about their society, their affiliation as individuals, the motivations for their actions, the distribution of rights in sacred law and in land, the proper way of organising a ceremony and so on. While it is clearly wrong to equate ideology with practice, self conception is part of the process of structuration (Morphy 1997: 131-32).

In view of his argument to this point, it is curious that Morphy (1997: 132) then characterises clans as having a 'fuzzy nature'. It is rather that the Yolngu repertoire of devices (usually realised through names) for indicating the composition and boundaries of social entities allows them to be as precise or as imprecise as they wish in any given context.

Yolngu social relations may aptly be described in terms of networks—close and dense and extended and tenuous—but their existence is not logically or existentially inconsistent with the existence of lineages and clans; in fact, they are quite compatible. Morton’s (1997: 124, fn 17) remark on this head is apposite: 'networks can serve to form corporations and territories, however temporary or contradictory these may turn out to be'.

I conclude that a good deal of the debate, incompletely dealt with above, is spuriously based on generalisations that are meant to be true for all Yolngu. Enough detailed descriptions by anthropologists and linguists now exist to make it abundantly clear that no single generalisation about Yolngu society or culture applies categorically and without exception. There are Yolngu languages, Yolngu societies, Yolngu beliefs, and Yolngu practices. Moreover, a generalisation about any one of the languages, societies, beliefs, or practices pertains to an event or specific period of relevant observation.

Notes

1. Yolngu of course also now use the terms 'clan' and 'lineage' when they engage in English discourse on topics of kinship.
2. Two further conditions pertaining to the constitution of patrilineal groups in Aboriginal societies need to be added to the patriilization rule above. They are that full membership may be achieved through the processes of adoption and of naturalisation. I believe that instances of adoption and naturalisation remain infrequent in Yolngu societies. Scheffler (1986: 348) also concludes that:

[there are] several different ways in which a kind of filial relation may be a condition for acquisition of a status [as kin or as a kind of kin]. Although it is felicitous to distinguish between relations of filiation and relations of descent, it is not felicitous then to suppose that one or another kind of relation of descent may be in one way or another a condition for inclusion in a social group or category. That way of constructing the category ‘descent group’ is (more implicitly than explicitly) at the root of the current controversy about ‘descent’ or ‘lineage theory’. Some anthropologists would resolve that controversy, not by rethinking and reconstructing the category ‘descent group’, but (in effect, if not in so many words) by eliminating it from our theoretical inventory, and, along with it, more than a century of theoretical progress in social anthropology and in comparative law.

3. According to linguists (both native English- and Yolngu-speakers) who have experience in the wider Yolngu language area, Djambarrpuynugu is apparently becoming (or has become) a lingua franca—in the sense of everyday language use—throughout a large part of north-east Arnhem Land. Yirrkala and related homelands thus appear now (1998) to be distinctive in that people there continue regularly to speak their own language. This has potentially significant implications for what I have assumed is general (if not universal) practice throughout the Yolngu-speaking area, namely the use of one’s own (father’s) language to indicate the estate to which one holds title. The linguists also say, however, that Yolngu people express concern about this situation and that some Yolngu teacher-linguists are instituting programs to reverse the trend. I take this development as evidence of the continuing role of language in indicating rights in land as I have analysed them.

4. Morphy (1990: 320) subscribes to this way of understanding the Yolngu clan; that is, ‘Yolngu clans are constituted ... through rights in, or the ownership of, certain areas of land and the mardayin associated with them’ (mardayin refers to ‘sacred objects’: in one sense ‘title deeds’ to the land).

References


Outline summary

Over four years have passed since the commencement of the Native Title Act 1993 (NTA). One of the unique features of the NTA is the mandatory requirement that the parties undertake mediation under the aegis of the National Native Title Tribunal (NNTT). The purpose of the mediation is to have the parties attempt to agree on a form of native title which is mutually acceptable and which can therefore become an agreed determination of native title pursuant to an order of the Federal Court.¹

This paper proceeds on the basis that, since the commencement of the NTA, there has been insufficient regard paid by anthropologists and lawyers to:

- the benefits to indigenous peoples of mediation by lawyers and anthropologists; and
- the simpler test and easier process available in native title applications than in applications under Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA) and the Aboriginal Land Act 1991 (Queensland).

Possible reasons for this lack of regard are explored. The paper outlines the historical development of mediation practice in native title determinations in Queensland. The role of the Connection Report in mediation practice is examined and some practical suggestions are made about how professional advisers might work more closely in the preparation and management of such reports. Finally, the paper concludes that unless lawyers and anthropologists adapt their current practices to meet the emerging requirements of mediation, then both sets of professionals may find that the market for their services has moved on.

The nature of the forum

The adversarial forum

The forum common to both the ALRA and the Aboriginal Land Act 1991 process was characterised by adversarial conflict. In both instances:

- a statement of claim was lodged with the tribunal;
- the inquiry of the tribunal was adversarial and not inquisitorial in nature;
- most parties were legally represented;
• often the claimants and a number of other witnesses were subject to cross examination;
• anthropologists and other experts were subject to cross examination; and
• theories of relationships were met with contrary expert evidence from other anthropologists and other experts.

Out of this cauldron of conflict emerged something which, hopefully, resembled the facts.

Because of the adversarial conflict, it was inevitable that both sides would focus a great deal of resources, time and money on the preparation of their expert evidence. In most instances the expert was used to translate 'knowledge' of the claimants into a form where it could satisfy the tests established by the relevant legislation, and be presented to a non-Aboriginal judge. Conflict then took place in a structured situation in a way that was completely alien to most of the claimants. The adversarial conflict was resource intensive and expensive for the funding Land Council, often culturally inappropriate because it required 'sensitive' issues to be advanced and recorded in an alien environment, and traumatic and confusing for indigenous witnesses.

The NTA: benefits of a simpler test and an easier process

Preface
The message of this paper is that native title legislation creates an environment with the following benefits:

• it offers an opportunity for non-adversarial resolution of issues through mediation;
• it offers an opportunity to negotiate acceptable levels of evidence;
• it allows claimants to settle with some of the parties very early in the piece, and to proceed through mediation to try to resolve all of the issues with the more important parties;
• material exchanged between parties in mediation is protected by confidentiality provisions, and cannot be used against a party if mediation breaks down and the parties are thrust into adversarial conflict; and
• it relies upon the adversarial forum only as a last resort.

These benefits alone provide an opportunity for lawyers, anthropologists, Land Councils and others to completely reassess the manner in which they approach the preparation of expert evidence in these cases.
The simpler test

In addition to allowing for negotiated evidence, the NTA also has a much simpler test which the claimants must satisfy. It is an unusual test, because it proceeds from an end result—a determination—and works backwards towards what the determination contains.

It is perhaps simplistic, but necessary, to say that native title is not the same as land rights title. This is implicit in the decision of the Federal Court in Pareroultja v Tickner, where the Federal Court found that native title could exist on land which was the subject of a successful Northern Territory land rights grant.

The things not needed to prove native title are: spiritual affiliation (ALRA); traditional affiliation (Aboriginal Land Act 1991); primary spiritual responsibility for the land (ALRA); and a body of traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships (ALRA).

To establish the existence of native title, one essentially requires positive answers to the following questions:

- Is there in existence a set of Aboriginal laws and customs for the land in question?
- If so, do these laws and customs bestow certain rights and interests on a particular group of Aboriginal people?
- Do neighbouring owners recognise the claimant group as the people who have customary obligations and responsibilities for the land under the set of laws and customs?
- Have the applicants established a connection with the land?

Native title depends on the existence of a system of Aboriginal law and custom for the land concerned. The test of native title both at common law and at statute does not involve decisions about:

- the existence of traditions, observances, customs and beliefs in relation to particular persons, sites, areas of land, things or relationships; or
- common threads of affiliation to a site on the land; or
- primary spiritual responsibility for that site and for the land; or
- traditional affiliation.

This confusion between the differing tests for an ALRA or Aboriginal Land Act 1991 claim on the one hand, and a native title application on the other hand, has been recognised by other commentators.
Mediation—an easier process

If it be practicable to resolve an application for determination of native title by negotiation and agreement rather than by a judicial determination of complex issues, the Court and the likely parties to the litigation are saved a great deal in time and resources. Perhaps more importantly, if the persons interested in the determination of those issues negotiate and reach an agreement, they are enabled thereby to establish an amicable relationship between future neighbouring occupiers (North Gamalanja Aboriginal Corporation v State of Queensland (1996) 135 ALR 225, 235).

Background—mediation as a novelty

A unique feature of the NTA is that it provides a structure (and indeed a statutory requirement) for the mediation of native title determination applications. To those who cut their teeth on the adversarial process in land claims, this is both a distinctive and puzzling feature. It is suggested that it is a feature which provides some excellent opportunities for applicants in the determination process.

The main features of mediation can be summarised as follows:

- It is essentially co-operative rather than adversarial in nature.
- It affords opportunities for positive discussion between the parties.
- It allows parties to put their position in an open and frank manner.
- It allows some of the parties to deal directly with each other without having to deal with all of the parties all of the time.
- It allows the mediator to act as a sounding board and to broker solutions between some or all of the parties.
- It allows mutually acceptable levels and types of evidence to be negotiated.
- It avoids Aboriginal people being subject to cross-examination by Europeans in the unfamiliar court room context.
- It avoids the situation where a European judge is asked to make decisions about matters of Aboriginal culture and other sensitive issues until those issues have been agreed between the parties.
- It is a much less intensive user of resources both in terms of time and money than the adversarial process.
- It provides an opportunity for parties to agree what they can agree and thus to limit issues which may need to be resolved in a court.
- It provides an environment where the parties can explore different avenues of reaching negotiated positions without fear of information provided during the mediation process being used against them later in an adversarial process.
All of the above suggest that mediation never fails, it simply has different levels of success.

Mediation as a dispute resolution mechanism is relatively new to Australia. It is essentially a product of the last ten years evolved through a desire by those in the commercial field to avoid the costs of protracted litigation conducted by 'armies' of lawyers. Such contests were resource intensive both in terms of time and money. Inevitably, a decision of the court will provide a result on the issue referred to it, but not an entire solution to the problem which the parties are seeking to resolve.

The NTA is probably the first piece of non-judicial legislation in Australia that provided for compulsory mediation prior to litigation. Those requirements placed a heavy burden on the NNTT and on parties to discharge their statutory responsibility.

On a practical level, most of the legal and anthropological practitioners who became involved in native title applications in the period 1994-96, had no previous experience of mediation in the commercial field. This, in turn, placed further burdens on the NNTT as mediator, to try to educate the parties to the process about this new creature called mediation.

The development of principles for mediation

Despite some bold efforts by the NNTT to develop some ground rules for mediation, it was over two years after the implementation of the NTA before (at least in Queensland) a set of principles emerged which established a process for mediation. This process included establishment of a list of issues which the parties to the mediation needed to address in order to progress the mediation towards an agreed determination.

Mid 1996 marks the first time that the State, the applicants and the NNTT sat down together to try and address the practical issues of process, with a view to developing a model set of procedures which could be applied in generic terms to each individual native title determination application. That it took so long to reach this stage is nobody's fault. In fact, it is quite extraordinary that, so early in the history of a novel environment, steps were set down which delineated a path to be followed.

There was at that time a concern amongst the advisers to applicant groups that mediation was really a process without shape or form. It was felt that mediation needed definition in order to create a circle of opportunity within which the parties could operate to try and reach agreed outcomes. Some of the major structural requirements were:

- an agreed process of steps to be followed and timetables for those steps;
- the development of a set of processes so that each party knew what the next step was along the path towards an agreed determination;
• a clear exposition of the tests or filters which the State would require the applicants to pass through in order to work towards a determination;

• a recognition that any party could step outside the process if circumstances warranted it and seek to have the matter referred to the Federal Court; and, finally,

• a recognition that the ultimate decision of agreeing to a determination was a political one for Cabinet, and not one for government officers.

Why the state is an important player in mediation

The state is the most important party that native title applicants have to deal with in seeking to reach an agreed determination. It is a fact of life that unless the state can be persuaded to agree to a determination of native title, then quite simply there cannot be a completed mediation outcome. Without the state's agreement, applicants are forced into the litigation forum.

The reason for the need for state agreement is quite simple. The state represents all of its citizens, including those parties who will be affected by a determination. Quite properly, the State of Queensland has taken the view that it must ensure that no persons are worse off by its agreeing to a determination of native title.

An understanding of government process

Advisers to native title applicants must have a rudimentary knowledge of the processes of government. Such knowledge is vital to understanding the steps that form part of the mediated outcome.

It is probably provocative, but nevertheless true, to say that a particular native title determination is never won through the political process. It is achieved through the bureaucratic process. The particular applicants are not served by a myopic approach from their advisers which simply adopts the 'they are all conservative, reactionary people who are opposed to the concept of native title and so we will not deal with them' view. If one brings that attitude to mediation, one will not progress far.

It is imperative that applicant's advisers understand that government officers are working within a policy framework determined by Ministers. The dimensions of the envelope of policy can be expanded and squeezed at certain points. The policy itself cannot be changed by a single application. That is a debate and a contest that takes place in another forum and at another level. The role of the lawyer and the anthropologist is to seek to achieve an acceptable mediated form of native title for their clients, within the policy framework. It must be understood that government officers (whatever their personal views) have to work within a policy envelope.
The comprehension of this fact of the processes of government will lead to an appreciation of the following:

- Government officers have some scope to move at a practical level within a broad policy framework.
- Officers will move towards an agreed determination where the broader objectives of policy can be met.
- The speed with which a mediation proceeds is determined by the ability of an officer to move the processes of the application through the various stages of a policy framework. Any assistance the applicant's advisers can give in this regard by use of a certain form of words or the structuring of a particular part of an application will help to speed up the movement of the determination through that part of the process.
- Officers do not determine and cannot change policy, particularly in the short term—policy change internally is an incremental process.
- Officers can be assisted in moving through the process by a cooperative and consensual approach by applicant's advisers, rather than by confrontation and conflict. Many officers are managing a number of applications, and are assisted by the timely provision of draft documents.

The time taken by applicant's advisers to understand the processes of government, the context and climate within which government officers work, the external dimensions of the policy framework within which they operate, and the mandate (if any) which they possess from their political masters, will be time well spent and amply rewarded.

It is also very useful early in the mediation stage to seek to 'tease out' from officers:

- the nature of the evidence they might require;
- their attitude to certain key features of the application (that is, intra-indigenous conflict, land use issues post-determination); and
- issues which they see as impediments or problems which need to be resolved in order for them to make a positive recommendation to their political masters.

Generally, officers will be quite willing to indicate what they see as the major hurdles to be overcome in mediation at an early stage of the process. If it becomes obvious that one particular point or issue cannot be resolved easily, then do not labour the point. Overall progress is much more likely to be successful if an attempt is made to agree as much as possible and to put areas of potential disagreement to one side.

Those issues can be revisited later when the parties have agreed on a number of other issues. It is surprising how, during the process of agreeing over
issues, solutions to what were previously thought to be insurmountable obstacles sometimes present themselves. Attitudes change, perceptions vary and understandings are reached through dialogue and the process of agreeing about some of the issues. Often the previously unachievable becomes possible.

The evolution of the negotiating framework document in Queensland
The President of the NNTT is the ‘father’ of the negotiating framework document used in mediation in Queensland. Following an initial draft document prepared by the President, there has over time emerged a standard form or set of principles under which the major players or parties agree to conduct themselves in mediation. The principles are incorporated in a document known as the Negotiating Framework Document (also sometimes referred to as the Draft Indicative Principles Of Mediation), which has a number of the features set out below.

A typical Negotiating Framework Document will contain all or most of the following direct and indirect features:

- An agreement between the applicants and the State.
- The establishment of a basis, process and timetable for mediation between the parties with a view to resolving the claim without the need for contested proceedings in the Federal Court.
- Other parties to the application may be informed of the agreement and invited to participate as appropriate in the negotiations under it, although this is unusual.
- The State and the applicants agree that they are prepared to negotiate on the basis that agreed determinations of native title are possible in respect of the areas under claim.
- Agreement that any agreed determination of native title will be and can be expressed subject to existing valid laws of the Commonwealth and State, and any private rights that exist upon the land.
- The parties acknowledge that a determination cannot necessarily be taken to resolve the management issues arising out of the present or future interaction between native title and the laws of the State and any existing private interests.
- The parties undertake to try and keep continuity of representation.
- The parties undertake to comply with a timeframe established by the agreement and to use all reasonable endeavours to maintain the progress of the negotiations under it.
- The State undertakes, within a given timeframe to provide a detailed tenure history of the land which is the subject of the application. The applicants review that material. The purpose of this exercise, which
becomes a sub-process in the larger process is that the State and the applicants can reach agreement on any past tenure grants which may have extinguished, suppressed or affected native title. Obviously, agreement on this issue is essential to the content and form of any determination.

- The State undertakes, within a given timeframe, to provide the applicants with a statement of the limitations which in its view are imposed by State law on the exercise of native title rights on the areas under claim. The applicants review this material. The parties seek to reach an agreement on the operation of such limitations.

- The applicants undertake to provide the State, within a given timeframe, with a written statement of the form of native title determination they seek and the ways in which they would seek to exercise their native title consistent with existing laws of the State and Commonwealth.

- The State, within a given timeframe, agrees to supply to the applicants a written statement of the matters of which the State would need to be satisfied in order to agree to a determination of native title, and the process by which the State would be so satisfied including: the form of the material to be supplied; the content of the material to be supplied; the criteria by which the State will assess the material supplied; the persons who will undertake the assessment; and the process by which the State will decide on these specified matters.

- If the applicants agree to accept the requirements of the State, then they must supply the material sought by an agreed date.

- The material exchanged between the applicants and the State must be the subject of strict confidentiality and copyright provisions.

The result of all of this is that all parties know the timeframe in which they are working, the hoops through which they must jump, and that the material they supply to each other cannot be used against them if mediation breaks down and the matter is referred to the Federal Court.

From the applicants’ point of view, the two main issues are: what must they establish; and what other interests must be allowed to coexist with any established native title rights in order to secure an agreed determination.

**Some practical consequences of the Queensland approach**

The State of Queensland seems to be the most advanced State in Australia in discharging its obligations to mediate native title applications. It has a two-fold test to decide whether or not it will agree that native title exists in a particular application:
CONNECTIONS IN NATIVE TITLE

- Are the applicants the correct people to hold the native title determination sought, that is, is somebody else liable to 'jump out of the woodwork'?

- Do the applicants have a continuing connection with the land?

These two criteria are really an amalgam of the common law and statutory definitions of native title. However, they are certainly less onerous than the current common law or statutory tests and, from an applicant's point of view, they are more pragmatic.

The second half of the test reflects part of the statutory test set out in s.223(1)(b) of the NTA. However, it is very important to note that the state does not specifically require:

- that the native title rights are 'possessed under the traditional laws acknowledged and the traditional customs observed by' the applicants; and

- that the requisite connection be derived from those laws and customs.

It is inevitable that, if mediation fails, then applicants would have to satisfy these additional tests in litigation in the Federal Court. The absence of a strict insistence on all of the tests in the state's criteria probably points to its recognition of the difficulties which applicants may face in satisfying the somewhat amorphous definitions of native title established in Mabo (No. 2), and in the NTA.

Thus, the preparation of material by the anthropologist to establish the two tests is vitally important. The anthropologist plays an essential and integral role in that function. The following section provides examples of methods by which material can be gathered and presented to the state so as to satisfy those two main tests. The reports that contain that material are known as 'Connection Reports'.

To complete the picture, however, it is interesting to look at the additional material which the state requires to be addressed in any agreed determination. It is a pre-condition of an agreed determination with the State of Queensland that the applicants recognise the principles in the determination.

Firstly, that native title is subject to the valid and validated laws of the State and the Commonwealth. There are some who would say that this is stating the obvious. However, I suspect its insertion is intended to ensure that the issue is put beyond doubt.

Secondly, that the provision of local government functions should continue on the native title land. This can be done (i) through a s.21 Agreement between the Prescribed Body Corporate which is to hold the native title as trustee for, or be the agent of, the native title holders, and the State or (ii) by a specific clause in the determination.
Thirdly, that the native title rights are subject to, or will be exercised by reference to, existing valid interests held by others in the native title land. Examples are interests held by infrastructure operators, such as Telstra or power utilities, or interests of others to pass over or make use of the land in some way, such as access to waters by fishermen.

All these matters need to be addressed in Connection Reports.

The Connection Reports

Introduction
This section deals with the methodology used in preparing Connection Reports; and the use of the Connection Report in identifying and particularising those native title rights still in existence.

The first thing that needs to be said is that a Connection Report is entirely different from a claim book. It has a different structure and a different purpose. Its purpose is not to present evidence. Its purpose is to simply satisfy the two-fold test of the State of Queensland. Accordingly, it must be structured to that end.

Structure of the Connection Report—some suggestions
A draft model of subjects to be considered for inclusion in a Connection Report is contained at Appendix A. It should be said that the model is somewhat site, or application, specific, but it is intended to demonstrate the following items in a Connection Report:

- the historical setting;
- the existence and a description of a set of laws and customs;
- the recognition and acknowledgment of those laws and customs by neighbouring groups;
- how the applicants possess rights under those laws and customs;
- major aspects of those rights;
- how those rights are exercised today;
- the effect of European colonisation on the exercise and modification of those rights; and
- the way in which the applicants have adapted their social, language, structural and cosmological ways to European influence.

It cannot be emphasised too strongly that the report should not be confrontational. Its intention is not to establish evidence, but to allow an ‘examiner’ to ‘tick the boxes’. In that regard it should be self-contained, but it should also include as extensive a bibliography as possible.
The Connection Report should also not seek to hide any problems or difficulties encountered, but should bring them out into the open. If necessary, supplementary investigations should be undertaken and reports prepared to demonstrate to the examiner that further work was conducted to address the issues that emerged initially and what the outcome of that further work was. The other thing to remember is that the standard of proof is not as high as required in an adversarial contest.

I would also encourage dialogue between the preparer of the report and the reviewer if uncertainties arise. That dialogue is probably best conducted through third parties on both sides, rather than face to face, in order to avoid the intrusion of personalities into the process.

Methodology in the preparation of a Connection Report
The following methodology has been found to be useful in preparation of a Connection Report.

Pre-meeting:
The anthropologist, the lawyer with the conduct of the application and, hopefully, an anthropologist from the Native Title Representative Body should meet at an early stage to discuss the nature and scope of the report to be prepared. This can often occur prior to the anthropologists entering into a formal contract. Matters which might usually be discussed at this preliminary meeting or conference include:

- an assessment of published ethnographic material on the applicant group and the application area;
- a discussion of the history by which the applicants have come together to make the application;
- consideration of the internal dynamics, stresses, tensions and pressures in the applicant group, including the examination of any intra-indigenous disputation or conflict;
- consideration of any overlapping or conflicting claims by neighbours or by other persons within the applicant group, or persons who may be members (in the broader sense) of the applicant group;
- discussion on the general strengths and weaknesses of the application;
- discussion on areas of likely extinguishment or suppression of native title rights;
- review of any likely land use problems arising from competing interest holders (non-native title holders—lease holders, local authorities, statutory instrumentalities, and so on);
- review of any mining tenements either granted or applied for;
• determination of any concerns already expressed by State officers or other parties about possible problems in mediating the application;
• preliminary analysis of the land use aspirations of the applicants post-determination; and
• an examination of any economic aspirations of the applicant’s post-determination—this is very important in an assessment of the rights to be claimed.

Work program:
Out of the preliminary meeting should come an agreed program to be undertaken, which should contain the following features:

• apportioning of the work into various stages;
• timetable for a completion of each stage;
• a clear statement of the input responsibilities of the anthropologist, lawyer and representative body at each stage;
• a clear indication of what part of each stage will involve field work and what part will involve desk work;
• a statement of what resources the anthropologist will require;
• an agreement on confidentiality and where property in the Report will reside;
• integration of the anthropological study for the Connection Report into the broader workshop and information gathering program of the application itself;
• integration of the timing of the anthropological reports into the plenary program and timetable established by the NNTT;
• an agreement by the anthropologist, lawyer and representative body to work closely and in good faith to produce a Connection Report for the ultimate benefit of the applicants;
• an agreement that the purpose of the report is to seek to achieve a mediated determination of native title and that it is not to be used as an expert’s report in litigation;
• an understanding and agreement as to the role which the Connection Report will play in the overall mediation process including an appreciation and respect of the expertise and professional perspective of both the lawyer and anthropologist;
• an acknowledgment of the lawyer that the anthropologist is a colleague in the process rather than an expert witness or a ‘pawn in a game’ (see Blowes 1998); and
• in return, an acknowledgment by the anthropologist that the Connection Report must be as professional as possible, and be structured and 'massaged' to fit within the overall objective, and in this regard to allow the lawyers and the representative body input into a review of draft reports, but with a final acknowledgement that the integrity of the report must be preserved.

The draft Report:

It is not the purpose of this paper to set out how an anthropologist or other independent expert should go about preparing their report. This part of the paper focuses merely on the review of the draft report when it is presented in its initial form.

Any review should take place through an open and frank dialogue. The review should initially be carried out by the lawyer for two reasons. First, this would ensure that nothing in the report cuts across or raises unnecessary issues that might affect the broader negotiating position. Secondly, it would make sure that in the detailed negotiating sessions about the wording of the report there is no language, terminology or principles which are contrary to the instructions of the client, or which might cause embarrassment and delay or might adversely impact on the negotiating process.

The Native Title Representative Body should also review the draft report (hopefully in concert with the lawyer) for the following reasons:

• to make sure that, when published to the applicants, the report will not create any disharmony within the applicant group;
• to ensure that the Native Title Representative Body is receiving value for money;
• to ensure that the report addresses the issues required in the scoping study, which ideally would have formed part of the contract with the anthropologist;
• to be a sounding board for the anthropologist, as the Native Title Representative Body may well be the repository of a number of other related reports to the application area; and
• to, in some regrettable instances, act as a referee between the lawyer and the anthropologist.

Review of Report by applicants:

It is vitally important that the Connection Report be explained to, and reviewed and accepted by, the applicant community. It is not acceptable to publish or present material in the name of the applicant group which the group is not aware of and which it has not approved. The following points may be of interest:
• Attempts to provide brief summaries or overviews of the report to the applicant group and seek approval for those summaries or overviews should be resisted.

• A full report should be provided to the group or appropriate senior persons in the group. It should be stressed to the group and to those persons that the document is strictly confidential and that copies should not be made.

• A workshop should be held to take the applicants through the report and to explain it in detail to them. Appropriate time should be allowed for this process.

• Any questions or negative views about the report, either with respect to its veracity, accuracy or completeness should be discussed and resolved with the applicant group.

Supplementary Reports:
Supplementary reports should be positively considered in the following situations:

• where an issue arises during the course of the applicant group review of the report which cannot be addressed merely by an amendment to the report;

• where the report raises issues which need to be addressed further, either on the face of the report or as a result of discussions among the lawyers, the anthropologists and the Native Title Representative Body; and

• where the applicants require other issues, such as territoriality, membership, history or boundaries, to be further refined.

There is significant merit in not trying to hide or gloss over any issues which arise in the principal report.

Again, any supplementary reports should be taken back to the applicant group, fully explained and discussed with them, and their specific approval given for the inclusion of the information in any supplementary report.

The doctrine of limited available resources
It is pertinent to remember that applicant groups have limited resources. The Native Title Representative Bodies (that is, mainly Land Councils) who fund the bulk of native title applications have to settle budgets for applications. They are subject to competing claims for those resources, and they are quickly becoming more professional in the distribution of their limited resources.

Land Councils are also acutely aware of the prospects which mediation offers to achieve a cost-effective outcome for their constituents. Some Land
Councils have already introduced the practice of requiring scoping studies before awarding contracts for Connection Reports.

The more experienced Land Councils are insisting that Connection Reports not be claim books in disguise. The speed of mediation does not afford the time for claim books; nor does the mediation process require them. More importantly, funders will not fund them.

The challenge for the legal and anthropological professions is to adapt their practices to meet the new demands imposed by mediation. Failure to adapt to meet the requirements of the marketplace could well see the introduction into the traditional preserve of the multi-disciplined entity, which is already making inroads into the accounting, legal and banking sectors.

The message is clear. Meet the market or the market will move on!

**Appendix A. Connection Report: suggested model outline**

1. **Introduction**

   Purpose: To lay the groundwork of the preconditions for the existence of native title.

   *Establish/Assert:*
   
   - the existence of a set of traditional laws and customs for the application area; and
   - the recognition and acknowledgment by neighbouring groups of the applicants as the traditional owners of the application area.

2. **Historical background to the claim area**

   2.1 *Are the applicants part of a sociolinguistic group?*

   Purpose: To show indigenous language as part of a continuum of customs and traditions.

   *Establish/Assert: the history of recording of indigenous language;*
   
   - languages and dialects in the application area;
   - was/were the language(s) recorded/acknowledged/spoken by Europeans;
   - continued occupation of application area by applicants; and
   - present use of indigenous language(s).

2.2 *History of settlement in application area*

   Purpose: To detail the social, political and economic changes which have moulded the social organisation of the applicants.
Establish/Assert:

- how do the applicants conceptualize the past—is it as a series of eras or periods marked by significant events;
- how does European history record these eras or events;
- set out recorded, detailed ethnographic references to the applicants’ predecessors/ancestors;
- what effect did the forces of history have (in each of these eras) on the customary laws of applicants with reference to:
  - the relationship between land and people; and
  - the economic, social, political and religious dimensions of the relationship.

2.3 The interaction between traditional and historical Aboriginals in the application area

Purpose: To place in context the existence of the historical and traditional persons living in the application area.

Establish/Assert:

- the historical basis of the classifications, and whether there are more than two groups;
- have they continued as strict classifications;
- was there intermarriage; and
- what were the reasons underlying the movement(s) of the historical people into the application area.

3. The traditional socio-territorial organisation

3.1 Clans and clan estates

Purpose: To establish whether under traditional law and customs the application area was divided into discrete ‘bubu’ or estates.

Establish/Assert:

- the existence of named sites, tracts and estates;
- their definitions or characteristics;
- the ethnographic and ethnohistorical evidence for the various estates;
- the existence or otherwise of patriclans, local groups, etc.;
- any recording of the socio-territorial organisation; and
- is this type of socio-territorial organisation common or unique to the region.

3.2 Rights of affiliation, succession and inheritance to land

Purpose: To establish the principles of law and custom which govern affiliation, succession and inheritance to land in the application area.
Establish/Assert:
- how a person became affiliated with a clan and local groups:
  - by birth, adoption, ceremony, residence, etc.:
  - affiliating through father, mother, mother's husband, mother's brother, wife's father, etc.; and
  - did 'secondary' rights arise in other parent's clan country;
- the elements of a clan's relationship to its estate:
  - all rights in land inalienable or transferable; and
  - is it a custodial relationship or not;
- the incidents of rights and obligations of an affiliated person to clan land:
  - camp, travel freely, use its natural resources, exclude others, grant permission to others;
  - manage natural resources, support fellow clan members in disputes, ceremonies and alliances, learn and pass on clan history, knowledge and geography, protect Story Places, educate children; and
  - are the rights possessory, proprietorial or both;
- dealing with the affiliation to land:
  - is the affiliation with the land transferable or relinquishable;
  - how does the system deal with children who have a non-Aboriginal parent;
  - are they assigned to their mother's husband's group;
  - are they assigned to their mother's group; and
  - are they assigned to their father's group;
- how does system deal with extinct groups:
  - what are the rules of succession;
  - have customs evolved to deal with:
    - situations where male members have no children;
    - situations where neither male nor female have any children;
    - feminism; and
  - can a person identify with more than one group.

3.3 Examination of applicant groups or sub-groups in application area
Purpose: To establish the applicants within the application area.
Establish/Assert:

- any existence of historical mapping;
- any ethnographic recording of applicant group or clan names;
- compare the application map to any historical cartography;
- explain any discrepancies which may occur between historical and present cartography; and
- List (as a means of 'pulling together') the following for each clan or group:
  - territory name (if any);
  - geographic location by reference to topographic features and, if possible, grid co-ordinates. Note to avoid too much precision;
  - orthographic variations of group names (including reference to publications which employed or listed them);
  - names of any groups who appeared in earlier references but which are not in the application; and
  - stem families (a sometimes controversial inclusion/decision).

3.4 Examination of other forms of identification, affiliation and connection

Purpose: To establish any subsidiary forms of affiliation and connection to application area.

Establish/Assert:

- The significance or otherwise of kinship ties in traditional times:
  - use of kinship terminology to identify persons related not only through consanguinity but also through classificatory kinship, adoption, marriage, etc.;
  - what are the main structural principles of the kinship terminology; and
  - is the kinship classification system:
    - cyclical and, if so, over how many generations;
    - any behavioural norms of respect, avoidance, joking, assistance, etc.; and
    - any senior lineage in a patriclan.

- Any changes in traditional system of kinship and marriage through social and cultural changes brought about by forces of history:
  - have any European kin terms and categories been favoured in the system, such as cousin.

- The existence or otherwise of moiety and section systems:
- basis for determining membership of a moiety or section;
- intra-moiety and -section prescriptions.

- Marriage rules:
  - set out classical rules;
  - describe any modifications;
  - set out contemporary rules; and
  - position of children born from casual and extra-nuptial relationships.

3.5 The role of elders in group affairs

Purpose: To set out the classical traditional role of elders so as to establish the credibility of modern-day elders who instruct advisers and address the NNTT in mediation.

Establish/Assert:
- the classical traditional role of elders:
  - how did one become an elder;
  - was it limited to males;
  - did elders of sub-groups gather together to discuss, resolve, determine issues; and
  - the current role of elders.

4. Continuity of connection

Purpose: To satisfy the statutory requirement for the continuity of connection between the applicants and the application area.

4.1 Continuity of residence

Establish/Assert:
- Assert residence wherever possible.
- Account for absences caused by government policy, pastoralists, miners, etc.

4.2 Continued use of traditional resources

Establish/Assert:
- Role or importance of land and resources in economic life of applicants.
- Overview of land and resources.
  - Hunting.
  - Fishing.
  - Gathering and foraging.
- Use of wood, string and stone technologies.
- Traditional laws relating to use of land and resources.
- Detail resources by use of traditional language names.

Note: It is very important to establish economic use of resources as a native title right.

4.3 Preservation of sites
Establish/Assert:
- Any earlier recording of any sites on application area.
- Antiquity of sites.
- Aspirations of applicants re sites.

4.4 Continuity of cosmological knowledge and religious traditions
Establish/Assert:
- Whether there existed, pre contact:
  - creation beliefs of sacred power being vested in, and manifested through, particular places, cultural forms and phenomenon;
  - intimate familiarity with places associated with creation beliefs, including mental landscape maps;
  - a network of sacred sites upon which a group has formed an inalienable affiliation of groups to their traditional land;
  - a cosmology which establishes the relationship between people and their country and forms the basis of traditional beliefs, practices and institutions; and
  - maintenance of the cosmology, via ceremony and proper care of country and sacred sites, such that the physical wellbeing of the people themselves and the vitality of their culture is maintained.
- The effect of contact on cosmology:
  - Did it need to adapt and, if so, how?
  - How was it sustained throughout times of stress? Provide examples of sustainability and adaptation.
- Cosmology and religious traditions today:
  - Do they exist today and, if so, in what form
  - Is any of it recorded?
  - Has the 'land rights' movement of the last 20 years seen a re-focus on these things?
5. The summary

5.1 Methodology

- Bring it all together in a single page summary.
- Emphasise the positive.
- Show how the report has addressed and dealt with any negative or new material which emerged during the course of the study.
- Be as confident as the supporting material allows, but not 'over the top'.
- Give the reviewer what he/she needs to satisfy any reasonable questions and so be able to 'tick the boxes'.

Notes

1. Whilst the current version of the NTA still contains provision for a determination of native title to be made by the NNTT, it is clear since the decision of the High Court in Brandy v Equal Opportunities Commissioner (183 CLR 245) that a determination can only be made by the Federal Court.

2. That test is set out in s.223 and s.225 of the NTA.


4. To quote from Gray (1996: 112):

   The problem is that lawyers are generally backward-looking people. They have a serious tendency to make new concepts end up looking very much like old ones.
   
   Because the main body of experience of land rights in Australia has been in the Northern Territory, under the Land Rights Act, many lawyers seem to think that native title claims should be constructed in the same way as land rights claims. In other words they seek to locate a group which exists for purposes other than land tenure, such as for language, ceremony, social, political or economic purposes, and to try to prove that that group is the land owning group.
   
   Put simply, it is suggested that the test runs something like this (Gray 1996: 112). Are there a set of traditional laws and customs acknowledged for the claim area (anthropologists tend to classify this as the 'tenure theory')? If the answer is yes, then under those laws and customs what does that 'system of Aboriginal law have to say about land tenure for the area in question'? Does the system state exhaustively the categories of people who have rights to and interests of any kind on the land being claimed? In this regard note that the reference is to categories of people, not to specific persons. That is the essence of communal title.

   The first step is not to search for an existing group but to search for what are the laws and customs applying to the land and under those laws and customs you work out what categories of people have rights and interests in relation to the land. The key thing to remember about native title is that it is communal. The title is not held by an individual. Indeed:
...there may not be a single person within the group so constructed who can claim to hold individually all those rights and interests. This does not matter, if it is recognised that the sum total of those rights and interests is held by those persons communally. The allocation of rights and interests within the communal title is to be worked out according to Aboriginal law.

This approach appears to have a number of advantages for those asserting their native title. It does not depend on everyone being able to give credible evidence of spiritual attachments to the land. The evidence required will be to establish the existence of a system of Aboriginal law, the categories of persons who have rights and interests according to that system and the identity of the persons who fall within those categories. It must always be recognised that the process of determining who are the individuals who fall into a particular category will never be exhausted. Others may emerge from time to time in accordance with Aboriginal law.

I envisage that a native title claim put in this way will be much less time consuming and much less expensive than a claim which is conducted by taking truck loads of people to every known sacred site on the land and having them all declare a spiritual affiliation to it (Gray 1996: 113).

5. For discussion of the Indicative Principles of Mediation, see Denisenko (1997–98).


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The third in the Centre for Aboriginal Economic Policy Research monograph series derived from an Australian Archaeological Society workshop, this volume contains papers presented at the 'Tangarri' workshop held at the Australian National University on 10-12 February 1998. These papers focus on issues for archaeological research, they are intended to a wider readership interested in native land claims preparation and mediation. Contributions focus on archaeological issues of Native land claims, land tenure and organisation of transfers where these matters are increasingly seen as political and academic debates in native land claim preparation and presentation. Indeed, in some of the papers, they are played by Native title archaeology and anthropological theory over the past two decades. The Native Title Act in Australia has encouraged a renaissance in the study of both Native and non-native organisation. Each author in this volume draws on their significant practical experience in both land rights and Native title matters.

Centre for Aboriginal Economic Policy Research
The Australian National University
Research Monograph No.13
ISSN 1036 6962
ISBN 0 7315 5100 1