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Proof & Truth

THE HUMANIST AS EXPERT

Edited by Iain McCalman & Ann McGrath



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**'Stories for country':
Aboriginal history, oral history, and land claims***

Ann McGrath

In January 1985 I travelled to Darwin to appear as an expert witness for the Northern Land Council in the Upper Daly land claim. While awaiting another expert (on potatoes!) to complete his lengthy evidence, several days were spent nervously shuffling through documents, in unsettling view of the hotel's palmy pool. More than ready to be cross-examined, I was glad to be in the witness stand at last. But my seat was hardly warm when counsel for the objectors asked that the Land Commissioner rule my historical submission inadmissible. This was on the grounds that the oral history material included was 'rank hearsay'.¹ I was outraged; is this what lawyers think of oral history?

In this paper, I will explore the relevance of oral history as a form of evidence in the Northern Territory land claims process. This requires a consideration of the potential 'applied' role of historians in contributing a historical critique: by assisting in the research and hearings of the land claim, and after the event, through analysing the material collected during its proceedings, or by assisting community history projects.

Since the *Aboriginal Land Rights (Northern Territory) Act* was introduced in 1976, a number of traditional land claims have been heard, and a significant amount of land has been handed back to its Aboriginal owners. Anthropologists have been cast in the hot seat. They have had to prove that the claimant group in question was the traditional owner, which meant demonstrating an ongoing traditional relationship with the land. Some anthropologists integrated a brief discussion of change into their analysis, but this is not their primary interest in meeting the requirements of the Act. The effect has been to concertina present and past into a timeless entity labelled 'tradition'.²

Until recently, few white historians have paid much attention to the study of Aboriginal history. In western societies, change was supposed to signify progress, with so called 'primitive' societies considered antithetical to 'modern' ones. This has reinforced the

dominant image of Aboriginal society as static, with change inevitably being physically and culturally destructive.

So far historians have had little involvement in Territory land claims, with some notable exceptions such as Marcia Langton of the Central Land Council. Nor have they shown much interest in analysing the tasks and procedures imposed on Aborigines. Perhaps they like to leave issues confronting contemporary Aborigines to the anthropologists, or perhaps they are not aware of the practical skills they might have to offer.³

Similarly, historians have made no comment about the growing accumulation of historical evidence resulting from land claims. As well as the thousands of square miles of land which have been granted to Aboriginal claimants, a by-product of land claim research is the creation of a repository of tens of thousands of pages of transcribed oral history. This includes claimants' life histories, collective traditions relating to 'history time' — since whites came — and the so-called dreamtime. Several lengthy videos have also been produced by claimants. These have all been transcribed and, except for secret material (which is marked 'restricted' or 'in confidence'), they are fully available to the general public. The evidence is very rich, revealing a great deal about the history of colonialism and Aboriginal attitudes to history. If professional historians (Aboriginal and non-Aboriginal) continue in their apathy, we will all miss out on a wealth of material which has an important bearing on Australian history.

Before going further, I will explain some steps in the land claim process. First, a group identifying itself as the traditional owners lodge a statement of intention to claim an area of land. Generally this has to be unalienated crown land, with the exception of Aboriginal-leased pastoral stations. The local land council appoints field officers to research the status of the land, and the basis of the claim. Anthropological consultants are called in to interview the claimants.

The anthropologists, and sometimes linguists, then prepare a submission, known as the claim book, which is lodged with the Land Commissioner, a judge appointed to hear the land claims. He or she is empowered to make a recommendation to the Federal Minister for Aboriginal Affairs, who makes the final decision. Evidence must establish that the claimants are the traditional owners of a particular tract of land. They must be able to show common spiritual affiliation and primary spiritual responsibility to that land. Anthropolo-

gists record and interpret the Aboriginal evidence. They compile genealogies, collate information relating to ownership and management; they observe land use and ceremonies to ascertain attachment. They map sites and dreaming tracks, listen to ancient stories, participate in bush food-collecting expeditions. Anthropologists ask questions relating to language, naming and other traditions.

On a few occasions, an historian has been called in to compile a submission. He or she is required to show the impact of Europeans in the vicinity of the claim area. This has usually occurred when a claim seems 'doubtful', and the historian has been asked to point out why claimants no longer live in the area. The dislocating effects of white contact are thus considered relevant to the argument.

Before and after the hearing, Aborigines make journeys to significant sites, conduct ceremonies and gather traditional tucker. During the hearing itself, they also demonstrate these ongoing traditions before the lawyers and Land Commissioner. This can mean weeks of activities, talking and explaining on location. In addition, impromptu bush courts are set up, where the claimants, expert witnesses and objectors are cross-examined under bough shelters or tarpaulins. Further public hearing sessions continue in a Darwin court room.

So what are the strengths and weaknesses of the ever-growing repository of knowledge emerging from the land claims process? I will list some of its limitations.

— Much is secret and confidential.

— The questions are asked in English, by non-Aborigines, except when a translator/linguist is employed. As the lawyers like to put question themselves, this necessitates reliance on English.

— A question and answer technique sometimes results in disjointed snippets (better results are achieved when an uninterrupted narrative is allowed to proceed; where Aborigines can tell stories according to their own selection of significance. However, language problems necessitate the former approach: to verify details, record wording and meaning accurately).

— Many questions which would enhance historical usefulness are not asked.

— The information is obtained in a situation with a clear goal of acquiring land. We might therefore expect some exaggeration and emphasis of certain types of information.

Now for the strengths of the evidence:

- A great variety of previously unavailable material from Aboriginal perspectives has been collected across the breadth of the Territory.
- A great variety of informants have contributed.
- Cross-examination is provided.
- Complementary data is rich: documented historical research, anthropological research into culture, and also site-surveys, maps etc.
- Many new insights can be obtained. This includes material on adaptation of new technology and goods into the Aboriginal economy, and the superimposition of new concepts and boundaries into the old landscape: for example, fences, railways and pastoral leases being used as convenient dividing lines of traditional land. (No specific 'line' as such was probably necessary before.)

Much of the historical story is told 'on site'. The oral record grows from the land into words... it is a particular type of landscape history. For example, in the Upper Daly hearings, Paddy Huddleston and Douglas Jack visited different places in Wagiman country. At one place, they spoke of murders, work for Chinese, the place of a cattleyard, and the location where a policeman took children away from their parents because they were lighter skinned. Don Liddy and Dolly Huddleston describe what happened at a corroboree place: a ceremony called 'rag burning' where the dead person's clothes were burnt.⁵ We are told where people were buried, when different country was traversed, on foot, in a buggy, and in a car.

'Dates' are rarely mentioned, and when they are, their significance can be obscure. Time periods such as before the 'first war' or 'second war' are more identifiable. As Paddy Huddleston explained:

We took off from Ooloo. Too many army was there. Getting all the Aborigine from the bush. You know, Edith River, everywhere. They found us up there - Jasper Gorge. The army was carrying me. I been little boy, you know? Got little cock rag anyway, I was frightened, scared of these... white men... like the devil carrying me. [After being moved to the Army Compound] ... My father was working for the ammunition then. My sister was born there near Kybrook where the fence is ... still the army time.⁶

Claimants were usually more comfortable talking in terms of how old they were, as signified by height, signs of puberty, such as

breasts or beard, the birth of children, or the colour of hair — 'flour-bag' denoting an older person. Stories are not so much a string of events as place-oriented. While the genre does not compare with 'local history' as we use the term, place is the real focus, the land the document or evidence, with memory jolted by the sight of it (even where no apparent physical evidence of events remains). Time often seems irrelevant, as patterns of behaviour and particular events are described in a continuum in relationship to land sites.

No apparent dichotomy exists between traditionally oriented activities and work for Europeans; this is a western invention. In Aboriginal accounts, the two merge in the changed landscape. The talent of a ceremonial singer is compared with Slim Dusty.⁷ Places are described by both Aboriginal and European names, and their stories also encompass both. Paddy Huddleston helped tell the dreaming story of a big star which travelled the land, and created a permanent water source. Proof of the story was a rock wedged in the fork of a particular tree, and a large cluster of stars in the sky. Another key site was described as 'that dreaming of Old Stan Brown station'.⁸ Europeans had also been integrated into the land histories, the land-based tradition.

We will now turn to the use of oral history within the formal historical submission of the land claim. It is commonly held that western society values the written above and beyond the spoken word — hence the reluctance to admit oral history into the arena of 'reliable' evidence. But I found it was not nearly as simple as this.

My fears that oral history was not viewed as particularly credible historical evidence, were, or so it appeared, confirmed during my preparation of historical evidence for the Upper Daly land claim.⁹ The two historical submissions I had co-written for other claims with Lenore Coltheart, relied exclusively on documentary sources.¹⁰ We had been advised accordingly, because such evidence was 'weightier' (indisputably it was heavier to cart around than tapes! All documents used to compile submissions had to be available for tendering as exhibits). Such sources, I was told, would 'stand up' better in court. The implications and consequences were disturbing. Aborigines would inevitably be rendered passive, for it is extremely difficult to portray a group as actors when their words are inadmissible. It was improper, in my view, for Australian history to be told exclusively from a European perspective, but totally inappropriate in an Aboriginal land claim.

Anthropologists as witnesses are accustomed to such scrutiny of their techniques and to the task of defending the principles of their discipline.¹¹ It surprised us, as historians, to have lawyers delimiting the techniques and style of our presentation. For although historians may be smug about the 'respectability' of their discipline, they are ill prepared to meet outside challenges.

In order to overcome the problem, we need to heighten our ability to articulate our procedures and goals. So in the case of the Upper Daly claim, requests were made for access to the Aboriginal claimants' oral reminiscences, which were already recorded by anthropologists in their field notes. By incorporating the claimants' perspectives, my submission would be more balanced in its research, and the hearing's Aboriginal evidence could be placed into its broader historical context. This could bring the historical submission to life, and down to grass-roots relevance. Now I could write about the lives of individuals, and extrapolate more widely about how colonialism affected families and land-owning groups. The land council lawyers said they liked the idea. The anthropologists were anxious, mainly because it opened the possibility of their field notes being tendered and scrutinised.¹² Nevertheless, a few quotes from this material were included. The transcripts of the Aboriginal claimants' evidence before the Land Commissioner in late 1984 provided rich complementary data, though this appeared too late for inclusion in my written submission.¹³

Now we reach that frozen moment in time, when I sat in the witness stand facing the prospect of my submission being thrown out of court because it contained 'rank hearsay'.

After a lengthy legal argument (I became quite lost) the lawyer for the claimants convincingly reasoned that those who had originally made the verbal (oral history) statements had appeared as witnesses before the court, at which time counsel had every opportunity to cross-examine them. The Land Commissioner, Justice Sir William Kearney, said he would make a decision on the matter later, but in the meantime, would hear my evidence.

During the cross-examination, I squeezed in a little speech about the virtues of oral history, and the way it could be evaluated in conjunction with other documents. But, in retrospect, the legal uneasiness did not reflect a questioning of the credibility of the historical discipline or of its evaluation of oral sources. It related more to the ambiguity of the role of expert witness, and to the hearsay rule. Was

I providing 'pure, factual' evidence, or also interpreting and evaluating?

The hearsay rule is not only applied to oral testimony, but equally to documents, with some exceptions. As strictly applied, the makers of documents should be called to give evidence — obviously difficult in the case of historical archives. It is not acceptable that other people should give evidence of what they heard someone else say out of court. One of the main reasons for the hearsay rule is so that the person directly concerned can be cross-examined, and their demeanour observed. This is to guard against distortion in retellings, after lapses of time.¹⁴ An outside witness might thus be called to provide oral history reminiscences, as was the case with the novelist and ex tin-miner, Xavier Herbert, in the Finnis River land claim.¹⁵ Aboriginal claimants provide historical material first-hand throughout the claim process. According to the hearsay rule, evidence closest to the event is most highly valued. 'Rank hearsay', therefore, was not a put-down of oral testimony, but a demand that informants provide their accounts directly before the court.

This brought home to me how the disciplines of law and anthropology emphasise the virtue of first-hand *oral* evidence to a much greater degree than history. Law is past-oriented, and highly 'traditional', relying on past precedents for its codes. As legal philosopher Martin Krygier wrote 'In law... past maintenance is institutionalised.'¹⁶ The decisions become ensconced in bound written volumes. However, legal decisions must rest on *primary* evidence, that is from a witness, a first hand participant and observer, who is cross-examinable on the relevant 'matters of fact' before the court. The lawyers, therefore, ask questions of the witness, who is sworn to tell the truth.

Anthropologists base their evidence on fieldwork, where information is collected by observing, and especially by listening to the explanations of the people being studied. This method especially lends itself to the study of pre-literate cultures. The anthropologist finds an artificial niche in another society so he or she can follow the participant/observer model of fieldwork. The study may be set in contemporary society, but in the Australian context, there has been a tendency for the study to be especially past-oriented. Influenced by structural functionalist techniques, anthropologists look for evidence of 'traditional' society, and try to construct models of what is sometimes imagined to be a pristine state. Although new

paradigms have replaced such an approach, its legacy remains.

Our contemporary (predominantly white) society highly values the spoken word, and the eyewitness account. Your 'word' is still a valued assurance. Television has exaggerated the value of 'eyewitness news', giving people in their lounge rooms a sense that they have seen, therefore they know or understand. The belief that unless you have been there, or seen it on television, you cannot really know much, is, in a western cultural sense, anti-intellectual, or anti-written word. 'History', on the other hand, is often seen as something kept in archives and libraries: delapidated dusty volumes and papers. The historian is a creature who inhabits such places. Whereas a film may bring history 'to life', books are considered of more dubious value. The literary differences within western society do not need to be elaborated here, but some of the cultural trends mentioned show a society in communicative flux. Is it too wild to say the written word holds hegemonic power while the spoken holds the most popular appeal?

Pre-contact Aboriginal society, being pre-literate, emphasised the special value of the spoken word. In the past, some writings/symbols had strong spiritual significance: for example message sticks, tree carvings and cave art. Now the power of written words in Aboriginal society is mostly due to the influences of the dominant outside society, which includes such institutions as white Australian law and anthropology.

However, the oral testimony in court, and the written judgements are also becoming important to Aboriginal life. Aboriginal history, however, was and still is largely orally transmitted. Aborigines have a different view of history: what it is, and what it means to them. In the Northern Territory, until recently, the landscape rather than documents and books has mapped out their past.

In order to escape stereotypes, and reach the Aboriginal side of the story, Aboriginal oral history — preferably told on or near their traditional land — must be listened to very carefully. The past has an authoritative role in the present: life is seen as a continuum, where past and present merge into a 'continuous present'. As Albert Crowson, a Mudbura elder, explained in his people's traditional land claim, 'we sons are on top now', meaning on top of the land: 'Watch out you don't forget this; Hold on to this dreaming which you inherit from your father; You in turn must use this at initiations.'¹⁷ Their oral traditions are 'stories for country', they belong to the

country, like the owners of specific sites. The stories explain the country, and the laws the humans upon it must follow. They must be passed on to ensure the land is properly looked after. To keep the stories alive is to hold onto country. Now the traditional owners must tell the stories for official land title under Australian law.

Aborigines have a special style of story-telling, and oral history performs important roles within their society. The construction of Aboriginal oral history is connected with proving that they follow, or once followed, certain laws. They also use it to explain the disruptions to their lives brought about by Europeans, and to construct their own models of colonialism. Their tradition is highly flexible, partly because of its oral transmission, which allowed change to be readily incorporated. This is how northern Aborigines were able to accommodate the cattle industry, for example, into their traditional landscape. They do not hold the dichotomous stereotypes of 'real' blacks versus those who have somehow 'sold out' or become white. What emerges clearly in the oral evidence is that Aborigines have successfully absorbed fundamental changes into their culture, without threatening their self-esteem or integrity.

Non-Aboriginal historians are by now keenly aware of the advantages and disadvantages of using all kinds of oral history. We share the legal assumptions that the room for distortion increases with distance from the event, and that special closeness to an event or issue may lead to bias. But in some cases, it is all we have. Other disciplines have developed ways of dealing with oral testimony and, to an extent, strategies to avoid its shortcomings. Our usual reliance on documents, and consequent experience with them, gives us greater confidence with, and skills in handling them. This has led us to be slower to take up the challenge of oral history, and many historians thus neglect what could be developed into a valuable professional skill.

So what is the potential value of such techniques for Aborigines? They have often expressed concern that their traditions will be lost, and have consequently agreed to record their life histories/stories with some white historians. In the land claims context, Aborigines have been involved in what may be described as a large community history project. But it remains lost to all in tedious court transcripts. Land claim data of a historical nature remains unused and unusable to Aborigines, and to all interested in history. This is because their meaning is not immediately evident; they require ex-

planation and historical analysis. The important frameworks 'between the lines' require decoding. Perhaps historians should be much more confident in offering themselves as specialist collectors, and critics/interpreters of oral history. If this is to be the case, we must sharpen our skills in analysing folk traditions, and gain the relevant cultural and contextual knowledge to do so properly.¹⁸ Ideally, a trained historian (and an Aboriginal historian would have special skills to offer), who truly co-operated with a community, could provide a narrative much more readable and meaningful than a patchwork of transcript material. Life histories would be interpreted differently to collective traditions. Greater insight could be gained into Aboriginal interpretations of their own history; we could learn so much.

Before any historian considers using historical material from a land claim, the consent and co-operation of the Aboriginal claimants is essential. Aspects of information revealed in a land claim may be too private to be widely used, despite the absence of restricted access conditions. Aborigines are understandably sensitive about white people appropriating their past. Consequently, non-Aboriginal historians must exercise respect for Aborigines' different values and social codes, and learn to behave with appropriate etiquette.

Ideally, Aborigines would initiate their own community history project. Historians of Aboriginal or European background might initially share information about how land claim material may provide a starting point or resource base. Aborigines from a particular community would then play a strong role in shaping the aims and nature of historical enquiry. They might see the project through as a community project, and may require only minor assistance, or possibly none at all.

In the case of non-Aboriginal historians, the political sensitivities of Aborigines towards them, and the complexities of Aboriginal history should not lead historians to shy away from the task. Aborigines may well demand that we share our skills, but this must be on mutually agreed terms. Difficulties do not mean that true co-operation might not produce valuable results.

The production of oral history projects offers participants an opportunity to challenge entrenched power relationships. In the interface between white interviewer and Aboriginal interviewee, both parties bring their pasts with them, and the dialectic smacks of co-

lonialism. We are trapped in the legacy of the past, and it can be deceptively difficult to break free of its constraints. Where the interviewer and informant are both Aboriginal, factors such as class, gender, and urban versus rural lifestyles can complicate the interaction, as they do when the interviewee is of a different cultural background. A change in terminology may help deconstruct such entrenched power relationships; rather than speaking of interviewer and interviewee, we should consider instead using 'recorder' and 'story teller'.

Historians, and especially 'oral historians', have important roles to play both within the land claims process, and after the collection of evidence is complete. They have the skills to collect and gather evidence, to interpret, to explain, and to share these techniques with others. Claim material could thus be rendered more palatable to insiders, including the Aboriginal claimants, the objectors, the lawyers, and the Land Commissioner. The general public would also be much better informed if historical analyses were available. Community histories could be compiled by or with the Aboriginal claimants. This would better enable Aboriginal historical traditions to be passed on to their children, and to white children, so they could all understand.

Notes

* This paper was first published in *Oral History Association of Australia Journal*, No. 9 (1987). It is re-printed in this volume with minor textual changes.

1. A. McGrath (with the assistance from Lenore Coltheart), *Aborigines and colonialism in the Upper Daly Basin region Northern Land Council* (Darwin, 1983). See especially pp. 44-5. See also transcripts of proceedings before Justice Sir William Kearney, 'Upper Daly Land Claim', 18-23, January 1985.
2. Anthropologists have already established a scholarly debate about their role in land claims. See K. Maddock 'Warlpiri Land Tenure: A Test Case in Legal Anthropology' in *Oceania*, 52, 2 (December 1981); M. Gumbert *Neither Justice nor Reason: a legal and anthropological analysis of Aboriginal land rights* (Brisbane: U of Queensland Press, 1984); K. Maddock *Your Land is our Land: Aboriginal land rights* (Melbourne: Penguin, 1983); K. Palmer 'Anthropologists in Bureaucracies: new issues in the post land rights era' in *Australian Aboriginal Studies* (1986), 1.
3. These problems are discussed in more detail in A. McGrath, 'History and Land Rights' (reprinted in this volume, see p. 233) in D. Kirkby (ed.) *Law and History in Australia* (Melbourne: La Trobe University, 1987), p. 18.

4. Ibid., pp. 18-22.
5. Transcripts of Proceedings, 'Upper Daly Land Claim', pp. 522-565.
6. Ibid., p. 709.
7. Ibid., p. 570. See also p. 666.
8. Ibid., p. 678-680.
9. A. McGrath, 'Aborigines and Colonialism...' Ibid.; A. Chase and B. Meehan, *The Upper Daly Land Claim* (Darwin: Northern Land Council, 1983).
10. L. Coltheart and A. McGrath 'A Brief History of non Aboriginal Activities in the Vicinity of the Finnis River Land Claim Area' (Darwin: Northern Land Council, 1980); P. Sutton, L. Coltheart and A. McGrath, *The Murrarji Land Claim* (Darwin: Northern Land Council, 1983.)
11. *Australian Aboriginal Studies* (1986), 1, and references in endnote 2 above.
12. This was a matter of great controversy in the Warramungu land claim.
13. See Transcripts of Proceedings, 'Upper Daly Land Claim', Aboriginal Land Commissioner, 27-31 August, 3-7, 10-14 December, 1984.
14. J. D. Heydon, *Proof of Documents: business records and computer documentation* (Sydney, 1984); M. D. Kirby et al., *Hearsay Law Reform — Which approach?* (Sydney: Australian Law Reform Commission, 1982).
15. The Cross Examination of Xavier Herbert, Transcripts of Proceedings, 'Finnis River Land Claim' (27 August, 1980).
16. M. Krygier 'Law as Tradition' in *Law and philosophy* 5, 2 (August 1986), 241.
17. Cited in P. McConvell and A. Palmer *Mudbura Claim Book* (Darwin: Northern Land Council, 1979), p. 39.
18. For potential recorders of Aboriginal history, the following article is extremely useful: John von Sturmer 'Talking with Aborigines', *Australian Institute of Aboriginal Studies Newsletter* 15 (March 1981), 13-30. For discussion of the use of oral history in Aboriginal history, see introduction and appendix of A. McGrath, *'Born in the Cattle': Aborigines in cattle country*, (Sydney: Allen and Unwin, 1987). See also, A. McGrath, 'Before Wages, Before Grog, Before the Japanese War' in B. Gammage and A. Markus (eds.) *All that Dirt* (Canberra: Australian National University, 1982). Numerous general introductions to Aboriginal society are available. For example, A. P. Elkin *The Australian Aborigines* (Sydney: Angus and Robertson, 1938, revised 1974); R. M. and C. H. Berndt, *The World of the First Australians* (Sydney: Ure Smith, 1964, revised 1977); K. Maddock *The Australian Aborigines* (Melbourne: Penguin, 1972, 1982).

NOTES ON CONTRIBUTORS

Editors

Ann McGrath is Professor and Director of the Australian Centre for Indigenous History in the Australian National University's Research School of the Social Sciences. She was previously the Director of the Society and Nation Program at the National Museum of Australia. She also served as a Senior Fellow at the Centre for Cross-Cultural Research at the Australian National University and an Associate Professor at the University of New South Wales. She has published widely on frontier history and gender in Australia and North America and has also been involved in various projects where the law and humanities intersect. Dr McGrath has worked on land claims in the Northern Territory, and was national co-ordinator of the Royal Commission into Aboriginal deaths in custody. She has served as an expert witness in various legal cases, including *Gunner & Cubillo v the Commonwealth of Australia*, a test case on the 'stolen children', heard by the Federal Court.

Iain McCalman is a Professor and Federation Fellow (Australian National University), historical consultant, and the President of the Australian Academy of the Humanities. He is a specialist in 18th century British and European history and has a particular interest in the history of popular culture and low life. One of his latest publications, the mammoth 500,000 word *Oxford Companion to the Romantic Age*, was published in 1999 and revised in a paperback edition in 2001. He jointly edited *Gold: Forgotten Histories and Lost Objects of Australia*, published in 2001 to coincide with the opening of the National Museum of Australia. He collaborated with the National Library on the Exhibition titled 'Cook and Omai - The Cult of the South Seas' (2003). His *Seven Ordeals of Count Cagliostro, the greatest enchanter of the eighteenth century*, was published in the United States, United Kingdom, and Australia in April 2003.