

Strings

OF CONNECTEDNESS

ESSAYS IN HONOUR OF IAN KEEN

EDITED BY P.G. TONER



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Change and Succession in Australian Aboriginal Claims to Land

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Since the advent of land rights legislation, and then native title laws, Aboriginal people in Australia have grappled with presenting tradition-based claims in light of cultural change to their lifestyles and customary relations with land and waters. While arguments are reasonably made that the legislative requirement to prove continuing customary law places unwarranted burdens on claimants (Strelein 2006; Pearson 2009: 100–32), it is also important to note that commitment to the idea of continuing cultural traditions retains its significance across Indigenous Australia. If Aboriginal associations with land have been ‘pushed in a culturalist direction’ by essentialist assertions about Indigenous ‘constitutability’ with place (Merlan 2007: 129–36), this has surely arisen from core beliefs among Aboriginal people themselves at least as much as from romanticism across the wider Australian public. The emergence of ‘the economic Aborigine’ is rightfully recognised as key to contemporary Indigenous life (Langton 2013: 59–80), but a major challenge for the courts and those sectors of Australian society embroiled in the language of land and native title claims is to understand how Indigenous cultural traditions underpinning assertions of rights both continue and change over time.

Ian Keen (1999: 5–6) pointed out that in the context of Australian native title claims ‘the demonstration of continuities with the past requires a kind of winnowing process, blowing away the chaff of culture-change to leave the kernels of persisting Indigenous forms’. This is a peculiar feature of native title

whereby embraced aspects of Australian society are positioned as negative in relation to asserting inherited rights to land. Keen is doubtless correct in that 'it is not enough to demonstrate a general cultural distinctiveness' in negotiating such claims (p. 5). Relations to land must be regarded as constituting 'some kind of system' that is 'grounded' in the past, though 'the form of the group holding title and the content of that title have changed' (p. 6).

Keen's discussion was focused particularly on the southeast and southwest of Australia 'where the degree of change in the lives of Aboriginal people has been greatest' (Keen 1999: 1), and indeed, it is in those settings that a 'cultural lack, loss and deficit' perspective has particularly continued to influence 'the native title sector' (Macdonald and Bauman 2011: 1). In part, this derives from very considerable physical dislocation (in some cases over several generations) from what is now presented as ancestral country, parts of Queensland constituting indicative cases (Trigger 1983; Babidge 2011).

However, the challenge of great historical and demographic change in relations with land and waters is also far from an easy matter in regions where Indigenous populations are regarded as 'more traditional'. Writing of the north, clearly with his Arnhem Land research in mind, Keen (1994a: 29) pointed out that changes in Aboriginal 'relations with country' are commonly 'about succession, and occur among those who claim to have taken over responsibility' for land in which others once had traditional rights. An early and highly influential report in the context of then emerging land rights legislation in the Northern Territory (Peterson, Keen and Sansom 1977) confirmed that there were traditional mechanisms for managing changing rights at a local scale. In the context of small local groups, the authors listed various kinds of 'secondary rights' which could be mobilised and translated into primary rights; hence, secondary rights could derive from place of spiritual conception, place of birth, place of death/burial of an important relative, kinship ties of various kinds, totemic and ceremonial links, and being the child of a female clan member. This type of rule-governed succession involved a clan, family group or individual succeeding to traditional ownership of a nearby estate which became vacant in the course of demographic and/or historical change.

The intervention by Peterson, Keen and Sansom (1977) in anthropological and legal debates about Indigenous rights to land, and then the resulting recognition of succession as encompassed within traditional customary law, was, as Layton (1985: 157) has pointed out, 'an important decision, because it acknowledged Aboriginal land tenure to be a living system'. The significance of the issue was, according to Layton, not missed among other Australians concerned about Indigenous land claims at the time. The majority leader of the Northern Territory Assembly reportedly went so far as to assert that recognising Aboriginal succession 'could have disastrous consequences for law and order in

the Northern Territory'. Layton (1985: 151) surmises that succession raised for such Australians an anxiety that it would become impossible to distinguish between genuine and opportunist claims. In any case, with the passing of the Federal Native Title Act some 16 years later, the critical issue has arisen across many cases of whether succession to country has occurred legitimately in terms of customary law.

The Ganggalida Case

Rather than movement and changing rights among small local groups, the issue in native title in the Gulf Country of northern Australia appears more about what Sutton (2003: 6) discusses for larger collectivities as 'group succession': 'Whole language groups or similar sized regional groups may be involved. For this reason I refer to such processes as instances of conjoint succession' (Sutton 2003: 6).

An indicative case from my research involved Ganggalida people as one of the four named language or tribal groups claiming rights in seas and adjacent mainland coastal areas in the southern Gulf of Carpentaria.¹ As summarised by Behrendt (2004), a solicitor engaged by the applicants, the relevant judge's decision accepted the claimants' evidence and my anthropological opinion that a section of the mainland coast in the vicinity of Burketown had been subject to a process of succession by the Ganggalida people,² this area having been occupied by a different group of Mingginda people at the time of European colonisation. While it was argued by the Commonwealth government that such succession could not exist as a matter of Australian law, that position was rejected by Justice Cooper who held:

The new legal order at the time of sovereignty recognised both existing rights and interests in relation to lands and also 'the efficiency of rules of transmission of rights and interests under traditional laws and traditional customs which existed at sovereignty': Yorta Yorta at [44]. If the rights and interests in respect of the Mingginda peoples' countries was acquired under traditional laws and customs which provided for such a succession and those laws and customs existed at sovereignty, then the interests of the Ganggalida peoples in respect of those lands and waters will be recognised and protected under the NTA. (*Lardil Peoples*, paragraph 131; cited in Behrendt 2004)

1 *Lardil Peoples v State of Queensland* (the 'Wellesley Sea Claim') [2004] FCA 298 (hereafter *Lardil Peoples*). I have carried out academic and applied anthropological research in this region since 1978 when I first began work as a site recorder.

2 I use here my spelling of the name of this language and 'tribal' group. The alternative 'Gangalidda' is the spelling used in the legal documents for the case.

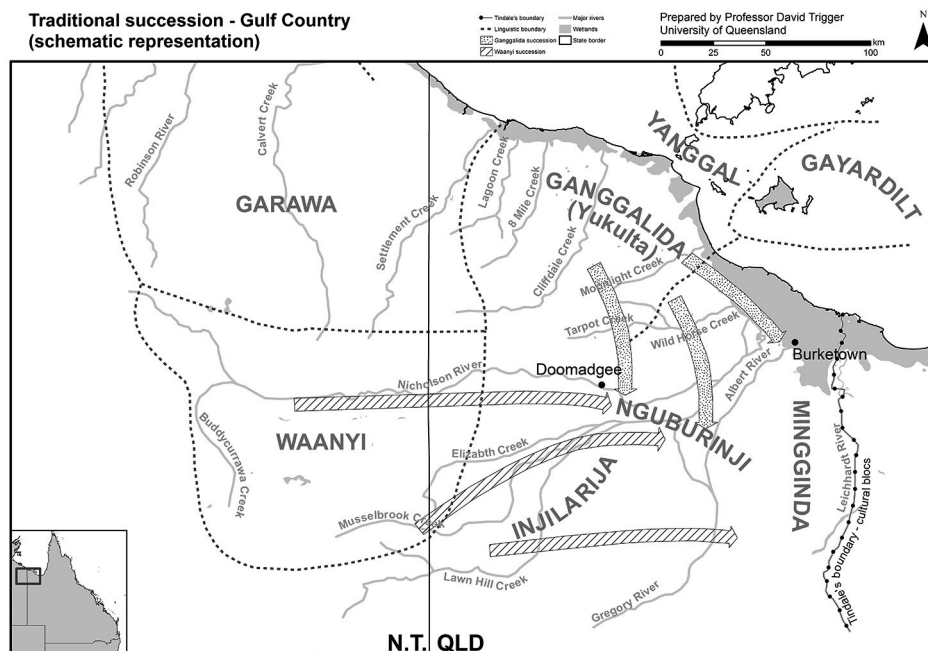


Figure 3.1 Traditional succession, Gulf Country.

Source: David Trigger.

The anthropological research, which benefited from my lengthy academic and applied work in the region, examined available early sources. These supported the view that the area west from the Leichhardt River (Figure 3.1) was once 'Minkin' (or Mingginda) territory (Evans 1990; Palmer 1883: 227; Curr 1886: 314; Turnbull 1896: 13; Old 1899). Causes of the demise of Mingginda people doubtless included violent encounters with Europeans and also disease. We can note Sharp's comment (1939: 454, footnote 41) that the 'Minkin' tribe was at the time of his research 'apparently extinct, probably having suffered severely from the yellow fever which decimated Burketown in the 1860s'. Tindale (1974: 181) draws on some of these sources to reach similar conclusions. Dymock (1977) reports on an interview he conducted with a senior Ganggalida woman, in 1972, in which she recounted an oral tradition telling of early encounters between 'Minkin' people and intruders on the Albert River. Linguist Sandra Keen (1983: 193) comments that 'Burketown was [in the past] Mingin country not Yukulta [Ganggalida] country'.

Recorded accounts from the most senior Ganggalida people with whom I had conducted academic inquiries from 1978 indicated that a language known as Mingginda (or Minggin/Minkin) was once spoken around the Burketown area (Figure 3.1). Ganggalida people had thus 'taken over' Mingginda country as its original occupants did not survive the impacts of European colonisation. By the

time of my writing an expert report for the native title claim in 1998, there remained a few older living people who still acknowledged Mingginda people as having once occupied the area, with most Ganggalida persons considering it as having always been part of their country. Interviews with eight women conducted in 1998 all confirmed the view among Ganggalida people that the Albert River area had always belonged to their families. Given the history of demographic change and the well-documented 'strategic amnesia' evident in Aboriginal law and custom (Sansom 2001; Trigger 2011: 150), I concluded that especially the convictions among younger people on this issue were indicative that the process of succession had been completed (see *Lardil Peoples*, paragraphs 128–9).

In the coastal area surrounding Burketown that was at issue in the Wellesley native title claim, Ganggalida claimants referred to their forebears' presence since the early 1900s and to their traditional knowledge and use of the country. Ganggalida people had lived at camps on the fringes of the town and exploited bush resources along the Albert and Nicholson Rivers down to the sea (Figure 3.1). There were memories of fishing as children, of Ganggalida people travelling from the coast up and down the rivers, and discussions of several significant Dreaming places on the open saltpan country not far from the sea. A woman indicatively commented that she was 'born and bred in Burketown'. Another pointed out that her father's maternal grandmother's personal name was taken from the Aboriginal language name of a site in the Albert River area (*Lardil Peoples*, paragraphs 128–9).

This data obtained during native title investigations in the late 1990s mirrored that from my early academic research when I had recorded nine then deceased Ganggalida forebears said to have succeeded to ownership of the Albert River area on the basis of birth and spiritual conception ties to Dreamings and sites there. An illustrative quotation from a senior man, whose father's pre-succession estate was located to the west of Burketown, discussed a named lagoon in what was once Mingginda country as his son's spiritual conception place:

I was fishin' down here [near the Albert River] and big whirly-wind come ... straight across, and pull up here end of the waterhole. And that's a sign ... come along the river then ... all the way. His mother said: 'Oh well this is [their son's] country'. And then they all give [their son] this country then, this lagoon, they just said: 'Oh well, this is little boy country here'. (1978. Field Audio Tape 10, DT General Field Book 1)

Twenty years later during the 1998 research, the man whose conception site was so noted, sang a song said to refer to Rainbow Snake Dreaming in the vicinity of the Albert River mouth, once part of Mingginda territory. There was discussion of a 'whirly water' (water spout) Dreaming story which belongs to the mouth of the Albert River with an individual asserting his grandmother told him this

was a place where the Rainbow Snake entered the sea and created whirlpools. Two special places were designated as ‘belonging to the Rain Dreaming’, and as having ‘a big story’, as the following woman in her 40s described:

My mum has the story of the rain. If you break anything then it will pour and pour with rain and smoke comes and you can’t see anything. There is a lot of [traditional] law [at this site]. Lightning hits the water and trees hard, it can kill you ... There are a lot of rules ... We were not allowed to go there when we were kids. Tribal men would go fishing and take young boys and the women and children would stay home, waiting for the fish and crabs, to prepare. It was the rules of the Dreamtime stories, maybe sacred places, only young boys were allowed out there [i.e. males only]. [A particular named man] used to go out there.

This information was consistent with what this woman’s mother had explained to me in the late 1970s and early 1980s (DT Field Book 5, Trip 2).³

A potentially persuasive piece of further relevant evidence on the issue of succession and change was an elicited linguistic analysis of recorded place names. In the context of the native title claim litigation Nicolas Evans examined the Aboriginal language names for locations I had recorded in the early 1980s. His hypothesis was that in a case of succession we should expect to find a mixture of language sources—some place names from the language of the original group, some from the succeeding group, and some where there might possibly be two alternative names. On the basis of available knowledge of linguistic features of both Ganggalida and Mingginda languages, Evans found that of the 50 or so place names recorded by me in the Albert River / lower Nicholson River / Gin Arm Creek area (Figure 3.1), there were clear Ganggalida (Yukulta) etymologies for 17, possible or partial Ganggalida etymologies for another eight, and clear or partial Mingginda etymologies for five place names (plus another six ending in what looked to be a Mingginda locative suffix). To quote Evans’s conclusion:

Within the limits of our knowledge of the languages concerned ... the toponymic evidence conforms to a succession scenario in which Yukulta [Ganggalida] speakers have succeeded to Minkin speakers as the primary landholders. (N. Evans, personal communication to D. Trigger, 5 August 1998)

This, then, is a case evident from the requirements of native title processes, where the descendants of deceased Ganggalida forebears now trace ties to the Burketown and surrounding area through their genealogical connections to those who were born there and assimilated customary knowledge of the country into Ganggalida traditions. Several living individuals at the time of the claim research were known to have spiritual conception sites in the area and also had their own birth affiliations there. Of significance at the time of the claim was

3 See *Lardil Peoples*, paragraph 133, for a noting of such spiritual beliefs.

that few if any living Aboriginal people disputed the fact that for many years the Burketown, Albert River, lower Nicholson River area had been Ganggalida country. This conviction was evident even among the few who nevertheless knew they had a likely Mingginda forebear in their own ancestry.⁴

The case material enabled my conclusions that Ganggalida occupation and ownership of Mingginda coastal areas is a case of completed succession (*Lardil Peoples*, paragraphs 128–9). The process occurred from the early 1900s and may be considered consistent with a regional body of custom and tradition. Ganggalida and Mingginda peoples shared closely related languages (Evans 1995: 9), as commented upon by senior informants in my research. To quote one man: the two groups ‘nearly talk the same language’ except ‘one was a bit heavy, one a bit light’. Tindale (1974: 181, Map of Aboriginal Tribes) suggests that the Mingginda group, like Ganggalida and other language groups west of the Leichhardt River (see Figure 3.1), also shared features of traditional law associated with male initiation. Circumcision was not practised east of the Leichhardt River and nor were subsection terms used in the traditional forms of social organisation. The Leichhardt River can thus be regarded as a traditional regional societal boundary of considerable importance and both Ganggalida and Mingginda belonged to the cultural bloc extending to its west.

The Waanyi Case

The second Gulf Country case that is productive for our understanding of succession to rights in land and waters is Waanyi. Waanyi people historically moved eastwards into Nguburindi territory and southwards into parts of Injilarija country (Figure 3.1), both areas believed by claimants to be culturally familiar, and since European arrival taken over according to Waanyi traditional law and custom with the demise of these two groups. My research, from 1978 through several decades to then encompass work for native title claim proceedings, documented the nature of Waanyi movements and the assimilation of the cultural significance of land and waters into Waanyi traditions. The focus of the research was on the facilitation of this process of succession via understandings of the country in terms of its ‘skin’ or subsection/semimoiety attributes, its totemic Dreamings, its flora and fauna species, and the general spiritual and material topography of the land. These aspects of tradition-based relationships with land and waters coexisted with Waanyi knowledge of the cattle industry, its dams,

⁴ However, this is not to conclude there was complete agreement of this kind in relation to other inland parts of Mingginda country.

fences, yards and camps that have been significant in the cultural landscapes of both Aboriginal people and others for more than 100 years. The anthropological research assembled considerable cultural data of relevance to these issues.⁵

Some movement eastwards from the tableland and ranges that traditionally bounded Waanyi people from their eastern and southern neighbours would likely have occurred before the impact of European incursions began. Inter-marriage, ritual obligations, and trade of resources amongst known networks would have seen Waanyi and other local groups interacting for a range of purposes. Indeed, there is evidence that the easterly movements occurred along customary routes that were already in use for ceremonial and trade purposes. Roth (1901), then occupying the office of Queensland Government Protector of Aborigines, produced a sketch map (Figure 3.2) showing a number of trade and travel routes from the Northern Territory border (near the eastern boundary of Waanyi country at the time of European arrival) into Queensland and the territories of other language groups.

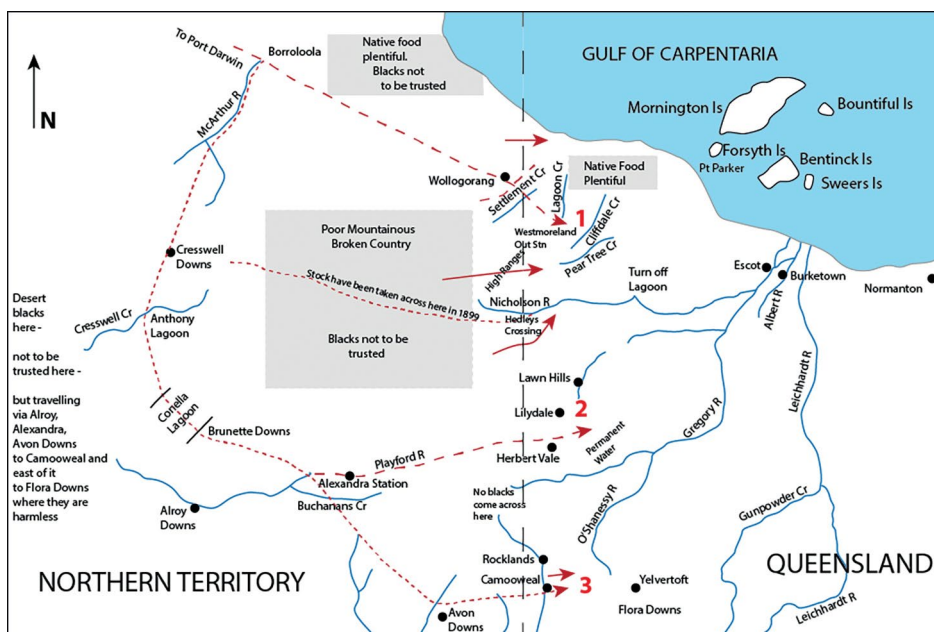


Figure 3.2 Roth sketch map (arrows and numbers show historical movement eastwards).

Source: David Trigger, based on original by Roth.

5 Waanyi customary succession is addressed in a sequence of available legal reasons for decisions that have been informed by this research, including Aboriginal Land Commissioner (1985), *Waanyi Peoples Native Title Determination Application* No. Qn94/9 [1995] NNTTA 51, and *Aplin on behalf of the Waanyi Peoples v State of Queensland* [2010] FCA 625. The formal recognition of Waanyi succession culminated in the decision in *Aplin on behalf of the Waanyi Peoples v State of Queensland* No. 3 [2010] FCA 1515. My research in the early 1990s was assisted by Jeannie Devitt, and from 2000 to 2002 was conducted jointly with Pauline Fietz (Trigger and Fietz 2003).

Colonial settlement, however, meant that a more permanent Waanyi territorial expansion began late in the nineteenth century. Research indicates this was due to a mix of desires on the part of Aboriginal people for commodities, such as tobacco and a secure food supply from ration depots and stations in Queensland, and to obtain protection from the extensive violence which characterised the period (Trigger 1992: 26ff; Roberts 2005). Dymock (1982, 1993), Trigger (1982, 1992) and Trigger and Devitt (1992) have presented comprehensive accounts of the effect of such historical processes on Aboriginal groups in the region. In summary, settler incursions into Waanyi country did not occur with the same level of force and disruption experienced by adjacent groups to the east and south. These latter areas, which were subsequently incorporated into Waanyi country, were the initial settings for pastoral activity due to both their relative accessibility and the perceived suitability (well-watered savannah plains country) of the land for running domestic herds. Such groups as the Nguburindi and Injilarija suffered the full brunt of these frontier displacements of Aboriginal people from the land.

The scholarly anthropological and linguistic literature indicates Nguburindi and Injilarija languages were distinct from Waanyi. Nguburindi was related closely to Ganggalida (Yukulta), Mingginda (Minkin) and the languages of the Wellesley Islands (Evans 1990: 173, 190). Nevertheless, the fact that these languages were not mutually intelligible was seemingly no impediment to the speakers having shared a similar system of customary law in regard to rights in land. Multilingualism was likely to have pertained (Rumsey 1993: 195) and, as noted for the Ganggalida case, Evans, along with other researchers, finds the language groups west of the Leichhardt River sharing a broad range of cultural practices and knowledge.

One aspect of shared regional law and custom is the system of eight subsections (known in Aboriginal English as 'skins') which are categories best understood as identifying distinctive internal spiritual qualities of persons, Dreamings and country (Kirton and Timothy 1977; Trigger 1982; Bradley 2010). In the course of research in 2000, a senior Waanyi man commented that Injilarija people owned the country 'before', and while he was not certain of the actual skin names they used, he was clear that they had 'skin belong to Dreaming', i.e. a system of categories for country similar to Waanyi people. The existence of a cultural bloc extending throughout the region does not necessarily imply that all skin names were identical; e.g. Mathews (1900: 497) suggested that the 'Inchalachee' (Injilarija) language shared a somewhat different set of subsection terms with the 'Warkya' (Wagaya) language to the southwest. Breen (2002: 302–4) discusses the material reported by Mathews (1899, 1905) and acknowledges this possibility. However, Breen's work makes it clear that various languages of this region share

the skin (subsection/semimoiety) *system* and hence people were able to work out social relationships with reference to different terms that may be regarded as nevertheless 'equivalent' across languages (McConvell 1985).

Senior people have commented on particular Waanyi deceased forebears whose personal skin affiliation matched parts of the country into which Waanyi people had moved historically. Typically, these individuals, and hence their descendants, were said to have connections with both ancestral estates in the west (which had been mapped for the Nicholson River land claim under the Northern Territory Land Rights Act in the early 1980s (Trigger 1982; Dymock 1982; Aboriginal Land Commissioner 1985)) and parts of the succession area in the east.⁶ Coterminous with the skin significance of the succession areas was the pattern of Dreaming routes and sites. Examples include *Jumburuna* (Yellow Goana), *Bujarda* (Piebald Snake), *Bujimala* (Rainbow Snake), *Warrgi* (Dingo), *Bardagalinya* (Red Kangaroo), *Wirrigajigaji* (Catfish) and *Marrarrabana* (Water Girls).⁷

Waanyi people thus recounted the travels of mythic figures across land encompassing both the original estates in the west and the succession area in the east. Taking as illustrative *Marrarrabana* (a female Dreaming often termed in Aboriginal English 'Water Girls'), this is known to have travelled from a considerable distance to the west (where it is named *Mungamunga* (Bell 1994)). At some locations, *Marrarrabana* created ceremony grounds for women. *Marrarrabana* danced through country in the west such as Walhallow and Calvert Hills stations and then into Queensland, at times leaving significant marks in the country. It travelled across the south of Lawn Hill Station looking for Rhumburriya country (the Dreaming's skin (semimoiety) category name), stopping at a site on Riversleigh station, which is also of that skin, eventually arriving at a location on the Leichhardt River (east of Waanyi country) where a manifestation of the Dreaming is said to be at times evident.

Such Dreaming routes extending across the landscape would appear to have pre-existed the historical movements of people eastwards, and hence provided part of the traditional cultural logic for Waanyi people becoming successors to the Nguburindi and Injilarija original occupants. In some cases, it appears that physical properties of locations have been the prompts for decisions

6 This does not mean that all the forebears' descendants had the same skin affiliation as the succession country, as this is so only for those who inherit connection through patrilineation (Trigger 1982, 1989; Reay 1962; Bradley 2010). However, links of matrilineation also traditionally give rise to rights in country, and cognatic land holding groups have become significant in recent decades. As well, many individuals assert more than one skin affiliation in light of traditional marriage rules having undergone much modification (Trigger 1985: 90–2, 354–7).

7 Dymock (1993: Sections 4 and 5) presents details of Dreamings through Waanyi country that are consistent with my findings. Tacon (2008) documents a number of these Dreamings and reports the views of various Waanyi persons assisting with studies of rock art representations associated with the mythic figures.

about the presence of particular Dreamings in accordance with what has been termed ‘epistemic openness’ in reading the country (Merlan 1998: 72, 209–28). Examples include places with a distinctive powdery white rock interpreted as associated with Catfish Dreaming and its associated skin category, the substance understood as the spiritual manifestation of fish faeces, and known as potentially dangerous in the hands of individuals with malevolent intentions to harm others through sorcery. Similarly, red ochre sites and round-shaped waterholes were connected to Rainbow Snake Dreaming and its distinctive skin category. Hence the Waanyi knowledge connecting physical and spiritual properties of landscape is read into the succession areas that Waanyi forebears and now their descendants have assimilated into laws and customs regarding land and waters.

A small number of sites in parts of the succession country had been recorded in the 1970s from one senior woman as Yinjilaaji (Injilarija) place names.⁸ In the late 1990s, these names were publicly known as Waanyi terms among older people, with some acknowledging their forebears had taken over that part of the country. In the case of the Waanyi term for catfish, known as a place name for two areas with that Dreaming’s presence, it is possible that the term was the same in the Injilarija language (though we have insufficient information about the latter to know definitely). It is equally possible that some considerable time ago the Waanyi term was imposed at these two sites on the basis of the pre-existing Dreaming known to be located there. A further illustration is a site name in Breen’s linguistic data (named Kudawudangirri) which his informant said was located in the Waanyi succession area. This is the same name I had recorded as Gudawudangirri, for Border Waterhole, situated within pre-succession Waanyi territory to the west. In 1982, the meaning of this name was given during my videoed research visit to the site as a ‘mob of girl together’, based on a Waanyi term for a young woman (*gudangirri*). This was a reference to the ‘Water Girls’ (*Marrarrabana*) Dreaming at the Border Waterhole area,⁹ and we have Breen’s elderly informant in the early 1970s giving that same name to a place in the succession area. This may again indicate similar site names for Water Girl Dreaming places in both Waanyi country and what was previously Injilarija territory, or a Waanyi term being applied as part of that group’s succession eastwards and associated cultural assimilation of the landscape.

8 This information was documented as part of Gavan Breen’s linguistic research with Ivy George (personal communication, G. Breen, November 2000), an elderly woman whose mother in my genealogical research was recorded as ‘Injilarija/Waanyi mix’. Ivy George (deceased by the time of the Waanyi native title claim) was a senior woman who had lived much of her life on a cattle station that had been subject to Waanyi succession.

9 Mary Laughren’s linguistic research similarly recorded a senior man recounting this Dreaming travelling to a site some 30 kilometres to the east of Border Waterhole. Laughren comments (personal communication, 30 October 2014) that *kudawudangirri* is a plural form of a Waanyi word for ‘young woman’.

Table 3.1 Waanyi families by pre-succession estates and post-succession areas (area A = Pastoral Station 1 Country; area B = Old Market Garden Country; area C = Three Rivers Country; area D = Pastoral Station 2 Country; area E = River Country).

Family #	Pre-sucession estates in the west									Post-sucession areas in the east				
	Estate1	Estate2	Estate3	Estate4	Estate5	Estate6	Estate7	Estate8	Estate 9	Area A	Area B	Area C	Area D	Area E
1														
2														
3														
4														
5														
6														
7A														
7B														
7C														
8														
9														
10														
11														
12														
13														

Individual and family connections to the succession areas were thus the product of both the skin system and its implications of Dreamings across the landscape. This aspect of tradition-based law and custom operated in the context of the fundamental influences of physical residence and occupation of the succession areas that had been historically produced and enabled by the locations of pastoral stations, ration depots and police bases. The descendants of known deceased Waanyi forebears asserted a connection to both the pre-succession estates in the west and the identifiable areas (which we might term transformed versions of traditional estates) in the east. Both sorts of connection have come to be held on the basis of cognatic descent from either male or female forebears. Features of the country that Waanyi have taken over have clearly been interpreted to fit the system of deduced skins and Dreamings. Table 3.1 shows schematically how nine families (cognatic groups) asserted connections both to a pre-succession estate in the west and a section of the succession area in the east. Two families claimed only pre-succession estates and a further four only succession areas. My conclusion was that the Waanyi research, in the context of the native title claim, indicated a completed case of adaptation and succession according to tradition-based law and custom in relation to land and waters.¹⁰

Conclusion

Building upon Peterson, Keen and Sansom's (1977) short but seminal report written during the early phases of Northern Territory land claim research, Sutton's (2003: 6) subsequent writing about native title claims considers succession that involves 'whole language groups' as 'conjoint'. This is distinguished from, and yet also based upon, the processes whereby individuals or families *within* a group assume primary interests in estates to which they may previously have held secondary rights. In the Gulf Country cases presented here, both kinds of succession can be said to 'rely on territorial proximity and pre-existing systemic grounds for territorial amalgamation' (Sutton 2003: 6). Just as Keen (1994b: 124–31) showed how succession between estate groups in Arnhem Land involved an extension of rights in expanded domains of land and waters, Sutton comments that conjoint, or perhaps 'collective', succession does not involve 'the extinguishment of pre-colonial rights of surviving groups so much as their transformation—usually involving considerable simplification—and their generalisation to wider "tribal" areas' (p. 6).

10 The legal decision in *Aplin on behalf of the Waanyi Peoples v State of Queensland* [2010] FCA 625, paragraph 89, discusses David Martin's anthropological opinions based on Trigger and Fietz's (2003) documentation of these relationships between particular extended families and areas across Waanyi country. The legal decision names the post-succession estates or 'countries' which are given pseudonyms in Table 1 presented here.

We might question whether the nature of either Ganggalida or Waanyi rights to country once east of that of their forebears involves any form of 'simplification', given the evident complexity of the networks of individual and family ties to the succession areas in both cases. The process has encompassed spatial movement and demographic changes driven by modified Indigenous cultural traditions in the context of colonial and postcolonial law enforcement, work in the pastoral industry, liaisons and marriages between Aboriginal women and men of European, Chinese and Afghan ancestries, Christian evangelism and establishment of a residential mission (Trigger 1992), and so on. However, Sutton's analysis would seem to fit the southern Gulf Country fairly well. Importantly, in terms of the argument that these forms of change are tradition-based, he points out (2003: 6) that we cannot exclude the possibility that this type of collective language group succession may have occurred prior to European disruption; while perhaps unusual, parallel 'similar population losses' to those following colonisation 'may have occurred before the colonial era, where epidemics could have wiped people out in big numbers from time to time'.

In his discussion of cultural continuity and native title claims in light of broad social theory, Keen (1999: 2) noted significant anthropological research between the 1950s and 1970s, particularly in the southeast and southwest of Australia, finding that people 'had lost their distinctively Aboriginal culture'. Both at the time of his writing (particularly in the Yorta Yorta case in the southeast), and subsequently (notably the Noongar case in the southwest), this 'culture-loss model' has been stressed by some native title researchers (see Keen 1999: 7, footnote 7; Brunton 2007). However, Keen also notes (pp. 2–3) findings of continuity of aspects of kinship, ways of speaking and spiritual beliefs, as well as complex processes of consecutive rejection and then reassertion and revival of cultural forms over several generations. Whether in the north or south of the continent, native title claims typically reveal often-impressive Indigenous strategies to maintain a distinct cultural heritage, as a form of self-conscious resistance to assimilationist pressures. While this may at times entail evidence that 'recently formed beliefs become ancient truths' (Keen 1999: 4–5), the Gulf Country cases indicate that Keen is also correct to qualify such analyses. Both Ganggalida and Waanyi processes of succession and change are best understood to a significant degree as developments of 'emergent cultural forms' rather than the formation of solely symbolic or strategic identifications with land and waters occupied through the impacts of (post)colonialism (Keen 1999: 5).

While the Gulf cases exhibit greater richness of traditional connections to land and waters than the settings Keen had in mind in southern Australia, they simultaneously offer broadly indicative principles by which changing rights to country may be documented and potentially recognised by the Australian legal system. Substantial change has occurred, yet forms of contemporary connection

with country are also continuous with adaptations in the previously operating system. Tradition-based connections in the succession areas have developed alongside Ganggalida and Waanyi people's routine participation in many of the regional institutions of the wider Australian society, including considerable processes of cultural assimilation. Given the obvious tensions of changing belief and lifestyle practices involved, the process of adaptation of customary law in relation to country affiliations is not always articulated unanimously among the relevant families and individuals.

Where disagreement emerges between contesting Aboriginal parties about whether or not succession has been licit in terms of law and custom, or whether it is a completed process, it can be difficult to determine a resolution. This can involve quite bitter disputes that continue over decades, as in the Finnis River area of the Northern Territory, where an historically incoming group was seen as seeking to displace the descendants of those who had been in occupation at the time of European arrival (Layton 1985: 162–5). New names had become attached to local sites and Dreamings from the incoming group's country to the south had been imposed. Yet this process of succession was contested as there remained Aboriginal people who, while articulating less traditional knowledge of the country, nevertheless continued to argue that they inherited legitimate rights from forebears who had been historically displaced. Similar disputes over whether change has been coexistent with traditional succession have been evident in a number of other land claims and native title applications (Sutton 2003: 5).

In the Gulf cases my conclusions are that succession has been completed legitimately as understood in traditional law and custom. At times, respondent parties have argued against this analysis, as with a Waanyi matter where the mining company CRA, as well as the Queensland government, 'submitted that there was no evidence of transmission or transfer of native title from the Injilarija to the Waanyi in accordance with traditional laws and customs of the Injilarija' (Waanyi Peoples Native Title Determination Application. No. Qn94/9 [1995] NNTTA 51, paragraph 41). The issue can thus be whether evidence of one or more particular 'transmission or transfer' *events* can be identified. However, I have depicted here a more informal process that has been accepted in legal cases, whereby tradition-based succession has occurred as demographic and historical change is prompted by engagements with the wider Australian society and economy. I have described how succession becomes assumed over time in the context of a regional body of broadly shared traditional law and custom, rather than any form of institutionalised decision-making about 'take over' of country occurring through discrete recounted events.

Nevertheless, particularly given the increasing access among Aboriginal people to written records about pre-existing 'tribal' groups, there may emerge possible new assertions from individuals and families that they believe they constitute depleted segments of landowning groups as they existed at the time of European arrival. In the Ganggalida case, there are occasional suggestions that the coastal succession area is still Mingginda, and individuals among one or two families who assert a distinctive connection to inland parts of what was once Mingginda country. In the Waanyi case, there was an unsuccessful attempt by a family based far away in southern Queensland to argue descent from an allegedly Nguburindi forebear and consequent rights to country, based on their reading of certain historical records.¹¹ There has also been legal argument in the Waanyi case in relation to who may legitimately be regarded as a member of the group holding rights in the succession area (*Aplin on behalf of the Waanyi Peoples v State of Queensland* [2010] FCA 625), and some disagreement between Waanyi and Ganggalida people over their territorial boundary in light of the historical changes and succession processes over the past 100 years or more.

The material presented indicates the importance of substantial and historically informed research in addressing such complexities. Anthropologists or other researchers cannot be expected to necessarily resolve clear outcomes in cases of tension or dispute (Keen 1994a). However, in the Gulf Country, it has been significant that my research in native title has come after many years of academic work. This has enabled my findings to apprehend systemic adaptations in traditional law and custom. In light of the adaptive capacity of Indigenous cultural traditions evident from the Gulf cases presented here, it would seem important that researchers bring a sophisticated approach to both ethnographic studies of changing relations with country, and the legal requirements for the recognition of Indigenous rights. To the extent that native title requires evidence of a 'grounded' and 'systemic' connection to land and waters (Keen 1999: 6), one that exhibits customary beliefs and practices as derived from a continuing 'society', the concept of succession is a powerful analytical tool. Its sensible application may be both intellectually productive and practically useful in many regions. The cases show that through the concept of succession, Aboriginal rights can be acknowledged as arising from a dynamic body of customary law that coexists with complex and changing Indigenous lives in modern Australian society.

11 A researcher was engaged to prepare a confidential anthropological report for this family.

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References

- Aboriginal Land Commissioner (W. Kearney). 1985. Nicholson River (Waanyi/Garawa) land claim. Report to the Minister for Aboriginal Affairs. Canberra: Australian Government Printer.
- Babidge, S. 2011. The proof of native title connection in absentia. In T. Bauman and G. Macdonald (eds), *Unsettling Anthropology: The Demands of Native Title on Worn Concepts and Changing Lives*, pp. 82–99. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies.
- Behrendt, J. 2004. *Lardil Peoples v State of Queensland* [2004] FCA 298, *Indigenous Law Bulletin* 6(2). Available at: www.austlii.edu.au/au/journals/ILB/2004/37.html#fn17.
- Bell, D. 1994. The tracks of the MungaMunga. In M. Joy and P. Magee (eds), *Claiming Our Rites: Studies in Religion by Australian Women Scholars*, pp. 213–46. Adelaide: Australian Association for the Study of Religions.
- Bradley, J. 2010. *Singing Saltwater Country: Journey to the Songlines of Carpentaria*. Crows Nest, NSW: Allen and Unwin.
- Breen, G. 2002. Making your skin fit properly: displaced equivalence in skin systems in the Barkly. In J. Henderson and D. Nash (eds), *Language in Native Title*, pp. 291–310. Canberra: Aboriginal Studies Press.

- Brunton, R. 2007. 'A bombshell in the centre of Perth': an anthropologist considers the single Noongar judgement. Occasional paper. Sydney: The Bennelong Society.
- Curr, E.M. 1886. *The Australian Race*. Melbourne: Government Printer.
- Dymock, J. 1977. The first Whitemen. *Journal of Anthropological Society of South Australia* 15(2): 4–10.
- Dymock, J. 1982. Historical material relevant to the Nicholson River land claim. Report to the Northern Land Council, Darwin.
- Dymock, J. 1993. Something deep and rich: indigenous and post contact environment and heritage materials relevant to the Lawn Hill/Riversleigh District of Queensland. Unpublished report prepared for Queensland Government Department of Environment and Heritage.
- Evans, N. 1990. The Minkin language of the Burketown region. In G. O'Grady and D. Tryon (eds), *Studies in Comparative Pama-Nyungan*, Pacific Linguistics C-111, pp. 173–207. Canberra: The Australian National University.
- Evans, N. 1995. *A Grammar of Kayardilt, with Historical-Comparative notes on Tangkic*. Berlin: Mouton de Gruyter.
- Keen, I. 1994a. Conflict in Aboriginal land tenure. In J. Fingleton, M. Edmunds and P. McRandle (eds), *Proof and Management of Native Title*, pp. 26–31. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies.
- Keen, I. 1994b. *Knowledge and Secrecy in an Aboriginal Religion: Yolngu of North-East Arnhem Land*. Melbourne: Oxford University Press.
- Keen, I. 1999. Cultural continuity and native title claims. *Land, Rights, Laws: Issues of Native Title*, Issues paper No. 28. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies.
- Keen, S. 1983. Yukulta. In R. Dixon and B. Blake (eds), *Handbook of Australian Languages*, vol. 3, pp. 191–304. Canberra: Australian National University Press.
- Kirton, J. and N. Timothy. 1977. Yanyuwa concepts relating to 'skin'. *Oceania* 67(4): 320–2.
- Langton, M. 2013. *The Quiet Revolution: Indigenous People and the Resources Boom*. Boyer Lectures 2012. Sydney: Harper Collins.

- Layton, R. 1985. Anthropology and the Australian Aboriginal Land Rights Act in northern Australia. In R. Grillo and A. Rew (eds), *Social Anthropology and Development Policy*, pp. 148–67. London: Tavistock.
- Macdonald, G. and T. Bauman. 2011. Concepts, hegemony, and analysis: unsettling native title anthropology. In T. Bauman and G. Macdonald (eds), *Unsettling Anthropology: The Demands of Native Title on Worn Concepts and Changing Lives*, pp. 1–18. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies.
- Mathews, R.M. 1899. Divisions of north Australian tribes. *American Philosophical Society Proceedings* 38: 75–9.
- Mathews, R.M. 1900. The Wombya organization of the Australian Aborigines. *American Anthropologist* 2: 494–501.
- Mathews, R.M. 1905. Ethnological notes on the Aboriginal tribes of Queensland. *Queensland Geographical Journal* 20: 49–75.
- McConvell, P. 1985. The origin of subsections in northern Australia. *Oceania* 56: 1–33.
- Merlan, F. 1998. *Caging the Rainbow: Places, Politics and Aborigines in a North Australian Town*. Honolulu: University of Hawai'i Press.
- Merlan, F. 2007. Indigeneity as relational identity: the construction of Australian land rights. In M. de la Cadena and O. Starn (eds), *Indigenous Experience Today*, pp. 125–49. Oxford and New York: Berg.
- Old, J. 1899. (Acting Sergeant, Police Station Burketown) 25.5.1889. Extracts from correspondence, Burketown Police Station, compiled by P. Memmott (1975), Aboriginal Data Archive, University of Queensland.
- Palmer, E. 1883. Notes of some Australian tribes. *Royal Anthropological Institute Journal* 13: 276–346.
- Pearson, N. 2009. Land is susceptible to ownership. In N. Pearson, *Up from the Mission: Selected Writings*, pp. 100–32. Melbourne: Black Inc.
- Peterson, N., I. Keen and B. Sansom. 1977. Succession to land: primary and secondary rights to Aboriginal estates. (A submission to the Ranger Uranium Environmental Inquiry.) In Joint Select Committee on Aboriginal land rights in the Northern Territory, *Official Hansard Report*, pp. 1002–14.
- Reay, M. 1962. Subsections at Borroloola. *Oceania* 33: 90–115.

- Roberts, T. 2005. *Frontier Justice: A History of the Gulf Country to 1900*. St Lucia: University of Queensland Press.
- Roth, W.E. 1901. Sketch map showing Aboriginal movements into Queensland. 'The Northern Territory – Queensland Border north of Urandangie'. 14 August 1901. Qld State Archives A/45400.
- Rumsey, A. 1993. Language and territoriality in Aboriginal Australia. In M. Walsh and C. Yallop (eds), *Language and Culture in Aboriginal Australia*, pp. 191–206. Canberra: Aboriginal Studies Press.
- Sansom, B. 2001. Irruptions of the Dreaming in postcolonial Australia. *Oceania* 72: 1–32.
- Sharp, R.L. 1939. Tribes and totemism in north-east Australia. *Oceania* 9(3): 254–75; 9(4): 439–61.
- Strelein, L.M. 2006. From Mabo to Yorta Yorta: native title law in Australia. *Journal of Law and Policy* 19 (Spring 2006): 225–71.
- Sutton, P. 2003. *Native Title in Australia: An Ethnographic Perspective*. Cambridge: Cambridge University Press.
- Tacon, P. 2008. Rainbow colour and power among the Waanyi of northwest Queensland. *Cambridge Archaeological Journal* 18(2): 163–76.
- Tindale, N. 1974. *Aboriginal Tribes of Australia*. Canberra: Australian National University Press.
- Trigger, D. 1982. Nicholson River (Waanyi/Garawa) Land Claim book. Darwin: Northern Land Council.
- Trigger, D. 1983. Land rights legislation in Queensland: the issue of historical association. In N. Peterson and M. Langton (eds), *Aborigines, Land and Land Rights*, pp. 192–201. Canberra: Australian Institute of Aboriginal Studies.
- Trigger, D. 1985. Doomadgee: A Study of Power Relations and Social Action at Doomadgee Aboriginal Settlement, Northwest Queensland. PhD Thesis, University of Queensland, Brisbane.
- Trigger, D. 1989. Garawa/Mugularrangu (Robinson River) Land Claim. Senior Anthropologist's Report prepared for Northern Land Council, Darwin.
- Trigger, D. 1992. *Whitefella Comin': Aboriginal Responses to Colonialism in Northern Australia*. Cambridge: Cambridge University Press.

- Trigger, D. 2011. Anthropology and the resolution of native title claims: presentation to the Federal Court Judicial Education Forum. In T. Bauman and G. Macdonald (eds), *Unsettling Anthropology: The Demands of Native Title on Worn Concepts and Changing Lives*, pp. 142–60. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies.
- Trigger, D. and J. Devitt. 1992. A brief history of Aboriginal associations with the Lawn Hill area. Report prepared for Doomadgee Aboriginal Community Council.
- Trigger, D. and P. Fietz. 2003. Anthropological report: Waanyi native title claim (QC 99/23). Prepared for Carpentaria Land Council.
- Turnbull, W. 1896. [Word lists of Aboriginal languages], *Australian Anthropol. Journal* 1(1): 13.

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