

LINGUISTICS AND LAND RIGHTS IN THE N.T.

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pp. 34-46 in *Further Applications of Linguistics to Aboriginal Contexts*, ed. by Graham R. McKay & Bruce A. Sommer. Occasional Papers No. 7 [sc. 8] 133pp. Melbourne: Applied Linguistics Association of Australia, 1984.

INTRODUCTION

This paper surveys the various points at which linguistically informed judgements bear on issues in the operation of the land rights legislation in the N.T.

The operation of the *Aboriginal Land Rights (N.T.) Act* 1976 has involved a lot of talk about Aboriginal land in Australia's Northern Territory (N.T.). The term "traditional owner", defined in the *Act*, has become a common expression. It refers to an Aboriginal person as owner of land according to Aboriginal tradition. The *Act* uses the term in the context of a traditional land claim, the running of a Land Council¹, or the composition and affairs of an Aboriginal Land Trust. The concept is also relevant to complementary N.T. laws, such as those about sacred sites and sacred objects. An alternate term, common in the Top End of the N.T., is "custodian".

The public face of land rights is the traditional land claim hearings before the Aboriginal Land Commissioner. But the Land Councils and the Aboriginal Sacred Sites Authority have wider responsibilities which continually involve consultation about land use and land tenure, a role which will continue beyond the current period of land claim hearings.

A TYPICAL TRADITIONAL LAND CLAIM

Consider first the steps in the preparation of a typical land claim. (See also Chapter Five in Maddock 1983:82-105, and the formal statement in the Practice Directions issued by the Aboriginal Land Commissioner and appended to his 1979 Annual Report.) An initial Notice of Claim is submitted to the Aboriginal Land Commissioner for a particular area of land² after minimal research on traditional ownership. Then the relevant Land Council undertakes research which will enable it to present the required evidence before the Aboriginal Land Commissioner. This typically involves several years of sporadic consultation with the traditional owners. When the research is compiled in the form of a "claim book", the Land Council submits the claim book and requests a particular date for a hearing with the Aboriginal Land Commissioner. The claim book is the pivotal exhibit at the subsequent hearing. At least in the C.L.C. region, the name assigned to the land claim derives from the name of the principal languages known by the claimants. Then the Aboriginal Land Commissioner issues notices of hearing (just in English) and the hearing proceeds, in two distinct phases (sometimes recurrent): Aboriginal

evidence on the one hand, and "expert" testimony, objectors' submissions (if any), and summary addresses on the other. After consideration the Aboriginal Land Commissioner reports to the federal Minister for Aboriginal Affairs, who tables it, and the report is duly published. After his Department has advised him on the report's recommendations (and excepting any legal impediments such as a challenge in the High Court), the Minister decides whether or how much of the land claimed is to be granted, as Aboriginal Freehold title. Assuming the claim is at least in part successful, the relevant land council once again consults with the traditional owners about an Aboriginal Land Trust to hold the title. (If it is not successful the land council still contacts the claimants to communicate the decision and seek advice on what to do next.)

For a list of N.T. land claims see the Commissioner's Annual Reports (listed with sketch map by Hiatt 1984:4-5,7), or Peterson (ed.) 1981:46-52.

TRANSLATING AND INTERPRETING

The first language of many Aborigines involved in Land Council consultation has not been English, the language of the advisors and the public hearings, and so there has been a constant need for interpretation and translation. This remains true even when the claimants make use of Aboriginal English or Kriol, for this language, especially as spoken by older Aborigines, has numerous differences from Australian English. Harold Koch (1984) has made a case study of the differences which surfaced during the hearing of the Kaytej-Warlpiri land claim. See Brennan (1979) for a general view of interpreting and translation needs in Aboriginal Australia.

Of course, in any of their negotiations with outsiders Aborigines have had to transcend the language barrier. In particular, in their contact with government agencies or Anglo-Australian legal institutions, Aborigines have had to wrestle with various western concepts and distinctions. A novelty in negotiations over traditional land is that in this domain, it is the Aboriginal languages which are richer than English in conceptual and terminological elaboration. Thus it is English which has had to wrestle with extending its expressive power (see below).

The kind and extent of interpreting and translation subsequently used in the process of each traditional land claim has been largely at the discretion of the staff of the Land Council involved. The language of Australian courts is English, and so it is with traditional land claim hearings. The Commissioner has felt that "generally speaking, there is no reason why witnesses who are able to speak English with understanding and some confidence should not do so" (Willowra Report 1980 para 94 p.15). Furthermore, the Transcript of Proceedings records only the English part of what was said, including of course any English interpretation of vernacular statements. (A recent adaptation has been to indicate when claimants were

discussing among themselves "in Aboriginal language" before answering a question.)

When claimants use English as a second language, other problems arise, as the the Aboriginal Land Commissioner himself has noted:

"One has to be careful about attaching too much importance to particular words used by Aboriginal witnesses when those words are no more than rough translations of Aboriginal terms having no precise counterpart in the English language." (1980 Utopia Report para 136 p.19)

A pervasive example is the words expressing types of ownership, such as "owner", "boss" and so on. I return below to the problems of interpreting terms which pose such difficulties.

There is, I believe, another factor promoting the use of English rather than the claimants' own languages in a land claim hearing. The land claim hearing is quite like a court, despite a number of sensible concessions the Aboriginal Land Commission has made. It is primarily a "whitefella" context, and as such provides the sociolinguistic cues for the use of English rather than another language. (Cf. Nash 1979, Neate 1981, Morphy & Morphy 1984:62)

In practice, the degree of interpreting has varied according to the claimants' ease with English, the ease of their interlocutors with the claimants' English, and the availability of interpreters.³ It is noticeable that the kind of interpreting in claim hearings has been more formal than had been used often by the same inquirers during the preparation of the claim. During a hearing the interpreter is called on (sometimes under oath or affirmation, sometimes not) to be an impartial mouthpiece, simply casting what is said into another language. Yet during any other process of consultation, an interpreter is often the main facilitator, offering his or her own answers to questions or explanations of misunderstandings. At the hearing, the claimants find they must adjust to the interpreter's not participating in the manner they are used to. This is just one aspect of interpreting for Aboriginal languages that makes the task different than for the more populous languages of the world.

For instance, a Spanish interpreter, say, in Sydney is usually unknown to his or her clients, while a speaker of an Aboriginal language is usually known, if only indirectly, to all the other speakers. Furthermore, the interpreter is usually incorporated into the claimants' extended family, with certain consequences for the terminology used. For instance the English expression "your father" has four distinct translations in Warlpiri and related languages depending on the speaker's relationship to the addressee, and the interpreter would supply the term relevant to his or her own relationship. (Usually the questioner being interpreted is a lawyer or the Commissioner, who would not be incorporated to any degree into the claimants' kinship network.)

There has been a feeling that impartiality is served by employing an interpreter who is not a claimant, or closely related to the claimants. Similarly, a person not involved in the preparation of the claim is preferred. In practice this has favoured the use of a non-Aboriginal native speaker of English who speaks the Aboriginal language as a second language. However, the Commissioner has been ready to use Aboriginal interpreters, even claimants. (With respect to the Mudbura claim to Top Springs Yingawunarri, one of the claim-book authors, P. McConvell, was the only existing non-Aboriginal interpreter of the language.)

Ideally, only experienced registered interpreters would be used. Increasingly more qualified individuals are becoming available for Australian languages, for example through I.A.D. and S.A.L. courses, which have gained N.A.A.T.I. recognition.⁴ Even so, there is still a shortage of their graduates, particularly those who have specialised in court interpreting.

HISTORY OF INTERPRETING IN LAND CLAIMS

The need for interpretation was recognised from the beginnings of land claim hearings. In 1977 a finding under s.11(2) of the *Aboriginal Land Rights (N.T.) Act* 1976 was made by the Ranger Uranium Environmental Inquiry (Mr Justice Fox presiding). It was the first recommendation made under that Act.

"The Commission was concerned to establish the degree to which traditional spiritual affiliation to various sites was still meaningful to the Aboriginal people and to what extent the indigenous religion of the people was still considered important by them. This is a difficult enough matter to determine with white people. With Aboriginal people problems of communication make it more difficult. We did not attempt to examine most of the claimants ourselves in relation to such matters. Aboriginal people did however give evidence before us, some with the assistance of an interpreter or linguist." (2nd Report, 1977:266)

The first Aboriginal Land Commissioner (Mr Justice Toohey) distributed in 1977 a tape recording explaining his duties, and in particular a call for the submission of traditional land claims. It augured well that he ensured that "through Dr R.D. Zorc of the School of Australian Linguistics the tape was translated into a variety of languages and distributed among Aboriginal communities." (1978 Report para 6, p.2 and Appendix 1) Every community received a tape in English and Kriol. Some of the more populous languages of the N.T. were used on the appropriate tapes: Gumatj (Yuulngu Matha), Warlpiri, Gurindji, Maung, Burarra, Murrinhpatha, Pintupi, Aranda (Arrernte), Garawa. Presumably lack of resources prevented the inclusion of other languages which have subsequently been a major language of one or more groups of claimants: Pitjantjatjara, Warumungu, Mudbura, Alyawarra.

Interpreters have been listed only in a few of the Aboriginal Land Commissioner's Reports:

- 1979 Warlpiri Report para 21 p.3
Mary Laughren (also transcribed video tapes)
- 1980 Uluru Report p.39
Reverend J. Downing
Mr P. Eckert
Mr D.A. Vachon
- 1980 Utopia Report p.53
David Long Jupurrula
Margy Peterson

The last two interpreters listed are Aboriginal, while the others are not. The Commissioner has not listed interpreters in his Reports since 1980.

Each of the eight claims involving Warlpiri claimants has had a Warlpiri interpreter provided at the hearing by the Central Land Council, but the number of other languages "in the air" at those hearings (Gurindji, Mudbura, Warumungu, Warlmanpa, Anmatyerre, Kukatja) have generally been interpreted *ad hoc*, usually by claimants, if at all. In the April 1980 claim to Willowra Pastoral Lease, K. Hale interpreted Warlpiri, and in the neighbouring June 1982 claim to Mt Barkly Pastoral Lease D. Nash interpreted Warlpiri, but in both those hearings the Anmatyerre was not given the same prominence. In the November 1980 Warlmanpa, Warlpiri, Mudbura and Warumungu claim S. Swartz was hired by the Central Land Council to interpret Warlpiri, and during the hearing the Commissioner also heard interpretation of women's evidence from a Warlpiri woman claimant (Alice Napurrula Nelson). No evidence was taken in Warlmanpa, Mudbura or Warumungu (and the odd term from those languages that came up was explained by the claim book author). Similarly, in the 1981 Kaytej-Warlpiri claim, Mary Laughren was hired as Warlpiri interpreter, and no evidence was taken in the Kaytej language (but one of the claim book authors H. Koch explained some terms in that language as they came up). For the July 1982 Ngardi-Warlpiri-Kukatja claim hearing, the Central Land Council hired Aboriginals to interpret Warlpiri (H. Nelson Jakamarra) and Kukatja, and a lot of the evidence was taken in those languages.

A couple of times women in mourning have given evidence in sign language, which has first been interpreted into spoken language by an Aboriginal woman.

TRADITIONAL LAND CLAIM EVIDENCE

CULTURALLY-BASED TERMINOLOGY

Linguists and anthropologists familiar with an Australian language have at times given evidence in a land claim hearing as to the meaning of particular terms. Terms

calling for this attention have been those that do not have a direct English equivalent, and which are relevant to traditional land tenure. Usually the term, while not necessarily polysemous, has two or more English translations, and this has to be explained to the hearing. Effectively, the "expert witness" is testifying about linguistic evidence for world-view.⁵ Evidence has not gone into, say, the especially Aboriginal semantic structures, including their revelation in special vocabularies, sign language.

Terms that have been the subject of inquiry before the Commissioner include, for Warlpiri:

Jukurrpa 'Dreaming'
ngurra 'home, camp, site, country'
pirilirpa 'spirit' (*bilirba* Meggitt 1962:192,206-7)
kurdungurlu "'managers'" (Nash 1982, Morphy & Morphy 1984)
various kinship terms.

It may be of interest to elaborate some of the discussion these terms have engendered.

The example of the term *ngurra* is quite widespread. In the claim to an area near Ayers Rock (by Pitjantjatjara speakers), three senses of the term were distinguished:

- (a) *ngura pulka* ... [lit. 'country big']
 - (b) *ngura in Manguru* = estate [lit. 'country song-from']
 - (c) *ngura kaputu* = range. [lit. 'country together']
- (1980 Uluru Report para 22 p.4)

The term *kurdungurlu*, and its northern equivalent *jungkayi*, have been the subject of much testimony in land claim hearings. In effect, there has been a need for language engineering in English to handle this concept. When extension of English terms such as "manager", "policeman", "worker" and so on proved inadequate, the vernacular terms themselves were borrowed, and eventually "kurdungurlu" came smoothly off the tongues of city lawyers. (See Maddock 1983:97-102). Here is a summary of testimony about the concept in one hearing:

"Mrs Morphy, a linguist, said that the words *djunggayi* and *mingirringgi* have a very general distribution through the region and it is not possible to say from which language they originated. They have however been adopted as part of the Ngalakan language. The claim book reads: 'Mingirringgi is usually translated as 'owners' and *djunggayi* as 'managers' (Exhibit 5, p.33).' However, Mrs Morphy agreed that these English words were as much a matter of interpretation as translation. She expressed a preference for avoiding terms like 'owners' and 'managers' and merely giving a description

in terms of the roles that people play towards land. She was not aware of any attempt to trace the etymology of the words, saying that they are words for which there are 'absolutely no direct equivalents in the English language'. (1982 Yutpundji-Djindiwirritj (Roper Bar) Report, para 54, p.10)

The Aboriginal Land Commissioner had earlier commented:

"Some of the linguistic difficulties that arose during the Utopia claim were met in this [Willowra] hearing by the interpretation of Dr K. Hale, who spoke Warlpiri fluently and who was able to offer an interpretation of words bearing no simple meaning but requiring an understanding of concepts... my understanding of the use of conceptual terms such as *kirda* and *kurdungurlu* was, I think, assisted by Dr Hale's capacity to interpret and explain the concepts involved." (1980 Willowra report para 94 p.15)

In respect of this, Morphy & Morphy (1984:66) claim that "even where a linguist fluent in the Aboriginal language is employed as an interpreter, there is plenty of room for Aboriginal evidence to be interpreted through the process of translation to fit the case being presented by one of the parties to the claim." They cite only Hale's commentary on the Warlpiri term *jurdalja*.⁶

Keen, and Smith, in Hiatt (ed.) (1984) have further commentary on attempts to express Aboriginal land tenure concepts in English. Kin terms for grandparents often arise in claimants' discussion of the sources of their land, and of their life histories. Usually second-generation terms do not distinguish between male and female referents, so for instance Warlpiri *jaja* can refer to 'mother's mother's brother' as well as 'mother's mother' and 'mother's mother's sister'. In Aboriginal English, the term "granny" would have the same possible range of reference. Similarly, Aboriginal English kinship terms *aunt*, *uncle*, *cousin* are misleading to someone who knows just standard English. Generally, an interpreter avoids laboriously explicating the lack of congruence between the kinship terminologies of English and the languages of the claimants, but it may be necessary if confusion arises. This has been the case with terms directly relating to land ownership: "owner", "manager", "to own land", "to hold country" (see Myers & Clark 1983), and so on. Terms in English have also been the subject of attention in evidence before the Aboriginal Land Commissioner, especially the content of the Act's definition of a traditional owner. Lawyers are used to handling such debate, but at least once advice was sought from a linguist (Dr Tryon in the Finnis River report 1981 para. 61).

LINGUISTIC PREHISTORY

Studies such as O'Grady 1959, von Brandenstein 1982 and McConvell (in press) are the few examples of linguistic prehistory studies for Australia.⁷

Evidence from linguistic prehistory has been little used in land claims. Probably this is because the antiquity of Aboriginal occupation of the land under claim has not been seriously challenged. The general point that the variety of the claimants' languages bespeaks centuries of differentiation met with the approval of the Aboriginal Land Commissioner (1982:11, para 49) ("Warlmanpa Report") quoting Nash 1980:27), but was not subject to much scrutiny.

Related to the long period of time that Aboriginals languages have been spoken in a given area is the degree of elaboration of various semantic domains related to that area. It is a commonplace that Australian languages have large flora and fauna vocabularies. In addition the terminology is specialised -- in comparison to the English terms for Australian flora and fauna, the vernacular terms are noticeably more monomorphemic. The observation may be extended beyond the flora-fauna to domains such as topography and weather.

The study of the etymology of place names is especially difficult in Aboriginal Australia, as it leads directly to songs and the content of Dreamings (Merlan 1982). The assignment of a place name to a particular language, where this may be done, does not always imply that the place is, or was, within the land of speakers of that language, which raises in turn the problems in equating linguistic group and land-holding group (Sutton 1978,1984, Merlan 1981, 1984). There are instances where a place name shows morphological features of an earlier stage of a language, from which one may suppose that speakers of that language have been in the environs of the place from before the time of the morphological change.⁸

GENERAL CONSULTATION INVOLVING ABORIGINAL LAND

Even if most traditional land claim hearings are completed this decade, consultation with traditional owners of Aboriginal land will not cease. Here are three areas in which consultation is open-ended:

1. The need for protection of special places (the work of the Aboriginal Sacred Sites Authority as well as the Land Councils), and concern for custody of sacred objects;
2. The requirement imposed by the *Act* that Land Councils keep a current register of traditional owners for Aboriginal Freehold land (though Toohey 1984 has recommended changes to this requirement);
3. Negotiations about land use proposals, such as mining, roads and railways, conservation, tourism, military exercises or other ventures.

The fact that such consultations and negotiations are now part of the scene follows from the fact that some N.T. Aboriginals have through the Land Rights Act regained real control over their land. The remaining challenge is for Aboriginal

land-owners to be seen to have real control over the negotiations and their consulting experts as well.

NOTES

1. There are currently three Land Councils in the N.T. The Tiwi Land Council comprises Bathurst and Melville Islands, and has no need to conduct land claims. The remainder of the N.T. is split between the Northern Land Council (N.L.C.) and the Central Land Council (C.L.C.).
2. To be claimable, land must be outside a town boundary, and be unalienated crown land or land whose interests are held entirely by Aborigines such as an Aboriginal cattle station.
3. There has rarely been interpreting of witnesses in claims brought in the Northern Land Council area, as the first language of witnesses there has usually been English or Kriol. The instances of interpreting of which I am aware comprise one witness in the Finnis River claim, and some in the Mudbura claim.
4. N.A.A.T.I. is the National Association for Accreditation of Translators and Interpreters, with headquarters in Canberra. The Institute for Aboriginal Development (I.A.D.) runs an Interpreter Training Program in Alice Springs, accredited to Level 2 for Arrernte (Arenge), Pitjantjatjara, Warlpiri, and, in 1984, Warumungu (Waramanga). The School of Australian Linguistics (S.A.L.) has accredited translating and interpreting courses at Batchelor, of which the graduates are mostly Top End or interstate, mostly representing languages of areas not subject to land claims.
5. An example is the evidence of Hale in the Willowra claim (summarised in Hale 1980) of Aboriginal propensity for binary oppositions. (Hale's evidence has been partially discounted by Maddock 1983, Morphy & Morphy 1984:61.)
6. The simplest English gloss for the term *jurdalja* (rendered "tudalka" in the transcript) is 'in-laws', and Hale refers to the "affinal" content of the term in his commentary. A remark more to the point would be that that no-one at the hearing took up this lead and pursued the affinal content of the *kurdungurlu* concept.
7. One wonders what could be done along the lines of Friedrich (1970), albeit without the additional dimension of recorded history.
8. I do not know if such evidence has been adduced in a land claim hearing. An example is the name for several Warlpiri places Jangankurlangu. The name derives from an earlier form **jangan* 'possum' (modern Warlpiri *jangarpa*), dating from the time when the postthetic *-pa* was not required before a suffix (such as *-kurlangu* 'belonging to').

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Date created: 18 July 1999