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Understanding classical Aboriginal land tenure: key concepts and issues

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The purpose of this podcast is to provide an introductory background to the significant anthropological literature relating to classical systems of Aboriginal land tenure and the key concepts involved that are relevant to native title.

Although there was clearly a common Aboriginal way of life in Australia prior to European arrival, as Ian Keen has documented in his book, 'Aboriginal economy and society: Australia at the threshold of colonisation' (2004) there was also, as he shows, considerable regional variation.

Here I will be concentrating on the commonality, only noting the most significant regional variation in passing as it is planned to follow this podcast with a series of others that go into the detail of the regional variation. There is a great deal more that could be said on each of the topics below as well as a range of relevant issues that are not touched on, such as matters like how moieties, sections and sub-sections relate to land but they will be explored in future podcasts.

In describing the commonality it is important to know how we arrived at our present general understanding of it, because it has been heavily influenced by a single author, **A. R. Radcliffe-Brown** who was the first professor of anthropology in Australia who arrived at the University of Sydney in 1926. Before he left for the University of Chicago in 1930, he published a masterly but not unproblematic overview of Aboriginal social organisation that including a model of land tenure (see 1930 or 1931).¹ I will summarise the debate that

emerged around his model in the early 1960s. I will then consider in turn, the key concepts drawn on in the description and analysis of land tenure, regional variation, change and continuity, and complicating issues, before concluding.

History

As with much to do with Aboriginal people it has been a long hard struggle to reach an informed and sympathetic understanding of the classical way of life as W.E. H. Stanner observed. Because European attempts to conceptualise Aboriginal relations to land were framed by the thinking of John **Locke** (1632-1704) in the 17th century, who viewed the emergence of agriculture as the origin of property in land, the general understanding of Aboriginal relations to land got off to a poor start: the view was that they had none. However, as early as 1798 David Collins, the Judge Advocate in NSW, reported on the basis of what he had learnt from Bennelong and others that Aboriginal people not only had property in moveable things but that they also had their own individual 'real estates' (1798: 599).

In 1880 the publication of the first formal ethnography of two Aboriginal groups, 'Kamilaroi and Kurnai' by Lorimer **Fison** and A. W. **Howitt**, confirmed what many people who actually had dealings with Aboriginal people knew: that they did recognise ownership of land, although in Fison and Howitt's account the land was held by patrilineal clans rather than individually. A key issue in their work was the distinction between the patrilineal **local organisation**² and the social organisation relating to marriage which was matrilineal in areas of south eastern Australia they were concerned with.

In 1910 **Radcliffe-Brown** arrived in the Pilbara region for fieldwork with the Karriyara finding that their land-ownership system was based on patrilineal descent. He wrote two important papers on the topic (1913; 1918). By the time of his return to Australia in 1926 his thinking was firmly framed by a natural scientific approach to understanding society, looking for structure and regularity, which we know as **structural functionalism**, and associate with his name and that of Bronislaw Malinowski.

His monograph on the '**Social organization of Australian tribes**' (1931) includes his **classic model of Aboriginal land tenure**. This model not only defined the land owners as everywhere members of a **patrilineal clan** but also described the structure of the everyday land using group which we now call the band: this was to turn out to be the most problematic aspect of his model. He said that the band was made up of clan males, their unmarried sisters and in-marrying wives from other clans (1930: 35), That is there was patriclan exogamy with the men staying put on their own land and the women moving to live with their husbands at marriage. This group is referred to in the literature as the **patrilineal band**.

Although there was some very limited questioning of Radcliffe-Brown's model (see Piddington 1932; Sharp 1937; Stanner 1933),³ it was not until 1962 that the key muddle in Radcliffe-Brown's thinking was made explicit by Les **Hiatt** (1962). It was clearly wrong on the composition of the land using group (**band**), as no such **patrilineal band** as predicted by Radcliffe-Brown had ever been recorded on the ground.

The problem in Radcliffe-Brown's analysis was that he did not use the word band, he called it the **horde**. However, and confusingly, he sometimes also used the word horde for the **patrilineal clan** so he was failing to make a clear distinction between the land-owning (clans) and the land-using(bands) groups. It is evident that he made this error because he assumed men lived on the land they owned.⁴ When reading his work, or indeed anybody's using the word horde, stop and work out which word should be substituted: clan or band.

It is not simply coincidental that this critique of Radcliffe-Brown happened in the early 1960s because at that time functionalism was coming under attack across the Anglophone world.⁵ In particular because it dealt poorly with history, change and conflict. In the early 1960s, the general opinion was that almost by definition, any functionalist-based theories were bound to be flawed. What is significant about Hiatt's critique is that it did not challenge the view that patrilineal descent was the main link between people and rights in land: but that left a puzzle. Why, if there was a **patrilineal ideology** of land

ownership did it not have a connection to land use? Why weren't Aboriginal men living on their own land?

At this point W.E.H. **Stanner** (1965) made his important terminological intervention calling for the use of four terms in analysing Aboriginal relations to land: **clan** (patrilineal, and the land-owning group), **band** (the land-using group), **estate** (the land owned) and **range** (the land used in the yearly round by a band). He defended Radcliffe-Brown's model and emphasised ecological factors that complexified land use.

Hiatt never provided an explanation for the significance of the **patrilineal ideology** nor did he develop his own generalisation about Aboriginal land tenure. What he did suggest is that in effect the people in an area pooled their land living in **communities** as oppose to bands. In this view he was supported by Mervyn **Meggitt** who worked with the Warlpiri.

Classically hunter-gatherer bands worldwide were understood to range between 25-50 people with Australia being no exception (see Lee and Devore 1966). What **Hiatt** (1965: 25-60) and **Meggitt** (1962: 212) were saying is that people lived in **communities** of 135-400 people. This analysis never really made much sense since outside ceremonial gatherings no everyday groups of this size have been reported for anywhere in remote and very remote Australia.⁶ What could be said is that these communities were groups of people who thought of themselves as 'co-resident', or to use a desert term, '**one countrymen**' (see Myers 1986), in some more abstract sense than an actual everyday face to face group.

A brief mention must be made of the response of **Joseph Birdsell** (1970) to what he saw as **Hiatt's** attack on the **patrilineal band**. The patrilineal band was at the heart of his and **Norman Tindale's** model of the **tribe** which was seen as a grouping of patrilineal bands central to Birdsell's genetic modelling. His criticism of Hiatt was that the failure to find the patrilineal band was the result of the disruption to local organisation post 1930, so that the studies Hiatt had reviewed were 'contaminated'.

The wash-up of this debate was to leave two key questions: what was the relationship between:

- people in a **clan** and the people in a **band**
- **range** and **estate**

The current thinking on these two questions is as follows. In respect of the **clan – band** relationship, the general picture is that elderly men wanted to live in the region of their own estate and thus they became the nucleus of a band in that region. The main reason for men of more than one patrilineal clan living together in a band was **bride-service** (see Peterson 1970). For first marriages in particular, a man might be living in the band of his in-laws for several years. Other men would have ended up in long term residence away from their own clan country because of conflicts and where they could get care when very elderly. Because of this desire of older men to live on their own land where their authority was at its greatest and where they wanted to be buried, there was a correlation between the number of clans and the number of bands. So the patrilineal ideology did relate to land-use and from an ecological view point acted as a spacing mechanism spreading people across the landscape.

The relationship between **range and estate** is complex. As I have had more interest in writing about this than most people I will refer to my own work here. In summary (see Peterson 1983; Peterson and Long 1986 for detail and evidence) the relationship was a dynamic one that has to be understood in the time span of generations. The constant in the relationship would have been the **range** as it was the result of the efficient pursuit of self-provisioning in an area. This was more predictable in better watered regions year to year but less so in the desert. The evidence is clear that **estates** would have expanded and contracted over generations linked to the demographic fortunes of the owning patrilineal clan and the process of **succession** (see below). For a diagrammatic representation of this relationship see Peterson 1983. If this analysis is correct it means that the modal situation which the system is straining towards is of a general congruence between range and estate, or to put it another way: in the long term the number of ranges and the number of

estates would be the same (and therefore the number bands and the number of clans were the same). Of course, they would not be identical at any period as there would be areas of any estate that were not used much if at all. This analysis also assumes on both theoretical and empirical grounds that ranges did not overlap in any substantive way. This does not mean that there were no 'company' estates areas but whether these were long term or rather manifestations of the life cycle of estates is an open issue.

Technical terminology

Band: This is the land using-group made up of from two to six or so households in remote and very remote Australia (see Peterson and Long 1986: 69 for all figures in this section) and a few more in areas of south eastern and south western part of Australia. The household is a unit of consumption. Normally a man, his wife or wives, their children and possibly an elderly dependent, likely to be the wife's mother. The male children over six or seven, and the elderly dependents would normally sleep in separate spaces or structures from the parents, provided that did not mean they were sleeping alone. Each household provisioned itself, occasionally linked with one other elderly household, and then, if they had a surplus, shared with other households.

Each band generally had one or two households of older people who formed a stable core based on men living on their own land. As already mentioned it was very common to find the household of one or two young sons-in-law present too and then possibly other households there for a range of reasons: friendship, visiting, getting away from conflict etc. Day to day the actual individuals living together in a band would have been quite variable as the only way to communicate with anybody not present was to go to see them, so there was a great deal of visiting by individuals, and small groups. When they left their band camp they went and visited people living in another band camp in a separate range.

In the arid desert the average size of bands was c. fourteen people, and in the tropical north c. forty (See Peterson and Long 1986:69). Arriving at a

reasonably reliable generalisation for southeast and southwest Australia is difficult but the number was probably somewhat higher.

Clan, patriclan, patrilineal descent group, patrilineage, lineage, patriline: A confusing array of terms are used to refer to the group with the principal rights in an estate, everywhere except in the more arid desert regions (see below). There is no consistency in their usage. In Australia the use of clan or lineage in the context of land tenure is always understood as patrilineal, but for that very reason the patrilineal reference often seems to be left off (for claims for matrilineal clan as land owing see below) and they can all be used to refer to what is the same group. Technically a **clan** is a descent group the members of which believe they are related but do not know all the specific genealogical connections, while a **lineage** is a descent group where the people know the genealogical connections, but this distinction is not always maintained in the Australian context. In most places in the world **clans** are quite large, often made up of many hundreds of people, but this is not the case in Australia where the average size was less than fifty. A **patriline** is just a very small lineage. Thus, while the number of people in the patrilineal descent group may influence a writer's choice of term, among other influences may be the convenience of a short word,⁷ the usage of the original ethnographer (e.g. Meggitt and patriline for the Warlpiri), or the feeling that clan or even lineage is too corporately formal in the Australian context. (see **Patrilineal v patrifilial** below).

'Patrilineal descent group' is the most neutral term. Some Aboriginal groups have an abstract noun that can be reasonable accurately translated as patrilineal descent group but many do not.

Estate: This is the area owned (Stanner 1965:13). Besides the patrilineal interest, there were a range of other rights and interests in an estate. These have been distinguished as **primary and secondary interests**, but Peter Sutton (2003) has suggested what may be a better terminology, **core (patrilineal) and contingent rights** (see also Mantziaris and Martin 2000: 62). Secondary interests and contingent rights are not exactly the same; for instance is the action of a wife gathering when living on her husband's country to be classed

as a contingent right or is that an over formalisation of the activity (see below under 'complicating issues'). I would argue that secondary interests, are not rights, but the basis on which people may be able to make a claim on those with a patrilineal interest. Such secondary interest vary regionally but may be, in relation to the place of conception, the place of physical birth,⁸ the place where the umbilical cord fell off, where a mother or father is buried, or where a shared travelling ancestral being named places on the estate of others.

Range: the area used by a band over a year. This is an etic concept. The range of a band is defined by efficient energetics in self-provisioning. Its size in the tropical savannah lands was likely to be more or less congruent from year to year given the strong seasonality. In the arid desert regions there was much less congruence year to year, but a band may have been anchored by an unyielding water source that it fell back on in hard times. A key point to make is that the range of an individual or household will be much greater than that of a band. Only rarely would all the people living together in a band at any one time do the same thing, except when a decision was taken to move to a new place. Rarely would all people in a band even go off to a ceremony together as some people might be too old or ill or have other reasons not to go.

Patrilineal versus patrifilial: While there appears to be no general agreement about the appropriateness of the use of patrifilial, for the reasons set out below I do not think use of the term is justified in Australia. There are two issues, a technical one and a connotational one.

The technical issue is whether Aboriginal people, generally speaking, have **descent ideologies**. All people have a filial relationship with their mother and father. A filial relationship becomes subsumed within a descent ideology when there is an ancestral orientation through a chain of parent-child ties of one sex. The general view as expressed by Myer Fortes in 1953 was that hunter-gatherers did not have descent groups because generally corporate descent groups are associated with the transmission of property and titles. The specific view relating to Australia is that of Harold Scheffler (1979) who has published a major, largely library based work, on Aboriginal kinship and argues that there are no descent ideologies in Australia, only serial patri-filiation. That is, in each

generation in Australia the patrilineal descent connection receives formal recognition. By this he means there is no orientation to a deep line of named ancestors such as in China, or ancestor worship, but only the kind of thing reported by Meggitt for the Warlpiri where he argues that a boy becomes affiliated to his father's **patriline** (Meggitt actually uses the term **patri 'lodge'** – the owning group of adult males that actually perform rituals together) during the process of initiation (see Meggitt 1962: 305). That is, it is not automatic by the fact of birth.

The history of this debate goes like this:

- Fortes (1953:24): descent groups were not of significance among peoples who live in small groups, depend on rudimentary technology and have little durable property
- Berndt (1955: 102): questioned this in respect of the Yolngu
- Meggitt (1962: 211): questioned this in respect of the Warlpiri
- Fortes (1969): Discussed Meggitt on the Warlpiri and concluded that the Warlpiri patriline had a minimal corporate structure but that it was recruited by exclusive patrification in every generation
- Scheffler (1978: 521-22): elaborated Fortes argument about the Warlpiri, and by implication many or all Aboriginal groups, arguing that they do not have patrilineal descent groups because the groups are not defined in respect to ancestors.

My own opinion (see also Morton 2017) is that **there are descent group ideologies** and that there are no grounds for using the term **patrilineal or serial patrification** even though genealogies are quite shallow (see Sansom 2006). However, an alternative view is given by Sutton (2003: 191-914).

Across north Australia the principal property of the corporate group is land; the ritual objects made in the main clan ceremonies are referred to by patrilineal kinterms and explicitly identified as manifestations of the clan

ancestors; in some areas the names of deceased male ancestors are invoked in ceremonial contexts when the objects are displayed; people are understood to be constituted in part by ancestral male substance; women are recognised as full patrilineal descent group members without any filiation rite, even among the Warlpiri. Fortes and Scheffler have been misled by Meggitt's account of the 'patrilodge' and a rather rigid view of descent, requiring named ancestors three or more generations back, and the nature of hunter-gatherer societies.

The connotational issue is becoming less relevant but nevertheless has influenced writing in the past. During the rejection of functionalist anthropology the critique of Radcliffe-Brown was aggravated by class and gender issues so that there was a more or less complete rejection of his views in some quarters, which included the emphasis on patrilineal descent.

Complementary filiation: Myer Fortes (1969) is associated with the spread of the term 'complementary filiation'. This refers to the filial parental link that is not subsumed by the descent ideology. Thus in the case of the patrilineal descent ideology it refers to matrilineal links through the mother and in the case where there are matrilineal descent groups it refers to patrilineal links through the father. This notion is part of the descent theorists (e.g. Fortes) views about kinship which were challenged by the alliance theorists like Edmund Leach who see marriage trumping universal ideas about motherhood, in particular. Clearly aspects of the so-called managerial relationship, the djungayi or kurtungurlu-like relationships as they are known in parts of northern and southern Northern Territory respectively, that are so important in ceremonial life, are ontologically related to complementary filiation but because the managerial relationship is more than complementary filiation I treat it separately below.

John Morton (2017) has written an important paper that is essential reading for anybody working in settled Australia where the ethnography is thin. He suggests there are general principles of classical Aboriginal land tenure that can be recovered from remote Australia to illuminate such situations and used as a guide for working with the patchier materials. Specifically, that the organic relationship between patrilineal descent and complementary filiation is

relevant to the modelling of contemporary tenure arrangements in settled Australia.

Managerial relationship: This widely found relationship is referred to as the **kurtungurlu** relationship among the Warlpiri with cognate terms in some other central Australian groups, and **djungayi** in the north eastern part of the Northern Territory. It has a number of names in English such as policeman, and endearingly by one elderly Warlpiri man from the point of view of his own status as a manager as, 'number one boss secretary' which is a brilliantly concise summary of this complex relationship.

At its most general the term refers to all members of the opposite patrimoiety to the owners of an estate or ceremony. At its narrowest it refers to a man's sister's children, or in the case of a woman to her children. There are two aspects of the **managerial relationship**. For people in that category who are younger than the owner, and right up to advanced middle-age, their role is as a labour force in the organisation of rituals and caring for sites. They do such things as make the performance ground, prepare ochres and other materials, fashion objects used in performances, decorate the owners, and clear growth away from important sites. This is true for both sexes. The second aspect relates to some managers who are elderly, and older than the key owners, in their role is as knowledge holders about the correct nature of designs and performance of rites. Their critical role arises from the fact that in the past most young men did not get married until close to thirty (see Rose 1960: Meggitt 1965) and as a consequence in many cases died before their fathers had passed on all their ceremonial knowledge to them. Senior managers were usually interstitial in age between the father and son and thus a source of such information when the father was not around.

Although the ZC/C⁹ meaning of the managerial term is canonical, in an ontological sense (see complementary filiation), the ZS/D for any individual is not a significant manager as they are always too young, often too young to even be actively involved in ceremonial life. As Olive **Pink** (1936) recognised long ago, a man's most important close manager is likely to be his FZS or his ZH, although it could be some other person depending mainly on demographic

issues and predispositions. Occasionally one may hear an elderly man (I don't know if this can apply to an elderly woman but see Dussart 2000: Chapter 3) in central Australia being referred to a 'manager for everyone', meaning that they are highly knowledgeable about ritual matters, and in one case a very powerful elderly man told me that he did not have any kurtungurlu, meaning that there was nobody who knew more than him about the rituals he was owner of. One of the best articles about the relationship is that by Frances and Howard Morphy (1984; see also Peterson and Long 1986: 61-2). If you work in central Australia it is especially important that you also read the entry under 'traditional owner' in conjunction with this term.

A major impact on the managerial relationship and workings of kinship systems in remote Australia, has been the end of the promise marriage system in the late 1970s a key feature of which was the age difference at marriage between a girl and her first husband. The long term effect on the managerial system is that the important role of senior managers as knowledge holders is weakened as fathers now share more of their life span with their children and are in a much better situation to pass on their religious patrimony themselves.

Traditional owner: this is a complicated term with its origin in the official definition in the *Aboriginal Land Rights (Northern Territory) Act 1976*. It is not a legal term in the *Native Title Act 1993* but the term is very widely and loosely used as a substitute for Aboriginal person without regard to its official definition, often in the shortened form of TO.

The legal definition in the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) reads:

traditional Aboriginal owners , in relation to land, means a local descent group of Aboriginals who:

- (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and
- (b) are entitled by Aboriginal tradition to forage as of right over that land.

The difficulties with this term are considerable in the context of its usage in the Northern Territory under the ALRA legislation. Although the term is defined in the above Act, the categories of person covered by it vary very considerably with different Aboriginal Land Commissioner's judgements. So the traditional owners in the Warlpiri and Kartangarurru-Kurintji claim are people only from the owner moiety. Following the Willowra claim, another Warlpiri claim, the term was expanded to cover people from the owner moiety and their genealogical ZC/C. In some later judgements a category of people referred to as 'second generation' managers, that is the genealogical connected people in the next generation were also included.

Extending the term to cover more than the owners was partly about the difficulties of recognising Aboriginal arrangements within our legal system, but also about politics. Anthropologically it makes little sense: owners and managers have quite different relationships to a site or area, but as a result of including them together under our legal system they are given the same rights. Given the official definition including certain managers results in the curious situation of there being two different 'primary spiritual responsibilities' for any country or site, that of the owners and that of the managers. The politics of the decision are not directly relevant here but the lumping of the two together is not only confusing to both Aboriginal and non-Aboriginal people but is the focus of considerable manoeuvring especially where money is concerned. Part of the reason for the inclusion was that there was not a sophisticated understanding of the managerial relationship in the early years of the land rights legislation in central Australia.

Succession: Understanding the succession process has been central to land claims but the term is used in a slightly odd sense. It is used to cover situations when there are *no* patrilineal descendants to inherit ownership of an estate. As has been seen above there are a range of interests in an estate other than a patrilineal inherited interest. The range of these interests varied across the continent. Succession (see Peterson, Keen and Sansom 1977) involves the conversion of a person or group holding one of these non-patrilineal interests into being recognised as the legitimate person or group to take over the area. In effect it generally involves the descendants of a man over several

generations changing their land owing identity (i.e. clan). As David Trigger has documented there are also cases where a language group has succeeded to the country of a neighbouring linguistic group in situations where colonisation has had a major demographic impact and people have moved to live in communities away from the land (Trigger 2015).

It can be safely assumed that succession was happening before colonisation because of the small average size of the patrilineal descent groups in Australia, running at about forty people (see Peterson and Long 1986: 69). With such a small size natural demographic fluctuations in the sex ratio, accidents, and fighting would have meant that sometimes a clan had no male heirs. Demographic fluctuation would also mean that other descent groups might have greatly expanded eventually splitting into two (Peterson 1983) and leading more of their members to be living permanently elsewhere because the economics of all the older men returning with their families to live on their own estate would eventually lead to energetic inefficiency.

It is clear that the process of succession was facilitated by people being unencumbered by the kind of written record that we have now created of people-land relationships. A son-in-law who remained resident in his in-laws' band would become knowledgeable about the owning group's religious patrimony having acted as a manager on many occasions. If the father-in-law was the last of the line, the son-in-law might remain there, his children be born there and he could pass on knowledge about the ancestral history of the area. Over several generations his descendants could come to be seen as the owners of the areas, with the previous people forgotten. This is only one of several possible scenarios but I think a not uncommon one in the past. The problem with succession today is that the whole process has been hugely speeded up by the land claim process (from three to four generations to the one year of the claim preparation process) and people's claims have to be made very explicitly, often causing conflict. This is added to as none of the people making the claim to succeed is likely to be living on the land which certainly gave individuals some priority in the past.

Matrilineality and land: There have been a few reports of land being held by matrilineal descent groups over the years. Perhaps the best known of these was said to be in western Arnhem Land but following the fieldwork in the area by Ron and Catherine Berndt (see 1970) it is clear that this view was incorrect. There are matrilineal descent groups in the area but land is held by patrilineal groups and the matrilineal groups are related to marriage arrangements. Most recently there have been suggestions that there were matrilineal land holding groups in northern South Australia but having read the evidence, myself and others, think it is unconvincing, although it should be noted that Peter Sutton has supported the view on at least one public occasion. This means that a definitive resolution of this claim is yet to be reached.

Regional variation

Radcliffe-Brown assumed his model applied across Australia. However, it became increasingly clear from the 1950s onwards that even the **patrilineal** emphasis did not apply in the arid desert regions. Nevertheless, views on the nature of the arid desert systems remain contested with the court as recently as 2006 taking a view in the Yulara compensation claim (*Jango v the Northern Territory* 2006 [FCA 318]) by finding for a Radcliffe-Brown model based on the work of Norman Tindale from the 1930s. This decision runs against the understanding held by most anthropologists following the ethnography and analysis by Fred **Myers** (1986) of arid desert systems as highly individualistic based around an individual's life history. Interestingly, it does seem that there is an incipient patrilineal ideology in such arid regions, which as Annette **Hamilton** (1982) has shown leads to the emergence of a patrilineal emphasis when people move to live far from their country.

As for the rest of the continent, generally speaking, it does seem that the primary interest is **patrilineal** everywhere but with subtle variations. There is some debate about the precolonial situation in parts of NSW and Victoria, the currently prevailing view is that patrilineal descent groups were the significant right holders (Howitt and Fison 1885; Howitt 1904; Morton 2017).¹⁰ Gaynor Macdonald 2011a and b) has the best developed alternative view.

Change and continuity

The impacts and consequences of European arrival on Aboriginal systems of land tenure have been very considerable and highly variable across the country. Here I will very briefly mention three matters.

Virtually everywhere there has been loss of detailed knowledge of country as people have settled down, often at some distance from their own clan areas. This is not just the loss of many place names, but especially in settled Australia the loss of the knowledge of estates, so that identification with country generally becomes generalised in terms of identification with a language, often not spoken today, the location of which is known to people mainly from oral histories or Tindale and Horton maps (see Rumsey 1993).

In the arid desert regions where there were no patrilineal descent groups, these have tended to emerge as a result of many people being far from where their parents were living when beyond the frontier. In order to maintain connection to that area people say that their country is the country where their father or father's father lived (see Hamilton 1982).

While many aspects of colonisation affected the land tenure systems such a population displacement and decline, the most disruptive was the fathering of children by non-Aboriginal people, given the significance of patrilineal descent in the pre-colonial system. As mentioned above Peter Sutton has developed a widely accepted analysis of the consequent transformations in relations to land with his model of **families of polity** (see Sutton 2003). Gaynor Macdonald has a different view specifically in respect of the Wiradjuri people (see 2011a and b).

Complicating issues

Somewhat contradictorily the principal complicating issue in respect of a deep understanding of Aboriginal land tenure has been land and native title claims. On the one hand reporting on Aboriginal arrangements in a legal environment has imposed an excellent discipline on ethnographers with the high evidential requirements of the law, and the knowledge that the detail can be tested in court through cross-examination. On the other hand, the language used in

ethnographic recording and analysis of Aboriginal land tenure, and the style of writing has come to be dominated by legal terminology, thinking and requirements. The language of rights and interests is seductive, especially as it often brings with it benefits for Aboriginal people in the form of recognition by Australian law, but it does not necessarily result in experience near descriptions of their way of life. For instance, to speak of a 'conception right' is rather different from saying that the fact of conception at a place outside one's own estate gives a person a basis for a claim to be heard in respect of issues that affect that site and surrounds. Whether these are heard by those with a patrilineal interest is another matter.

Another important point, already mentioned, is that the exact mirroring of Aboriginal land tenure arrangements in Australian legal language is not possible and always partial. David Martin has referred to the area of Aboriginal land tenure by Australian law recognition as the **recognition space**, depicted with a Venn diagram. The recognition of Aboriginal property rights by the Australian legal system also inevitably introduces changes to the Indigenous systems.

Aboriginal systems and the mainstream system are related to quite different economic circumstances, have quite different characteristics and very different purposes. The Indigenous systems gave recognition to the social relations around property through ritual in small-scale networks, with considerable flexibility, ambiguity, levels of contestation, and ideas of inalienability. The Australian market system by contrast creates defined objects owned by defined persons for the purposes of alienation which requires clear definitions and certainty. Interestingly, and somewhat contradictorily, in recognising Aboriginal systems under Australian law we have made the land inalienable except to the Crown.

Finally, it is vital to recognise that anthropologists are more than mere recorders of fact, even if this goes against the current public discourse around anthropologists and their writings on Aboriginal culture. By its very nature anthropological fieldwork not only involves translation and interpretation but

looking at the relationship between what people say and do. Anthropologists' ethnographies are an intercultural creation not simply an exercise in recording.

Conclusion

The anthropological literature relevant to land tenure in general and Australian land tenure in particular is enormous. Here I have focussed on only the literature and main concepts directly relevant to understanding the ethnography and anthropological conclusions drawn from it. From the publications mentioned here you can access the wider literature. I have tried to keep the account general and not to interject too much of my own personal understandings, but nevertheless as in most anthropological domains there is rarely complete consensus and the ecological orientation of my own understanding will be evident in places.

References

- Berndt, R.M. 1955. 'Murngin' (Wulumba) social organization. *American anthropologist* 57:84-106.
- Berndt, R. and C. 1970. *Man, land and myth in north Australia*. Sydney: Ure smith.
- Birdsell, J. 1970. Local group composition among the Australian Aborigines: a criticism of the evidence from fieldwork conducted since 1930. *Current Anthropology* 11: 115-141.
- Collin, D. 1798. *An account of the English colony in New South Wales*. London. T. Cadell Junior and W. Davies.
- Dussart, F. 2000. *The politics of ritual in an Aboriginal settlement: kinship, gender, and the currency of knowledge*. Washington DC: Smithsonian Press.
- Fison, L. and Howitt, A.W. 1880. *Kamilaroi and Kurnai*. Melbourne: G. Robertson.
- Fortes, M. 1953. The structure of unilineal descent groups. *American Anthropologist* 55:17-41.
- Fortes, M. 1969. *Kinship and the social order*. London: Routledge and Kegan Paul.
- Hamilton, A. 1982. Descended from father, belonging to country: rights to land in the Australian western desert. In *Politics and history in band societies* (eds.) E. Leacock and R. Lee. Cambridge: Cambridge University Press. Pp. 85-108.

Hiatt, L. 1962. Local organization among the Australian Aborigines. *Oceania* 32(4): 267-286.

Howitt, A. W. and Fison, L. 1885. on the deme and the horde. *Journal of the Royal Anthropological Institute* 14:142-169.

Howitt, A. W. 1904. *The native tribes of south-east Australia*. London: Macmillan

Keen, I. 2004. *Aboriginal and economy and society: Australia at the threshold of colonisation*. Melbourne: OUP.

Lee, R.B. and DeVore, I, (eds.). 1966. *Man the hunter*. Chicago: Aldine.

Macdonald, G. 2011a. Territorial Boundaries and society in the New South Wales riverine: a Wiradjuri Analysis.' In *Unsettling Anthropology: the Demands of Native Title on Worn Concepts and Changing Lives* (eds.) T. Bauman and G. Macdonald. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies. Pp. 62- 81.

Macdonald G. 2011b. The Secularisation of Riverine Law in south-east Australia. *Anthropological Forum* 21(3): 307- 328.

Mantziaris, C. and Martin, D. 2000. *Native title corporations: a legal and anthropological analysis*. Sydney: Federation Press

Meggitt M. J. 1962 . *Desert People*. Sydney: Angus and Robertson.

Meggitt, M. 1965. Marriage among the Wailbri of central Australia: a statistical examination. In *Aboriginal man in Australia* (eds.) R. M. and C. H. Berndt. Sydney: Angus and Robertson. Pp. 146-166.

Morphy, F. and Morphy, H. 1984. Owners, managers and ideology: a comparative analysis. In *Aboriginal land owners* (ed.) L. Hiatt. Sydney: Oceania Monograph No. 27. Pp. 46-66.

Morton, J. 2017. 'Mother's blood, father's land': native title and comparative land tenure modelling for claims in 'settled' Australia. *Oceania* 87(1): 58-77.

Myers, F. 1986. *Pintupi Country Pintupi Self*. Washington: Smithsonian Press.

Peterson, N. 1970. The importance of women in determining the composition of residential groups in Aboriginal Australia. *Women's Role in Aboriginal Society* (ed.) Fay Gale. Canberra: Australian Institute of Aboriginal Studies. Pp. 9-16.

Peterson, N. 1972. Totemism yesterday: sentiment and local organisation among the Australian Aborigines. *Man* 7:12-32.

Peterson, N., I. Keen and B. Sansom. 1977. Succession to land: primary and secondary rights to Aboriginal estates. In Official Hansard Report of the Joint Select Committee on Aboriginal Land Rights in the Northern Territory. Canberra: Government Printer. 19 April:1002-1014.

Peterson, N. 1983. Rights, residence and process in Australian territorial organisation. In *Aborigines, land and land rights* (eds.) N. Peterson and M. Langton. Canberra: A.I.A.S. Pp. 134-145.

Peterson, N. 2005. On the visibility of Indigenous Australian systems of marine tenure. In *Indigenous use and management of marine resources* (eds.) N. Kishigami and J. Savelle. Osaka: Senri Ethnological Studies 67:427-444.

Peterson, N. 2006. 'I can't follow you on this horde-clan business at all': Donald Thomson, Radcliffe-Brown and a final note on the horde. *Oceania* 76:16-26.

Peterson, N., Keen, I. and Sansom, B. 1977. Succession to land: primary and secondary rights to Aboriginal estates. In Official Hansard Report of the Joint Select Committee on Aboriginal Land Rights in the Northern Territory. Canberra: Government Printer. 19th April 1977: 1002-1014.

- Peterson, N. and Long, J. Aboriginal territorial organization: a band perspective. Sydney: *Oceania Monograph No. 30*. (171 pages)
- Peterson, N., McConvell, P., Wild, S. and Hagen, R. 1978. A claim to areas of traditional land by the Walpiri and Kartangarurru-Kurintji, 1978. Alice Springs: Central Land Council.
- Piddington, R. 1932. Totemic system of the Karadjeri tribe. *Oceania* 2: 373-400.
- Pink, O. 1936. The landowners in the northern division of the Aranda tribe, central Australia. *Oceania* 6: 275-305.
- Radcliffe-Brown, A.R. 1913. Three tribes of Western Australia, *Journal of the Royal Anthropological Institute*, 43:143-194.
- Radcliffe-Brown, A.R. 1918. Notes on the social organization of Australian tribes. *Journal of the Royal Anthropological Institute*, 48:222-253.
- Radcliffe-Brown, A. R. 1930. The social organization of Australian tribes. *Oceania* 1(1): 34-63; 1930, 1(2): 206-246; 1930, 1(3): 322-341; 1931,1(4): 426-456.
- Radcliffe-Brown, A. R. 1932. The social organization of Australian tribes. Sydney: *Oceania Monograph No 1*.
- Rose, F. 1960. *Classification of kin, age structure and marriage amongst the Groote Elylandt Aborigines*. Berlin: Akademie-Verlag.
- Rumsey, A. 1993. Language and territoriality in Aboriginal Australia. In *Language and culture in Aboriginal Australia* (eds.) M. Walsh and c. Yallop. Canberra: Aboriginal Studies Press.
- Samson, B. 2006. The brief reach of history and the limitations of recall in traditional Aboriginal societies and cultures. *Oceania* 76:150-172.

Scheffler, H. 1979. *Australian kin classification*. Cambridge: Cambridge University Press.

Sharp, L. 1937. Social anthropology of a totemic system of North Queensland. Unpublished PhD, Harvard University.

Stanner 1933. The Daly river tribes: a report of fieldwork in north Australia. *Oceania* 3: 377-405.

Stanner, W. E. H. 1965. Aboriginal territorial organization: estate, range, domain and regime. *Oceania* 36(1): 1-26.

Steward, J. 1936. The economic and social basis of primitive bands. In *Essays in honor of A. L. Kroeber*. Berkeley: University of California Press. Pp. 331-350.

Sutton, P. 2003. *Native Title in Australia: An Ethnographic Perspective*. Cambridge: Cambridge University Press.

Sutton, P. and K. Hale 2021. *Linguistic Organisation and Native Title: The Wik Case, Australia*. Canberra: Australian National University Press. Also downloadable in part or as the whole volume from <https://press.anu.edu.au/publications/linguistic-organisation-native-title>

Trigger, D. 2015. Change and succession in Aboriginal claims to land. In *Strings of connectedness: essays in honour of Ian Keen* (ed.) Peter Toner. Canberra; ANU Press. Pp.53- 73.

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¹ References to Radcliffe-Brown's statements can be confusing. His original paper was published across four issues of *Oceania*, three of which are dated 1930 and the fourth 1931. He wrote about the horde specifically in the first and last issues. However, all four articles were republished as the first *Oceania* Monograph in 1931.

² Local organisation is the commonly used term to refer to Aboriginal land tenure systems, especially prior to the land claim era. It emphasises the social-cultural aspects. Sometimes the phrase 'territorial organisation' is used by authors discussing Aboriginal relations to land. Generally people who use this term have a more ecological and spatial emphasis as much as a laws and customs, but the usage is not always consistent.

³ Donald Thomson questioned the model most directly with Radcliffe-Brown in private correspondence (see Peterson 2006). However, when it came to publication he kept with the model even though his own fieldwork evidence clearly did not support it.

⁴ His main explanation for them staying put on their own clan land was that it was crucial to them being effective hunters (1931: 439). They had to know the lie of the land very well. The most interesting thing about this 'ecological' argument is that it became central to Julian Steward's (1936) influential article generalising about the nature of hunter-gatherer economic and social organisation. Steward was one of the founders of the cultural ecological approach and his work probably accounts for the use of the term band for the land-using group.

⁵ It is important to make a distinction between functionalism in the strong formal sense as theorised by Malinowski and functionalism in a weak sense. The first task of an anthropologist going somewhere new is to work out a general overview of how things fit together or if they do not why not, so in that weak sense we are all functionalists as Ernest Gellner has pointed out.

⁶ The Australian Bureau of Statistics has defined five regions, very remote, remote, outer regional, inner regional and metropolitan, see map on their website.

⁷ I use clan for this not very good reason, although the best term is the neutral 'patrilineal descent group'.

⁸ The word born as used by older Aboriginal people, at least, can refer either to the time of conception or to physical birth. Care needs to be taken to be clear in which sense the word is being used.

⁹ In this text only, the first term refers to the one used by a male speaker and the second term that used by a female speaker.

¹⁰ Ray Wood has an as yet unpublished manuscript comprehensively reviewing the literature on the topic and added to with evidence from his own fieldwork, supporting this view.