

Chapter 2

Treaty Now: Popular Music and the Indigenous Struggle for Justice in Contemporary Australia

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I grew up on the Gold Coast in Queensland, Australia's third largest and oldest state, at a most unusual time in my nation's history. In infancy, my mother took me down the road to Miami Beach almost every afternoon before driving north along the strip of local beaches to collect my father from work in Southport. Unbeknown to me and possibly to my parents at that time, forces were afoot that would radically change Australia's sociopolitical terrain and imbue my generation with a vastly different set of cultural assumptions about what it was to be an Australian. Campaigning under the prominent slogan "It's time," December, 1972, saw Gough Whitlam lead the Australian Labor Party back into office for the first time since 1949, and before its controversial dismissal in November, 1975, his government's social reforms were sweeping.

Free tertiary education, free universal health insurance, financial support for single-parent families, the abolition of capital punishment, the lowering of the voting age to 18 years, language support for non-English-speaking residents, equal employment opportunities for women, and an unprecedented platform of self-determination for Indigenous communities were among the many significant reforms introduced under Whitlam's leadership. The White Australia Policy, which had unjustly restricted the entry of non-Europeans to Australia since the federation of the six British Colonies there in 1901, was formally abolished under the Racial Discrimination Act 1975, and the disenfranchised Indigenous peoples of Australia would also find an unprecedented level of protection for their human rights and freedoms under this legislation.

For the earlier part of the twentieth century, governments, missionaries, and pastoralists had systemically subjected these traditional owners of the Australian continent to harsh and degrading treatment and conditions. All but a few entire Indigenous communities were forcibly removed from their homelands into lives of indentured poverty on missions, pastoral stations, and fringe camps, where they were stigmatized and penalized for practicing their own languages and traditions. Children of mixed descent were targets of a brutal policy of assimilation under which they were stolen from their families, and subjected to high incidences of abuse in orphanages and foster homes, and also throughout Australia, Indigenous

men in particular were habitually singled out by police for arrest, leading to disproportionately high numbers of Indigenous deaths in custody (McGrath, 1995; Kidd, 1997; Perkins and Langton, 2008).

The overarching aims of these practices had been nothing less than genocidal. They were methodically perpetrated against Indigenous peoples to bring about the complete annihilation of their pre-existing ways of life and their lingering claims of sovereignty over the Australian continent. I entered primary school in the late 1970s, my mother and I made regular trips down the Gold Coast Highway to Burleigh Heads, and each school day we passed right by a traditional Indigenous *bora* "initiation" ring. Although this was the last known ceremony ground of the local Yugambeh people, the Gold Coast's traditional Indigenous owners, to have survived the city's twentieth-century development intact (Bowdler, 1999), it barely registered in my young consciousness. And of the Yugambeh themselves and their rich local heritage (Yugambeh Museum, 2006), I heard nothing but silence from among my circle of adult carers.

The Turning Tide

The Whitlam era also saw the creation of the Australia Council for the Arts in 1973 as a national funding and policy body, and one of its first acts was to convene a National Seminar on Aboriginal Arts in the nation's capital, Canberra (Australia Council, 1973). At this time, the work of Indigenous artists was largely seen by government and industry as a folkloric resource to be plundered freely for political and financial gain. Seeking to end this exploitation, prominent Indigenous elders, such as Wandjuk Marika from Yirrkala, spoke out at this forum for a suite of policy reforms. They called for an independent national network of incorporated Indigenous arts cooperatives, copyright protections for works by Indigenous artists, and an end to all trade in unlicensed reproductions of Indigenous art, and they demanded that all Indigenous artists in Australia receive equal pay for equal work (Marika, 1995, pp. 110-26; Johnston, 1996).

It was on these recommendations that the subsequent Liberal government led by Malcolm Fraser established the Aboriginal Artists Agency in 1976 as a national nonprofit body to protect the legal interests of Indigenous artists, and for the first time in history to ensure that they received royalty payments for their works. This Agency undertook many projects to promote traditional Indigenous artists throughout Australia and overseas. But it also took the unprecedented step of representing emerging Indigenous bands such as No Fixed Address from Adelaide, Coloured Stone from Ceduna, and the Warumpi Band from Papunya. Drawing on a range of globalized popular styles including rock, reggae, and country, their best-known original songs celebrated the strength shown by Indigenous Australians in the face of state oppression, and paved the way for reconciliation with non-Indigenous Australians.

In "We Have Survived" and "Genocide" (both 1981), No Fixed Address, led by singer/drummer Bart Willoughby, recounted the long histories of state oppression suffered by Indigenous Australians. No Fixed Address were formed in 1978 alongside Us Mob at the Centre for Aboriginal Studies in Music, and their music featured in the seminal semi-autobiographical film *Wrong Side of the Road* (Isaac and Lander, prod., 1981), which revealed the endemic racial discrimination, social exclusion, and police harassment still faced by Indigenous youths. "Black Boy" by Coloured Stone (1986), led by singer/drummer Buna Lawrie, railed against the racial mores maintained under the White Australia Policy by encouraging Indigenous Australians to be proud of their dark skins. Similarly, "Blackfella, Whitefella" by the Warumpi Band (1987), led by the flamboyant Yolŋu lead singer George Burarrwaja from Arnhem Land,¹ called for an end to the social rift between Indigenous and non-Indigenous Australians and soon became a prominent anthem of the burgeoning movement for Aboriginal Reconciliation in Australia.²

By the late 1980s, Labor was again in power under Bob Hawke and I was in my teens. The airwaves bristled with songs by non-Indigenous Australian artists, like "Solid Rock, Sacred Ground" by Goanna (1982), "Beds Are Burning" by Midnight Oil (1987), and "Special Treatment" by Paul Kelly (1989), that had been composed in support of these new ideals, and demonstrated a new yearning among Australians to atone for past injustices against Indigenous peoples. And as I grew into adulthood, even more Indigenous artists joined the chorus.

Songs like "Took the Children Away" by Archie Roach (1992) and "Malcolm Smith" by Tiddas (1994) foreshadowed the damning revelations of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, and the Royal Commission into Aboriginal Deaths in Custody (Australian Human Rights Commission, 1997; Council for Aboriginal Reconciliation, 1998). Also popular was "From Little Things, Big Things Grow" on *Comedy* by Paul Kelly and the Messengers (1991). Composed by Paul Kelly and the Indigenous folk balladeer Kev Carmody from southeast Queensland, this song became another prominent anthem of the Aboriginal Reconciliation movement. It celebrated Vincent Lingiari's leadership of the pivotal 1966 strike on the Wave Hill cattle station in the Northern Territory. Sparked by appalling wages and conditions for local Indigenous laborers, this action led to the Whitlam government's eventual handing back of exploited pastoral lands to their traditional Gurindji owners in 1975 (Hardy, 1968; Bird Rose, 1991).

In December, 1991, Prime Minister Hawke was deposed by his former Deputy, Paul Keating, who led Australia into a new era of recognition for Indigenous rights. At Redfern Park in inner Sydney in December, 1992, on the eve of the United Nations International Year for the World's Indigenous People, he gave a moving speech before the media and the local Indigenous community that

¹ All spellings of names and words from the Yolŋu languages follow the conventions used today throughout the Yolŋu communities of Arnhem Land (Zorc, 1996).

² See <<http://www.reconciliation.org.au>>, accessed September 7, 2009.

irrevocably acknowledged how Australia's prosperity had come at the terrible expense of systemic injustices against Indigenous peoples (Keating, 1992). In June that same year, the High Court of Australia had ruled to overturn the doctrine of *terra nullius*, the legal fiction that Australia had been unoccupied at the time of British settlement in 1788, which had excluded Indigenous peoples from asserting any rights or controls over their traditional homelands. Known as the historic Mabo judgment (Australia, 1992), this case concerned the Merriam people and their native title over their islands in the Torres Strait, and it was ultimately won under the Racial Discrimination Act 1975 (Sharp, 1996). Keating's government subsequently enshrined this judgment in the Native Title Act 1993, and as the nation celebrated, Indigenous and non-Indigenous artists from all over Australia collaborated on the commemorative album *Our Home, Our Land* (Yothu Yindi et al., 1995). "Mabo," the album's second song by Yothu Yindi (1995) from Arnhem Land, opens with the triumphant declaration, "*Terra nullius* is dead and gone."

Written on a Bark

In another move to mark the United Nations International Year for the World's Indigenous People, Yothu Yindi's engaging lead singer, Mandawuy Yunupingu, was named Australian of the Year on Australia Day, January 26, 1993. Mandawuy was a Yolngu man from the remote Indigenous community of Yirrkala on the northeastern tip of Arnhem Land, which unlike most other Indigenous communities had not been enfranchised into the Commonwealth of Australia until the establishment of a Methodist mission there in 1934. Before embarking on his musical career with Yothu Yindi in 1986, Mandawuy was already recognized as a gifted and influential educator. He was among one of the first Indigenous school teachers from the Northern Territory to earn a bachelors degree in education and be promoted to principal, and for the first time in history his revolutionary ideas about bilingual and bicultural learning made it legitimate for local Indigenous children to be schooled in their own languages as well as English.

In typically Yolngu fashion, Mandawuy's grand treatise on these ideas came in the form of a song, which he composed while completing his Education degree through Deakin University in 1986. Called "Mainstream" (Yothu Yindi, 1989), it challenged the prevailing assimilationist notion among Australian educators that schools served Indigenous children best by teaching them only in English. It argued that traditional Yolngu law enshrines a local mainstream of esoteric thought that long predates the transplanted intellectual traditions of Europe, and building on traditional Yolngu mechanisms for maintaining amicable relations between different clans, it posited a more balanced and equitable way for Indigenous and non-Indigenous Australians to coexist (Corn, 2009, pp. 25-68).

The balance engendered through Mandawuy's ideal of biculturalism was also central to his greater social project for Yothu Yindi (Yunupingu, 1994). This kind of balance was constructive. It made space for different views to be exchanged.

It laid foundations for mutual respect among different peoples, and it created new possibilities for different ways of life to coexist. It was also necessary because for the past quarter-century Mandawuy's family had been fighting an entrenched struggle for justice over the unwelcome mining of their traditional homelands around Yirrkala. The state's repeated refusals to recognize Yolngu sovereignty over this issue is a theme that runs throughout Yothu Yindi's repertoire, and inspired the composition of its most famous song, "Treaty" (1991).

In 1963, the Australian government granted a bauxite lease over the lands surrounding Yirrkala to the mining company Pechiney while ensuring that their Yolngu owners were locked out of all negotiations. Mandawuy's father, Mangurrawuy Yunupingu, was then a senior elder at Yirrkala, and had recently finished collaborating with 15 other elders to paint the "Yirrkala Church Panels" (Marika et al., 1962-63). Spanning two giant bark panels, this extraordinary document was created as a symbol of contemporary Yolngu solidarity. The panels incorporated the most sacred hereditary designs of nine local Yolngu clans, and were initially hung on either side of the crucifix inside the Yirrkala Church to demonstrate the equality of the Christian and Yolngu faiths (Mundine, 1999, pp. 24-5). Mandawuy was a young boy at the time of the panels' production, and Mangurrawuy cut locks of fine hair from his young head to make the delicate paintbrushes required (Corn, 2009, p. 39).

The newfound solidarity of the Yolngu elders at Yirrkala would soon be tested when the lands to be mined were summarily excised from the Arnhem Land Aboriginal Reserve. They acted swiftly to register an official protest in the form of the "Yirrkala Petition to the House of Representatives" (Marika et al., 1963), which was again spread across two painted bark panels. This second document incorporated a statement in Yolngu-Matha and English that beseeched the Australian government to spare their lands. Known as the "Yirrkala Bark Petition," it now resides on permanent public display in Parliament House in Canberra, yet did nothing to change the fate of the Yirrkala community.

When the mining company NABALCO obtained Pechiney's lease in 1967, the nearby homeland of Nhulunbuy was instantly bulldozed to make way for a new town to house its miners, and the mine itself went into production in the following year. Heartbroken, the Yirrkala elders issued a writ through the Supreme Court of the Northern Territory in an attempt to halt these developments (Mundine, 1999, p. 22). Their case, *Milirrump v. Nabalco* (Australia, 1968), was heard by Justice Blackburn, who rigorously probed the depths of Yolngu law and property management provisions among seven resident clans. Mandawuy's father gave evidence for the plaintiffs, while his older brother, Galarrwuy Yunupingu, was present throughout the proceedings as a court interpreter, and witnessed their eventual defeat in Canberra in April, 1971, when Blackburn ruled that Yolngu land ownership had "never formed any part of the law of any part of Australia" (Australia, 1971, pp. 244-5). Mandawuy would later recall his father's disappointment at this loss:

My father was devastated when we lost that court case, and I saw most of the elders, along with my father, saddened. We'll never forget that those aspects of our law, our strength and our unity were not seen as part of Australian culture, and the Australian way of life in the Yolŋu way. (quoted in Corn, 2009, p. 41)

Further insult to Yolŋu dignity came when Blackburn determined that the plaintiffs had not proven their descent from the people who had inhabited Yirrkala when the British First Fleet claimed Australia for the British Crown on January 26, 1788 (Australia, 1971, p. 198). Galarrwuy scathingly satirizes this judgment in "Luku-Wāṇawuy Manikay 'Sovereignty Song' 1788" (Yothu Yindi, 1989), which he composed to coincide with Australia's national Bicentennial celebrations in 1988. The song parodies a federal parliament sitting and relates the strange tale of the Balanda "Anglo-Australians," who claim to have owned the Yolŋu homelands ever since the British First Fleet landed at Sydney Cove in 1788. That this singular act of succession took place some 2,500 kilometers away from Yirrkala, and 146 years before the first missionaries arrived there was apparently of no consequence. The humor of "Luku-Wāṇawuy Manikay 1788" is further underscored by the offbeat strokes of its acoustic guitar accompaniment, which is reminiscent of the many Anglo-Australian folk songs that celebrate unbridled pastoral expansion and colonial conquest (Corn and Gumbula, 2004).

Writing in the Sand

By 1988, Galarrwuy was in his third term as Chair of the Northern Land Council, which in response to Blackburn's ruling against the Yirrkala elders in 1971 had been founded under the new Aboriginal Land Rights Act (Northern Territory) 1976 to represent regional Indigenous interests in land. Australia's Bicentennial celebrations that year presented a high-profile opportunity for Indigenous peoples to reaffirm the collective sovereignty, and so on the occasion of Prime Minister Hawke's visit to the Barunga Festival in June, Galarrwuy and fellow Indigenous leaders from throughout the Northern Territory presented him with the "Barunga Statement" (Yunupinju et al., 1988). This new document took the form of a single typescript bordered by traditional Yolŋu and central Australian painted designs, and it called upon the federal government to enter into a formal treaty with Indigenous Australians in recognition of their prior ownership, continuing occupation, and sovereignty over their homelands, and in affirmation of their human rights and freedoms.

Hawke's initial response to the "Barunga Statement" was surprisingly positive. Yet his promise that the process of negotiating a treaty would commence within the lifetime of his parliament would never be fulfilled (Aboriginal and Torres Strait Islander Commission, 2001). By 1991, Hawke's promise of a treaty had all but faded from public consciousness when Yothu Yindi's first hit song, "Treaty" (1991), began receiving airplay. The band had teamed up with Bart Willoughby,

Paul Kelly, and Midnight Oil's lead singer, Peter Garrett, to create a rock song that would recapture the public's imagination for this cause. Its lyrics were incisive and its chorus infectiously demanded, "Treaty yeah, Treaty now."

The first verse of "Treaty" recounts how Hawke's promise of action at the 1988 Barunga Festival was broadcast worldwide, but then disappeared "just like writing in the sand," and the song's music video (Yothu Yindi, 1992) presents corroborating evidence. It shows the completion of the "Barunga Statement" onsite at the festival, news reportage of Hawke's visit there, and the ravages of bauxite mining on the Gove Peninsula.

The song's second verse contrasts Hawke's unfulfilled promise against the permanence of Yolŋu law. It asserts that the Yolŋu never sold or ceded their "priceless" homelands to the British Crown, and echoing "Luku-Wāṇawuy Manikay 1788," it declares that "the planting of the Union Jack never changed our [Yolŋu] law at all." The ideal of balance and equity between Indigenous and non-Indigenous Australians first set forth by Mandawuy in "Mainstream" is also referenced in this second verse through the traditional Yolŋu metaphor of "two rivers" flowing together and becoming as "one" (Neuenfeldt, 1993; Corn, 2009, pp. 35-6).

Typical of the compositional style that Mandawuy had been developing since the early 1980s, "Treaty" also incorporated two complete quotations of a traditional Yolŋu song, making it the first hit song in history to feature lyrics in a true Australian language. The old song he selected was of the *djapṇarri* style, which had dominated as a popular music among youths at Yirrkala from the 1930s to the 1970s (Knopoff, 1997, p. 603). It had been composed by Rrikin Burarrwāṇa in the 1950s, and its presence in "Treaty" evokes Mandawuy's nostalgia for his early childhood before Yirrkala was ravaged by mining. The exuberant rhythmic drive of the *djapṇarri* style sets the mood and tempo heard throughout "Treaty," and the repeated melodic contour of Rrikin's old song, C#-B-A-G#-F#-f#—generically known in Yolŋu-Matha as a *dāmbu* "head"—is stated at the opening of each English verse (Stubington and Dunbar-Hall, 1994, pp. 252-3; Corn and Gumbula, 2007; Corn, 2009, pp. 69-81).

The legacy of mining at Yirrkala is cited in many other songs by Yothu Yindi. "Our Generation" (1993) opens with the couplet, "Someone in the city gets a piece of paper/ Someone in the bush holds the law in their hands," which interrogates the ontological schism between Crown and Yolŋu laws in Australia that underpinned the defeat of the Yirrkala elders' legal case against the mine. "Baywara" and "Gunitjpirr Man" (both 1993) were composed in memory of Mandawuy's uncle, Daḡayṇa Marika, who gave evidence for the plaintiffs. "Homeland Movement" (1989) recounts how after four decades of mission life at Yirrkala, Yolŋu spent the 1970s building outstations on their remote homelands in the aftermath of Blackburn's judgment, and "Lonely Tree" (2000) laments the very last sacred banyan tree left standing in the vicinity of the local bauxite plant. Finally, the fate of the "Yirrkala Bark Petition," displayed behind glass near the "Barunga Statement" in Australia's Parliament House, is remembered in "Written on a

Bark" (1999). Its opening verse evokes contemporary Australia's great failure to recognize the Indigenous rights and freedoms that from 1788 onward, "were taken away in the name of a King," and the grave suffering inflicted upon Yolngu by the state in recent history.

Treaty Yeah, Treaty Now

Despite the tragedy of Blackburn's ruling against the Yirrkala elders in April, 1971, some good did come from it in the longer term. Upon coming to power in December, 1972, Whitlam's Labor government established the Royal Commission into Aboriginal Land Rights, which led to the creation of Australia's first piece of native title legislation, the Aboriginal Land Rights (Northern Territory) Act 1976, and the formation of the Northern and Central Land Councils to enforce its protections for Indigenous land interests in the Northern Territory (Northern Land Council, 2002; Central Land Council, 2008).

While Prime Minister Hawke's later promise of a treaty in response to the 1988 "Barunga Statement" similarly failed to bear fruit, it too led to his Labor government's establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1990 as an elected representative body which enfranchised Indigenous Australians into government funding processes that impacted upon their lives (Aboriginal and Torres Strait Islander Commission, 2005). The Council for Aboriginal Reconciliation followed in 1991 (Council for Aboriginal Reconciliation, 2000), and under Prime Minister Keating's leadership of Labor, so too did the pivotal "Redfern Park Speech" (Keating, 1992) and the Native Title Act 1993.

Yet with the election of the Liberals led by John Howard in March, 1996, Australia entered a renewed era of conservatism not seen since Whitlam had come to power, and the nation's Indigenous affairs policies took a series of retrograde steps. In the aftermath of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australian Human Rights Commission, 1997), Howard refused to offer a national apology to the many Indigenous Australians who had been stolen from their families by government decree in the twentieth century. Sustained public outrage at this refusal was reflected in the Closing Ceremony of the 2000 Olympic Games in Sydney, at which Yothu Yindi performed "Treaty" (1991) and Midnight Oil appeared on stage to perform "Beds Are Burning" (1987) wearing costumes boldly printed with that most elusive of words, "sorry."

In the aftermath of the *Wik Peoples v. Queensland* case in 1996, the Howard government successfully introduced the Native Title Amendment Act 1998, which sparked the lengthiest federal Senate debate in Australian history and greatly curtailed the rights enjoyed by Indigenous claimants under the original Native Title Act 1993. In 2005, his government disbanded the Aboriginal and Torres Strait Islander Commission amid allegations of entrenched internal corruption,

and in an effort to garner voters' support ahead of the 2007 federal election, it launched the Northern Territory National Emergency Response, which without warning or consultation introduced sweeping mandatory changes to welfare, law enforcement, and land tenure provisions among Indigenous communities of the Northern Territory. Prompted by spurious claims of organized child sexual abuse within these Indigenous communities, the most controversial aspect of this so-called Intervention has been its blanket suspension by the federal government from the Racial Discrimination Act 1975.

Although the election of a new Labor government led by Kevin Rudd in November, 2007, precipitated a long-anticipated Apology to the Stolen Generations of Indigenous Australians on the first sitting day of Parliament in February, 2008, the Northern Territory Intervention continues unabated despite mounting evidence to suggest that it remains a chronically ill-conceived and ineffective infringement of Indigenous human rights (Australian Human Rights Commission, 2007; Northern Territory Emergency Response Review Board, 2008; Anaya, 2009; Rothwell, 2009). Public concerns over this policy have recently been compounded by federal funding cuts to the many hundreds of homelands that sustain Indigenous laws and ways of life throughout the Northern Territory, and the Northern Territory government's rash withdrawal of support for the bilingual school programs that Mandawuy and his contemporaries worked so hard to establish in the 1980s.

Despite these current challenges, many Indigenous peoples throughout Australia continue to observe their laws, languages, and traditions regardless, and from among them, a new generation of popular musicians has arisen in the guise of bands such as Saltwater from Galiwin'ku, Nabarlek from Manmoyi, and Yilila from Numbulwarr (Saltwater Band, 1998, 2004; Nabarlek Band, 1999, 2001, 2005, 2007; Yilila, 2005, 2006; Yunupingu, 2008). Following in Yothu Yindi's stead, many of these artists incorporate into their original songs quotations drawn directly from traditional music and dance repertoires that express the ancestral roots of their respective people's continuing sovereignty over their homelands (Corn, 2002, 2009; Corn with Gumbula, 2003, 2005). As Mandawuy explains:

We're still practicing our law. We're still doing it regardless of our laws being rejected or being trivialised by mainstream Australian law. We don't care. We keep going because it's important to pass our law on to the next generation. It strengthens our identity as Aboriginal people, the First Nations of this country. (Quoted in Corn, 2009, pp. 29-30)

Yet hope for the future, and for a reconciled Australia still remains. As recently as July, 2008, Prime Minister Rudd and his Cabinet travelled to Yirrkala where Galarrwuy led local elders in presenting him with a new "Yirrkala Bark Petition," which called for renewed national leadership toward the full recognition of Indigenous rights and title in Australia through constitutional reform (Yunupingu, 2009). Even though Rudd's Cabinet includes the former lead singer of Midnight Oil, Peter Garrett, as Minister for the Environment, Heritage and the Arts, it remains

to be seen whether their government will advance Australia toward this end. In the meantime, at least two generations of Australians remember the haunting words of "Treaty," and as sung in its second verse, are "dreaming of a brighter day when the waters will be one."