

L a n d m a r k s :
Reading the Gove Peninsula

A thesis submitted for the degree of Doctor of Philosophy
at The Australian National University

Kitty Eggerking

January 2013

Declaration

I certify that this thesis in its entirety is my own work and based upon my own research. Where I draw on the work of others, it is duly acknowledged.

Kitty Eggerking
18 Jaunuary 2013

Acknowledgments

This thesis has been a long time in the making, and I have no doubt tried the patience of all those who have been involved with its production. Special thanks must go to Paul Pickering, Nancy Williams and Howard Morphy for their advice, encouragement and conversation over the years. Thanks too is due to Mary Edmunds for her support and helpful suggestions early in the process.

I am most grateful too to those institutions and individuals who have provided information in one form or another. Particular thanks must go to the fantastic and diligent staff of the AIATSIS library, the Northern Territory Research Service and the Berndt Museum of Anthropology. Thanks also goes to the staff of the National Archives in Canberra and Darwin, the National Library of Australia, Museum Victoria, Monash University library, the House of Representatives Table Office and the Art Services department of the federal parliament. I must also thank those who granted me interviews — Robert Ellicott, Ted Egan, Jeremy Long, Barrie Dexter and Colin Tatz. Very early in the piece I also called on Kim Beazley senior. I regret that I was not better informed before imposing upon their time.

Special thanks is also due to all those connected in one way or another with the former Methodist Overseas Mission (MOM) or the Methodist Church, as much for their hospitality as their information: to Michael and Evelyn Ellemor for welcoming me into their home to inspect the papers of Arthur Ellemor; and to Betsy Wearing for her generous hospitality and for access to Beulah Lowe’s diaries. I thank Betsy too for organising permission from Stuart Lowe to use the diaries. The volunteers at the Uniting Church Archives were also gracious hosts. I chanced upon others from MOM while visiting Yirrkala in 2004 and all had wonderful information to offer: Wally and Jill Falwell, Bernie Clarke and Jack Goodluck.

I also thank Leon White for making that visit possible and for his valuable insights. Others who were enormously helpful during my stay at Yirrkala were Katrina Hudson and the late Dr Marika. I thank Frances Morphy for translating a recording of Gawarrin Gumana. Further thanks go to Katie Haynes, Ursula Frederick and Pip Deveson for technical support; and to Lan Tran for her forbearance.

I acknowledge too the support and occasional chiding from my immediate family. None of us has ever quite understood why the work has been so protracted. All I can say is that the journey has been endlessly fascinating and has been full of unexpected surprises.

Abstract

This thesis investigates the events leading up to and including the first land rights case, *Milirrpum v Nabalco*, heard in the Northern Territory Supreme Court before Justice Blackburn in 1970. It examines how the Yolngu people of the Yirrkala mission responded to the federal government’s leasing of the Gove Peninsula for the mining of bauxite, initially by seeking a political solution and subsequently legal redress. Thus, it considers events such as the bark petitions the people of Yirrkala sent to the federal parliament in 1963 and the subsequent inquiry by a select committee of the House of Representatives into Yolngu grievances. While these events are reasonably well known, the thesis situates them in fresh and appropriate political contexts. For instance, it takes into account the instability of the Menzies government in 1963; and, further, it examines the relevant parliamentary standing orders to show that the bark petitions were in order but the then Minister for Territories was out of order in ‘rejecting’ the first petition.

As well as these known events, the thesis also brings to light many other hitherto unreported events and matters. These events — and especially the actual Gove case — represent key moments for inspecting the contest of Indigenous and non-Indigenous systems of knowledge or world views, and this is the key reason for undertaking the study. To chart a course through the two disparate traditions, much of the focus is on the ways that land is conceptualised.

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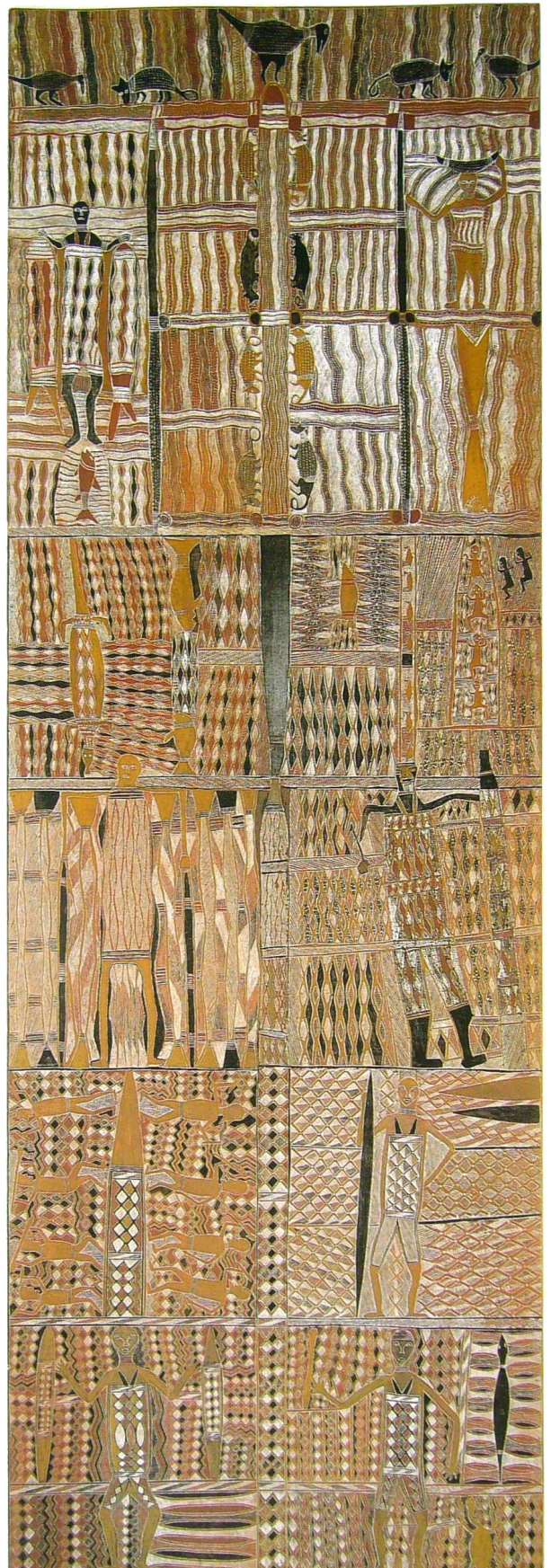
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Abbreviations

AIAS (later AIATSIS): Australian Institute for Aboriginal (and Torres Strait Islander) Studies
ALP: Australian Labor Party
BAC: British Aluminium Company
CAA: Council for Aboriginal Affairs
CP: Country Party
CPD: Commonwealth Parliamentary Debates (<i>Hansard</i>)
FCAA (later FCAATSI): Federal Council of Aboriginal (and Torres Strait Islander) Advancement
GBC: Gove Bauxite Company
HR: House of Representatives
IDC: Inter-departmental committee
LP: Liberal Party
MCAA: Methodist Commission on Aboriginal Affairs
MOM: Methodist Overseas Mission
MTS: Milirrpum transcript
NAA: National Archives of Australia
NLA: National Library of Australia
NTA: Northern Territory Administration
NTRS: Northern Territory Research Service
OAA: Office of Aboriginal Affairs
SC: Select Committee
SCR: Select Committee Report
SCT: Select Committee Transcript
SMH: <i>Sydney Morning Herald</i>
SML: Special Minerals Lease
V&P: Votes and Proceedings (of the House of Representatives)



Church Panels, installed in Yirrkala mission church 1963

Prologue

The wondrous paintings on the preceding page were completed in early 1963 for installation in the new church at the Yirrkala mission, at the very tip of north-east Arnhem Land. They serve as a splendid introduction to Yolngu culture and to the events described in this thesis. Before providing a brief description of these church panels, it is necessary to say a little about the Yolngu universe. Everything in that universe is assigned to one of two moieties. The sun, the morning star, the water goanna, the stringy-bark tree, for example, all belong to the Dhuwa moiety; the moon, the evening star, the stingray, the cycad palm are all said to be of the Yirritja moiety.¹ People and country, too, are of one or other moiety. This is not to say that the world, and everything in it, is in eternal dualistic opposition; rather, in the Yolngu world, the Dhuwa and the Yirritja complement each other and are thoroughly intermeshed. In short, everything in the Yolngu world is linked to every other thing in an intricate web of inter-relationship. Thus, the painting on the left is by eight Dhuwa artists from six clans; the one on the right by eight Yirritja painters from five clans. Each panel depicts a series of major creation stories of ancestral beings or *wangarr* important to that moiety. To begin with the Dhuwa panel: the lower half describes the journeys of the Djang’kawu, who are often portrayed as a brother and two sisters. The Djang’kawu yearned to investigate a cloud bank on the horizon and so made preparations to leave their usual home, Baralku, the Dhuwa island of the dead. They were guided on their journey across the sea by the Morning Star, Banumbirr. They were constantly heading for the cloud bank, here represented by its maker, Thunderman or Djambawal — the very dark single figure who looks to be holding a shield above his head, but it is a thunderbolt he is preparing to hurl. The Djang’kawu sang as they paddled their canoe; sometimes the seas were rough; sometimes they encountered different sea creatures. Eventually they made landfall near Yalangbara, where they rested. Here they pierced the ground with their digging sticks (*mawalan*) and brought water and many life forms forth from the earth. The remaining sections of this panel describe how the Djang’kawu travelled about north-east Arnhem Land, animating the land with all manner of life and endowing it with both meaning and names for other Dhuwa clans, such as the Galpu, the Djapu, the Djambarrpungu, the Marrakulu and the Datiwuy. Artists from the clans just named, together with those from the Rirratjingu clan, worked individually on different sections of the Dhuwa panel. Mawalan, Mathaman and Wandjuk worked on the Rirratjingu sections portraying the travels of the Djang’kawu from Baralku to Yalangbara. Mawalan was the recognised leader of the Rirratjingu clan at the time, and he — together with his son Wandjuk and his younger brothers Mathaman, Milirrpum and Dadaynga — feature prominently in the events under consideration, and that is the reason for introducing them here.²

1 See, for example, Hutcherson 1995.

2 Mawalan and Mathaman had the same father, but different mothers. Milirrpum and Dadaynga had the same mother and father — and their father, Dhurruyrrnga, was the brother of Dhuwakan, the father of Mawalan and Mathaman. The four brothers use the surname of Marika, which was their paternal grandfather’s name. The other painters were: Gungguyama Dharmarrandji (Djambarrpuynyu); Larrtjanga Ganambarr (Datiwuy); Munuparriwuy Wanambi (Marrakulu); Mutitjipuy Mununggurr (Djapu); and Mithinarri Gurruwiwi (Galpu).

In the lowest sections of the Yirritja panel three *wangarr* can be discerned. Banaitja, Galparimum and Lany’tjung moved through parts of the country, imbuing it with life for Yirritja clans.³ These *wangarr* first gathered at Gangan and then spread out through Yirritja country, dispensing *rangga* (sacred objects), *miny’tji* (sacred designs) and songs as they went. These *wangarr* occupy the bottom third of the panel, which was produced by the Dhalwangu artists Birrikitji, Gawarrin and Yanggarrin, whose country is centred around Gangan. The middle section depicts Wirrili, who brought language and pigments to the Gumatj clan. Alongside him stands Murriri, who brought fire to that clan. These *wangarr* share the country around Caledon Bay, though Wirrili is associated with stony, dry country and Murriri with paperbark-swamp country — country that is depicted immediately above these two figures. This section is by the Gumatj painters Mungurrawuy, Djarrkudjarrku and Watjun. Mungurrawuy Yunupingu was considered head of the Gumatj clan at the time and, like Mawalan, he appears frequently in the events discussed.

The story for the top third of the panel is that of the Manggalili clan and was painted by two brothers from that clan, Narritjin and Nanyin Maymuru. It focuses on the Djar-rakpi area of Blue Mud Bay and tells the story of Ngulumun, who gave the clan their language. To his right is the woman Nyapilingu, who is sheltering under some sheets of paperbark against heavy rain. She is credited with showing the clan how to make possum string.

Running up through the Yirritja panel appears to be a series of mortuary logs. In the Manggalili section of the painting the column of logs is said to become ‘the Tree of Life’, and the possums that scurry up and down are reported to be conveying messages between heaven and earth.⁴ At the top of this tree sits the chief messenger, the *guwark* (koel cuckoo), and this top panel represents the heavens. While many versions of the stories depicted in the two panels are possible, I have relied primarily on Ann Wells’ *This is Their Dreaming: Legends of the Panels of Aboriginal Art in the Yirrkala Church* (1971). Mrs Wells recorded these stories at the time the paintings were being created, but, as the wife of the superintendent at the Yirrkala mission, she was given versions of the stories that the painters wanted her to record. I suspect she may have taken some liberties in describing the column in the Manggalili section as the tree of life and in attributing messenger status to the possums, but otherwise her account seems quite consistent with what the painters told her. Other versions of the stories and other representations of the *wangarr* are always possible, depending on the context, the potential audience and the teller.

The paintings illustrate most eloquently a fundamental certainty of Yolngu cosmology: that everything — plants, animals, people, language — comes initially from the land, and everything was created from the land and emplaced in the land by *wangarr*. It will be noticed that the Yirritja panel carries many diamond shaped designs, while the Dhuwa panel has a preponderance of striations. These are the *miny’tji* or sacred designs given to each clan by *wangarr*. Anyone who has had a thorough Yolngu education would know not only to which clan the *miny’tji* belong but also to which country

3 These ancestral beings are sometimes collectively known as Barama. Cawte (1993, p. 39) on the other hand suggests that the four entities are brothers.

4 Wells 1971, p. 56.

the *miny'tji* refer. As Howard Morphy says, *miny'tji* are handed down from generation to generation, thereby 'maintaining a continuity over time in the relationship between land, clan and the ancestral past'.⁵ With the exception of the Manggalili section, the two panels refer to country within about a 50-kilometre radius of the Yirrkala mission on the Gove Peninsula.

Having just alluded to Yolngu education, this is the appropriate moment to say a little more about that style of education. Children are taught progressively: they learn first the 'outside', public or superficial, stories; if they show aptitude and if they are judged ready by others to know, they gradually learn more and more about the 'inside' or deep ways of the world. In other words, knowledge in and of the Yolngu world is cumulative, compounding and revelatory. Knowledge is also always tailored according to a person's experience and according to the situation, and knowledge includes correct discernment of such things. Knowledge, moreover, is never simply there for the taking. It should also be noted that every Yolngu person is born into a particular clan, either Dhuwa or Yirritja. A man always remains in his birth clan — the clan of his father — in his given moiety, but a woman marries into a clan of the opposite moiety, even while remaining a member of her original moiety and clan. Thus, everyone's mother is of the moiety opposite to the one into which her children are born, and thus every Yolngu person comes to learn about the Dhuwa world and the Yirritja world, and how everything in those two worlds connects, even while only publicly expressing knowledge of their own moiety.⁶

The church panels make the perfect preface to this thesis, both literally and metaphorically, since they usher in a series of extraordinary events that culminated in Australia's first, though unsuccessful, land rights case, known informally as the Gove case of 1970. The panels were painted at a time when mining companies had begun to explore for bauxite on the Gove Peninsula. Yolngu responded to this intrusion by demonstrating that it was their country in various ways, one of them being the church panels. Since no one in a position of white authority saw fit to inform — let alone consult — them about the developments, Yolngu took matters into their own hands. As Gawarrin Gumana recalled in 1997: 'The church was strong against us doing anything The government didn't believe we [had] culture, land, sacred painting. They didn't want us to make it explicitly known in public.'⁷ According to Gawarrin, the time had come when the 'old men thought we should make explicit *miny'tji*' so that Europeans would 'understand how we were living and where we came from'.⁸ The *miny'tji* (clan designs) are, as already suggested, seen as 'part of the sacred law (*madayin*)' of each clan and are also a clan's 'charter for the land', a point to which I return below.⁹ Sutton makes the powerful point that:

5 Morphy 1991, p. 170.

6 This very brief description of Yolngu social structure is taken from Williams 1986, Chapter 2; Morphy 1991, Chapter 3; Keen 1994, Chapter 2.

7 Gumana 1997. The recording was made by Francis Goode from the Oral History section of NTRS on 24/3/1997. It was recorded at the request of Gawarrin and other old men in Yolngu matha.

8 Gumana 1997.

9 Morphy 1991, p. 170.

The political control of the land and religious control of sacred designs or other symbols were, as far as we can tell, typically inseparable in indigenous Australia so long as ancient traditions persisted.¹⁰

This thesis is at core a history of events at Yirrkala from 1963 to 1971, beginning with the bark petitions — the inspiration for which came directly from the church panels and which brought Yolngu grievances to national attention — and ending in Justice Blackburn's unfavourable decision in the Gove case. One of the key interests in pursuing this history is to come to an understanding of how the Yolngu of Yirrkala, so remote from the centres of power, first sought a political solution to their grievances and subsequently turned to the law for a remedy. Their quest for a political solution occupies Chapters 3 and 4, while the legal route is considered in Chapters 6 and 7. Chapter 5 is the turning point between the two institutional modes of redress.

Those inclined to think this too narrow a focus will be surprised to learn from Bain Attwood that '[l]ittle has been written by historians' about these events, although anthropologists and lawyers have covered some of this ground.¹¹ Those who have written about these events — including Nancy Williams, Howard Morphy and Marc Gumbert — did so at a time before many documents were available in the national archives, and so I, coming late to the field, have had access to an extraordinary array of material that eluded these earlier researchers. I depart from the existing literature in another way, too: I try to account for institutional practices by reference to their salient internal rules. Thus, in considering the reception of the bark petitions in the House of Representatives, I pay attention to its standing orders of that time and weigh the testimony of witnesses in the Gove case against some of the rules of evidence for the court.¹²

Yirrkala is a world away from Canberra, Melbourne and Darwin, and yet I try to draw these various places together into the one theatre of action. I try also to bring the various players — Yolngu, politicians, bureaucrats, missionaries, anthropologists and lawyers — together on the one stage. I try too to situate events in their appropriate political context. For instance, while others have noted that the bark petitions were the first to give rise to a parliamentary inquiry, it has so far escaped attention that the inquiry was only instituted because the government of the day lacked the numbers to prevent it going ahead.¹³

As well as inspecting these and other events of the 1960s, I try to show the ways Yolngu and Yolngu country have been inscribed in various European records — policy documents, learned monographs, letters, newspapers, memoirs, transcripts and maps — over a more extensive time frame, but with heavy abridgement. I do this to show the ways white knowledge about Yolngu and their country had accumulated and was being deployed by the early 1960s. Such matters are addressed in the first two chapters. This historical sketch not only provides the appropriate context for considering the events of the 1960s, but the historical background and the events together lay the groundwork for understanding how various knowledge claims, European and Yolngu,

10 Sutton 1998, p. 399.

11 Attwood 2003, p. 395.

12 Whenever I have nominated 'the first land rights case' as the subject of the thesis, the inquirer generally presumes I am working on the Mabo decision or the Gurindji struggles — surely sufficient reason for the thesis.

13 See Chapter 3 below; HR Parliamentary Practice 2005 (5th edition, online version), p. 618.

were displayed and played out in the timeframe under consideration. It is this contest between different knowledge systems that is the motivation for undertaking this research, and there is much in this clash of thinking that warrants serious attention. I have been at pains to make this a genuinely inter-disciplinary and inter-cultural study, one which, among other things, carefully examines the encounters between Yolngu and the Europeans who observe, describe or regulate Yolngu lives — anthropologists, politicians, missionaries and bureaucrats — that are thrown up by the archives. In large part, however, I am forced to rely on ethnographic accounts, not only because these are the first extensive descriptions of the north-eastern corner of Arnhem Land, but also because, until the 1950s, anthropology was the predominant influence on government policy in the domain of Aboriginal affairs and was seen as a desirable prerequisite for anyone wishing to work as a patrol officer or a missionary. Moreover, much was ultimately made of ethnographic knowledge in the court case: in fact, it is in the Gove case that anthropologists make their first appearance as expert witnesses. Much of the anthropological writing at least until the 1960s focused primarily on Yolngu social organisation and portrayed Yolngu society as preoccupied with religious matters and as unchanging or static.¹⁴ Until the 1960s there was a tendency, as Martin Nakata notes, to write about Indigenous peoples as ‘people of the past’, people who seemed to have no connection with the present, who did not look towards the future and whose culture was static and traditional. Such representation is ‘the very act of denying [Indigenous people] as actors in their own present’.¹⁵ It is an attitude that is exhibited by the politicians, the bureaucrats, the mining executives, some of the missionaries and only occasionally the anthropologists who cross these pages. It was such an attitude that went hand-in-hand with the notion that people of the past were doomed, could not survive into the future and so were in need of protection. A similar sentiment — which often goes under the banner of ‘before it is too late’ — can be found as the rationale for establishing institutions like the Australian Institute for Aboriginal Studies, and it certainly was the motivation behind many collections of material culture. No doubt it was this perception of ‘an aboriginal inability to grasp the European plan of life’¹⁶ that prevented many of the Europeans who had dealings with Yolngu from either informing or consulting Yolngu about plans to mine the peninsula. To treat peoples as relics of a bygone age is to forget that they live in the here and now, grappling with choices and decisions in their daily lives. Such treatment, according to Nakata, runs the risk of ‘submerging’ these supposedly static peoples in someone else’s history and displacing them from ‘the centre of their own lives’.¹⁷ Nakata advocates a reading of the record that reinstates Indigenous people at the centre as actors by carefully listening for their voices, by taking their concerns seriously and by detailing the context in which things happened. In reading the record about Yirrkala, I find numerous traces of Yolngu individuals, and in this account I try to create space for Yolngu to be actors in their own stories

14 See, for instance, Stanner 1968, pp. 38-40.

15 Nakata 2007, p. 204.

16 Stanner 1968, p. 47.

17 Nakata 2007, p. 202. In the quote I have substituted ‘Indigenous people’ for his original ‘Islanders’.

and try to show how they actively made sense of encroachments upon their world. In other words, this is to be a history against the grain or, in the words of Greg Denning, ‘a two-sided history’, even while relying, for the most part, on documents from one side.¹⁸ To redress the imbalance, I use documents from the other side wherever possible — and this is another reason for according the church panels prominence here. There is after all, as W.E.H. Stanner observed, ‘stuff in aboriginal life, culture and society that will stretch the sinews of any mind which tries to understand it’.¹⁹ One casualty of reading against the grain is, however, that many of the commentators and chroniclers I scrutinise do not emerge from such a reading with their reputations unsullied. It is a direct consequence of the way they represented, misrepresented or even defamed Yolngu.

The Yirrkala church panels are charters to Yolngu land, which was given or entrusted to Yolngu by various *wangarr*. They can also be read as maps and histories of north-east Arnhem Land. Even if one is not knowledgeable in the ways of Yolngu painting, one can still derive aesthetic pleasure and get some feel, albeit superficial, for what is being expressed in the panels. With written documents, however, one needs a basic knowledge of an alphabet in order to catch even a glimpse of what is going on. To the uninitiated, painting is open; writing is closed. (Of course, it is generally supposed that, once the alphabet has been mastered, written knowledge is universally available.) In painting, or in music for that matter, knowledge is non-dogmatic in nature and amenable to a range of interpretations or readings. In one painting a whole world can be silently conjured, and in painting there is always the possibility that deeper meanings will eventually be divulged. A picture does in fact convey meaning — or at least the impression of meaning — better than any thousand words.

The church panels were designed not only to assert Yolngu knowledge, but also to invite an exchange of values between Yolngu and European knowledge.²⁰ The panels are a sign that Yolngu people were determined to take matters into their own hands and in the process to demonstrate or to assert their culture and their land to all European comers — the mission, the government and the mining companies. To support these broader political aims, Yolngu were keen to demonstrate and promote ‘the underlying unity of the clans’,²¹ since ‘a united front’, it was believed, would expedite negotiations between Yolngu and Europeans.²² The panels are an assertion of Yolngu values; they can further be read as an invitation to a dialogue and as a plea for help. Above all, the church panels will serve as a useful reminder, a touchstone, of Yolngu agency in the course of this thesis.

To read and to write is to know how many words are expended on the simplest description or explanation, how many are squandered on necessary but tedious scene setting. It is also to learn how circuitous and even duplicitous writing can be. To read the records I have read is to know that writing does not guarantee either ‘truth’ or cer-

18 Denning 1998, p. 41.

19 Stanner 1968, p. 41.

20 Morphy 1998, p. 239.

21 Morphy 1998, p. 246.

22 Morphy, 1983, p. 111. According to Marcia Langton (2000, p. 22), ‘months of region-wide negotiations’ to this end preceded the actual painting of the panels.

tainty, as it was once reputed to do, any more than the spoken word. It is as if Thamus' prediction (and Plato's prejudice) has come true: that writing is the 'recipe' for giving people the appearance of being 'very knowledgeable when they are for the most part quite ignorant'.²³ Like any other act of communication, the written word can be partial, fallible and incomplete; it too is susceptible to persuasion, self-justification, self-delusion and myth-making. Many of these dubious qualities are exposed in the course of this thesis.

For too long the written word has been held to be *the* distinguishing feature and the hallmark of Western knowledge, the thing that separated 'us' from 'them'; that marked 'us' as civilised and them as 'uncivilised'; that made 'our' knowledge authoritative and gave us authority over 'them'. It made our knowledge superior to theirs. One only needs to consider parables such as Homi Bhabha's 'Signs taken for wonders' or Lévy-Strauss's 'A Writing Lesson' to know that this was supposedly the case and to know the awe in which the 'natives' apparently held writing.²⁴ It was also generally accepted that because they lacked writing, they lacked documents and therefore lacked history as well. We have solid, factual history; they have only unreliable memory, myths and legends. The point is now generally conceded that we Europeans judge other cultures by different criteria, standards that we set and that we hold do not apply to our own cultures. Any deficiency or lack detected in another or alien culture is not so much about what 'they' lack as about what 'we' have come to possess or achieve — or even to have borrowed, usually without acknowledgement, from some other culture. Any supposed deficit is only a means for assessing the relative positions occupied by us and them on the evolutionary ladder, and the distance between. Any such deficiency is, according to Sahlins, 'inspired by theoretical conceits of progress'.²⁵ It is an attitude, a teleology and a mantra that goes hand-in-hand with that other European conceit that parades by the name of positivism, which, mercifully, has been in full retreat for quite some time now.

To attempt to work in an intercultural way I find maps a convenient device; they provide a useful, alternative means for steering a course through disparate knowledge claims. For a long time, maps were another of those things, like the written word, that were supposed to separate 'us' from 'them'. In some quarters, they were regarded as the very model for scientific method — the perfect and impartial representation of the real world on paper. It is perhaps from this vision of mapping that Geertz draws his analogy of the cartographer as the consummate scientist,²⁶ an analogy that I exploit in the first chapter. But as geographers and others have turned their attention to theories of a literary, postmodern or poststructuralist bent, this vision of mapping has begun to slip from view.²⁷

Thus, James Corner notes that while maps and mappings have been taken, for instance,

23 Plato (1973), *Phaedrus*, p. 96. In this translation, by Walter Hamilton, 'receipt' is used instead of 'recipe', which much better conveys the double sense of 'remedy' and 'poison' that Derrida detects in Plato's word, *pharmakon* (1981, p. 97 ff).

24 Bhabha 1994, pp. 102-122; Lévi-Strauss 1976, pp. 385-399.

25 Sahlins 1993, p. 25.

26 Geertz 1988, p. 10.

27 See for instance Harley 2001, and particularly his essay, 'Deconstructing the Map'.

as means for enhancing the imperialist cause, they can also be seen as 'instrumental in the construing and constructing of lived space'. 'In this active sense,' he continues, 'the function of mapping is less to mirror reality than to engender the re-shaping of the worlds in which people live'. He writes about the 'agency of mapping' to convey 'the ways in which mapping acts may emancipate potentials, enrich experiences and diversify worlds'.²⁸

Maps make great conceptual tools and are made for metaphors, the most beguiling of which is surely that any map may 'be regarded as a hinge around which pivot whole systems of meaning'.²⁹ It comes from geographer Denis Cosgrove, who further regards mapping as both 'a form of literacy' and a 'sign of civilization'.³⁰ Maps and mapping are, moreover, activities fundamental to any society.³¹ While 'all cultures map', as Wystan Curnow notes, a particular culture may fail to recognise the 'mapping code and the assumptions that informed its use' deployed by another culture. Curnow here is speaking about a dispute that arose between Maori and the Crown over the terms of sale of much of New Zealand's South Island. In this case Pakeha had failed to appreciate that the territories they presumed to be unchartered 'already had their maps' — 'complex oral maps embedded in genealogy, legend and ideology, and sustained by memory and ritual, which took literary rather than visual form'.³² In the Yolngu case, their maps are both literary and visual.

I make much of two sets of Yolngu maps that were drawn 18 years apart for Ronald Berndt. The information differs greatly from one set to the next, largely due to the variation in both Berndt's interest and Yolngu purpose over the years. Every Aboriginal map, like every ceremony, is a 'unique performance', as Sutton observes. 'While elements of both maps and ceremonies may remain constants, their selection and combination in each case is always likely to be event specific'.³³ In the case of the second set of maps, drawn in 1964, Yolngu were intent on showing the deep and abiding significance of land that had been excised for mining. The two series of maps drawn for Berndt are the third pair of landmark documents — along with the church panels and the bark petitions — considered in this thesis. Only Yolngu will have a complete grasp of the meaning of these twinned documents, because, as Veronica Strang puts it, they 'rely almost entirely on highly condensed symbols, which, with their many layers of encoded meaning, require a cultural context and oral exegesis'.³⁴ While it is true that the three sets of documents were made in part for a non-Yolngu audience, they were not intended to be completely accessible to that audience. Much has been made of the symbolism of both the church panels and the bark petitions, but in this work I deliberately focus on their more prosaic meanings.³⁵ The maps, however, have almost entirely escaped

28 Corner 1999, p. 213.

29 Cosgrove 1999, p. 9.

30 *Ibid.*, p. 8.

31 Turnbull 2000, p. 95.

32 Curnow 1999, p. 254.

33 Sutton 1998, p. 399.

34 Strang 1997, p. 222.

35 For their symbolism, see for example, Morphy 1998 and 2008; Yunipingu 1989 and 2008.

attention. Berndt’s 1964 article — which is based on the second mapping exercise and is the only published reference to the 1946 mapping exercise — is reasonably well known, but nothing has previously been published on that earlier exercise. From studying the 1946 maps for the Gove Peninsula, I conclude that their main purpose was to inform Berndt on major sites of the Macassan trepanging industry. Many other maps and references to mapping feature in this work. There are questions asked of missionaries and anthropologists about maps, and questions put to Yolngu about reading maps. In fact, the first question asked of the first Yolngu witness in the Gove case was: ‘can you read a map?’ There are also maps drawn and annotated by explorers, anthropologists, missionaries and miners; and maps etched into the earth as miners performed their surveys with bulldozers. Maps and other ways of representing the landscape — songs, stories, photographs, ceremonies, naming practices, resource inventories and so on — bring the land ‘within cultural boundaries’, not only turning it into landscape, but also, as Strang says, ‘providing ways of holding and, sometimes, colonising the land’. Such representations of country can be both ‘objects of meaning’ and ‘tools for negotiation’.³⁶ The Gove Peninsula lies at the north-west edge of the Gulf of Carpentaria, extending south to Port Bradshaw or Yalangbara and bounded on the east by Melville Bay and the Arafura Sea in the north. The area under examination in this work lies between Melville Bay and Dalywoi Bay. It is exquisite country of white beaches, turquoise seas and everywhere the rocky red soil that is in fact bauxite.

36 Strang 1997, p. 217.

Chapter 1: Marking out Arnhem Land

I ‘Seamanship and authorship make too great an angle with each other,’ Matthew Flinders mused four months into his long voyage to Port Jackson. ‘[T]he further a man advances upon one line the further distant he becomes from any point on the other.’ Flinders may have had confidence in his seafaring abilities, but his literary skills were at the time untested. So, on this second voyage to the colony in 1801, Flinders wrote home to his cousin Willingham Franklin, seeking to enlist him in what Flinders imagined would be a grand literary enterprise. Together they would write the final account of the great quest that lay ahead: the charting of the unknown coasts of Terra Australis, a project that entailed the staggered circumnavigation of the continent. In the event, Flinders, deprived of seafaring, honed his penmanship during the six years he was forcibly detained on Mauritius and so no longer required the services of Willingham.¹ Some two centuries later, American anthropologist W. Lloyd Warner found himself embarking on another enterprise of almost imperial proportions: his would be one of the first studies in an elaborate program designed by A.R. Radcliffe-Brown, the foundation Professor of Anthropology at the University of Sydney (1926-1931), to map the social organisation for every Aboriginal ‘tribe’ whose kinship structures remained relatively undisturbed by the European colonisation of Australia.² Like Flinders, Warner could not predict with any confidence what he might encounter, but, like Flinders, he prepared for his travels as thoroughly as possible to meet any eventuality. Flinders equipped himself with ‘every chart at the Admiralty which related to Terra Australis and the neighbouring islands’, the accounts of previous expeditions to this part of the world, and all the paraphernalia needed to make his survey — chronometers, sextants, quadrants, telescopes and so forth.³ No doubt Warner also carried compass, maps and other equipment needed to survive three years in the wilderness, but, more importantly, he took with him the concepts of his anthropological antecedents — Lowie, Radcliffe-Brown, Malinowski, Durkheim, Mauss and others.⁴ These were the real and only tools of his trade; they would serve to orient and ground him in carrying out his fieldwork; they would set the pattern and tenor for what Warner in turn would write. Like Flinders too, Warner would refine the raw material gathered in the field into a seamless and authoritative account only later, in the comfort of his home. Flinders’ account, written after finally returning to England in 1810, brims with navigational and other scientific detail, but, for all this, it remains highly readable and transparent. Readers get a sense of Flinders the man — some may object he makes himself too apparent — his preparations and his encounters with others. To give one brief example: in his meeting with Pobasso, a Macassan captain, Flinders has no difficulty in recording that discussion was made possible only through the translating efforts of his Malayan

1 The quote is extracted from a letter from Flinders to Franklin, 27/11/1801, Estensen 2002, p. 79.
2 Elkin 1956, p. 250.
3 Flinders 1814/ 1966, V.1, p.6; Estensen 2002, p. 144.
4 Warner 1958, pp. xii, xvii.

cook.⁵ Even though Warner's eventual account, *A Black Civilization*, makes for engaging reading, the reader rarely catches sight of Warner or his travels. We are not told how he lived or how he gathered his information. While his book is shot through with direct quotations from 'informants', such people are rarely named and their speech is reported in fluent and idiomatic English.⁶ Readers are given to understand that Warner was fully conversant in the language of the Murngin people he studied and that he accurately recorded and translated their discussions. The direct speech may enliven Warner's work, but his book is otherwise a model for the way science is (or was) supposed to be written — informative, impersonal, accurate, dispassionate: in a word, objective. I have chosen to begin with this fanciful juxtaposition of Flinders and Warner not only to draw attention to some peculiarities of writing that will emerge in the course of this chapter, but also to suggest that the journeys of these two men do intersect, spatially at least, in the north-east corner of Arnhem Land. For both Flinders and Warner Arnhem Land was a blank canvas: their mission was to fill their resulting pages with features and names, and to offer descriptions of what they found to readers far away. The accounts offered by Flinders and Warner were the first in the respective fields of geography and anthropology to reveal Arnhem Land to English-speaking audiences. This chapter concerns subsequent efforts to embellish and emend those first accounts — efforts designed to augment European knowledge of Arnhem Land and its people. In short, such efforts were, as we shall see, intended to put Arnhem Land squarely on the map or, as James C. Scott is fond of saying, to render it 'legible'.⁷

To begin this account of the unfolding of Arnhem Land then, I want briefly to consider the country as Flinders encountered it, beginning with its name. The earlier Dutch accounts gave various suggestions for the origin of Arnhem Land, but the version Flinders favoured linked the name to the yacht *Arnhem*, which had visited the area in 1623 under the command of Jan Carstens.⁸ Flinders' mission for this part of his expedition was 'carefully to examine the Gulf of Carpentaria and the parts to the westward thereof, between the 130th and 139th degrees of east longitude' — in other words, to survey the entire northern coast of what is now the Northern Territory.⁹ By 11 February 1803, Flinders had almost completed his clockwise circuit of the gulf; he was nearing 'the eastern extremity of Arnhem's Land', and finding no name for the promontory on his Dutch map, he named it Cape Arnhem. (He would later honour his Dutch predecessors in similar fashion with the naming of Arnhem Bay.) He noted the surrounding country as 'no where of much elevation' and, some hours after rounding the headland, reported the 'furthest land visible' as two flat-topped hills. He named the nearer and steeper of these hills Mt Dundas, the other Mt Saunders. Two days later he sailed into a bay lying under the western flank of Mt Saunders, pronouncing it 'the best harbour we found in the Gulph of Carpentaria', even while failing to recognise Cape Arnhem

⁵ Flinders 1814/1966, V.2, p.229.

⁶ A notable exception was a man Warner called Mahkarolla, whom he described in his preface as 'one of the finest men I have had the good luck to count among my friends'. Warner wondered 'at the futility of so-called progress when I think of him' (1958, p. x) and recorded Mahkarolla's life story in detail in *Black Civilization*.

⁷ Scott 1998, *Seeing like a State*.

⁸ Flinders 1814/1966, V.1, p.x; Estensen 2002, pp. 246, 263.

⁹ Flinders 1814/1966, V.1, p.10. He did not survey the whole northern coast: after leaving the Wessel Islands he headed north-west for Timor (V.2, p.248).

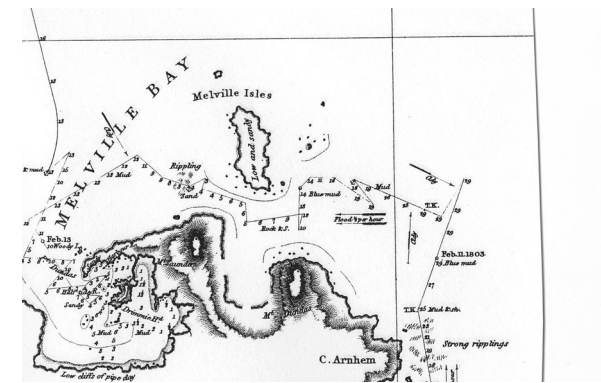


Fig 1.1: Portion of Flinders' map showing Melville Bay

as the western gateway to the gulf. Since the bay did not appear on the Dutch chart, Flinders named it Melville Bay 'in compliment to the Right Hon. Robert Saunders Dundas, Viscount Melville', who by this time was the first Lord of the Admiralty. For good measure, he named the sandy point at the eastern entrance to the bay Point Dundas. He did not record in whose honour he named the prominent headland within the bay Drimmie Head.¹⁰

Flinders and his crew spent three days in Melville Bay, making brief forays into the surrounding countryside. He and his 'botanical gentlemen' reported that there 'did not appear to be any rich soil on the borders of the bay', though 'on the south and eastern sides the country was covered with an agreeable intermixture of grass and trees, and better adapted for cattle than any I have seen in so low an altitude'. Flinders commented favourably on the diversity and abundance of local fauna and on the geology. He described the garnets he found as large, of 'a plum-pudding like appearance', which, if polished, would be beautiful. He noted 'a tolerable supply of fish', firewood and fresh water, which could be obtained from 'a hole made there by the natives'. Flinders did not encounter any of the local inhabitants here — though he had encountered some Yolngu previously at Caledon Bay — but 'as dogs were seen twice, it is possible the natives were watching us at no great distance'. Here too he detected 'traces of the same strangers', the Macassans, he had come across earlier at Blue Mud Bay and Caledon Bay. A day's sail from Melville Bay, Flinders would come face-to-face with Pobasso.¹¹ The scene conjured by Flinders of Melville Bay seems calculated to stimulate the imagination of readers into believing that everything lies, like a vast empty stage or an unpolished gem, in readiness for European action. The earliest attempts by Europeans to settle and exploit the Northern Territory were to prove unsustainable, and in the next section I offer an assessment of how things stood in the early 20th century, when the Commonwealth assumed control of the territory. Here it is worth noting that when Lloyd Warner arrived to begin his fieldwork in 1926 he nominated as the only achievements of 'white civilization' the Overland Telegraph, linking 'white Australia with the

¹⁰ Flinders 1814/1966, V.2, pp. 223-224. In addition, he gave the name Melville to the island that is now called Bremer Island or Dambaliya.

¹¹ The 'botanical gentlemen' were botanist Robert Brown, botanical painter Ferdinand Bauer and gardener Peter Good (Flinders 1814/1966, V. 2, pp. 225-229).

rest of the British Empire' via 'the tiny isolated town of Port Darwin' and 'a melancholy and profitless effort to implant its own markings in the form of cattle ranches' on the southern reaches of Arnhem Land. For Warner, Arnhem Land remained 'that almost blank space on the map which extends from the Gulf of Carpentaria to the Indian Ocean'.¹²

Based some 200 kms to the west of Melville Bay at the Methodist mission at Milingimbi, Warner's impression of his immediate surrounds was less favourable than that of Flinders. He noted that the 'long flat' coastline was broken by groves of tea tree, which were 'green oases' for Murngin people on their journeys from 'the barren alkaline plains' of the interior to the coast. Like Flinders, he was impressed by the 'many varieties of birds, fish and other animals' in the district, and while 'vegetable foods' were plentiful, their variety was limited.¹³ From his inquiries into the social structure of the Murngin Warner found they had little use for the pre-existing anthropological classifications of 'tribe', 'phrarty' and the like, but this did not deter him from talking about the eight constituent 'tribes' of the Murngin. Even though he had selected the name for convenience to refer to the local population, Murngin was the actual name of one of those eight tribes.¹⁴ He did, however, discern that the notions of 'moiety' and 'clan' were key organising principles in Murngin society, which we now understand as Yolngu society. He noted that everything within the Murngin universe belonged to either the Dhuwa or Yirritja moiety, and that this 'division is as clear cut to a Murngin as heaven and hell to a mediaeval theologian, although of course never on the basis of good and evil'.¹⁵

He described clans as 'the largest units of solidarity' and found them to be 'exogamic patrilineal group[s] averaging forty or fifty individuals'.¹⁶ Subsequent investigations largely support this finding, though some of these more recent studies, as we shall see, have embellished Warner's schema to reflect their own understandings and theoretical predilections. Warner noted too that of the 'four cultural groups' of north east Arnhem Land, the Murngin 'have many more clans' than the other groupings: in the course of his overview of Murngin society he mentioned some 37 of them.

Warner was convinced that 'ownership of the land' was a 'permanent and inextricable' feature of Murngin culture, that such ownership was vested in the clan and that such ownership was by way of 'immemorial tradition'.¹⁷ According to Warner, Murngin territory ranged from 'Cape Wessel in the northeast' to the 'islands and the coast of the eastern side of the Gulf of Carpentaria to Blue Mud Bay' and 'eastward over to the upper waters of the Goyder and Glyde Rivers'.¹⁸ He attributed ownership of this region to many clans, which appear in the smaller type on the map below, while the names conveyed in larger type are those of the Murngin 'tribes'. (See Fig. 1.2, but note that Boun, Ingura, Nakara, Nuncabuya and Rainbarngo are the names of neighbouring non-Murngin 'tribes'.)

12 Warner 1958, p. 3.

13 *Ibid.*, pp. 3-4.

14 *Ibid.*, p. 15, especially notes 1 and 2.

15 *Ibid.*, p. 30.

16 *Ibid.*, p. 16.

17 *Ibid.*, pp. 18-19.

18 *Ibid.*, p. 36.

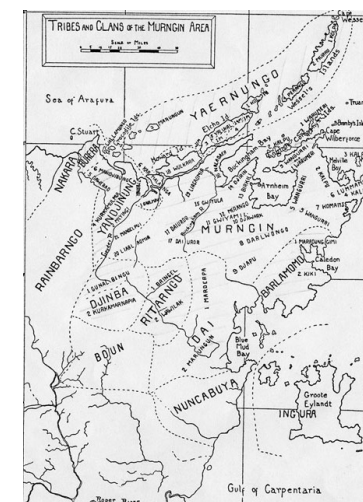


Fig. 1.2: Warner's map of Murngin tribes (1937)

I include Warner's map (Fig. 1.2) here not only because it makes an important reappearance in later events, but also because it serves as a reminder that his were the first attempts to chart Yolngu society and from it latter-day anthropologists have taken their bearings. Many of the clan names appearing on the map are now obscure, though a number have modern equivalents,¹⁹ but I am not in a position to comment on their status. There is, however, one oddity that arises from contemplation of Warner's map: it does not conform with Warner's description of Murngin territory. It is clear from viewing the map that Warner has mistaken his east for his west: the Gulf of Carpentaria marks the eastern extremity of Murngin territory, while the Goyder and Glyde Rivers might be said to form the western bounds of that territory. No doubt this apparent loss of bearings is an aberration that is perhaps explained as a consequence of his writing the account in the northern hemisphere.

II

From the moment the Commonwealth government assumed control of the Northern Territory in 1911, the territory was viewed from the southern seat of power as a far-flung possession to be ruled by remote and, as we shall see, haphazard control. As Heatley noted, for the 25 years between 1911 and 1936, four different departments and 22 different ministers were responsible for the territory; on Porter's count, there were ten different ministers for the years 1932 to 1951.²⁰ These southern politicians and their bureaucrats had no real ambition to populate the country, even though they had a vague awareness that the vacant land might prove a useful first line of defence against northern marauders and that it might still somehow be used to turn a profit.²¹

Early attempts to develop industries — pastoral, agricultural and mining seemed the most promising — soon encountered problems of unreliable workforce, erratic seasons, hostile terrain and long distances between raw materials and eventual markets. The

19 Djapu remains unchanged; Kolpa is now Galpu; Darlongo is Dhalwangu; Mardepa is Madarrpa; Wangurri remains unchanged; Riraidjino is Rirratjingu; Komaitis is likely to be Gumatj; and Gwiyamil may be Ngyamil.

20 Heatley 1969, p. 27; Porter 1993, p. 166.

21 Cf Heatley 1969, Chapter 1.

only workers who seemed willing or able to tolerate the conditions were ‘coloured’, but these ‘Asiatics’ — as Baldwin Spencer, in his capacity as Special Commissioner and Chief Protector of Aborigines, noted in his report of 1913 — were liable to corrupt the Indigenous population by supplying alcohol and opium and by using Indigenous women as prostitutes. To Spencer’s mind the only way to avoid these moral panics (most notably, miscegenation) was to create reserves for the containment, protection and segregation of the Indigenous population. As Spencer saw it, ‘the care of the aboriginals of the Northern Territory should be made a national responsibility and any scheme for the purpose of preserving and uplifting them should be under the control of the Commonwealth Government’, rather than Christian or charitable missions, and the government should move quickly to establish reserves while the land was still unoccupied.²² By the time of Spencer’s report, the major Australian churches had announced to the Commonwealth their preferred ‘spheres of influence’ over undesignated lands in the territory and had undertaken to establish missions in those areas (see Fig. 1.3).²³

Other than upholding the central tenet of the policy that came to be known as protectionism, the Commonwealth showed little initiative or took little action in the sphere of Aboriginal affairs until public outcry over a massacre in 1927 forced the government to appoint J.W. Bleakley (Queensland’s Chief Protector of Aborigines, 1913-1942) in May 1928 to conduct an inquiry into the living conditions of Aboriginal people in the Northern Territory.²⁴ Unlike Spencer, Bleakley advocated that the care of Aboriginal people was best ‘placed in the hands of subsidised mission organisations’, since ‘[t]he Government, with its tremendous task of developing the country, would be unwise to burden itself, and its already overtaxed machinery, with the worry of management of a number of charitable institutions’.²⁵ Bleakley recommended that missions, at least initially, confine themselves to the exercise of ‘benevolent supervision’: that is, winning the trust of ‘myalls’ (i.e. ‘full-bloods’) ‘by kindly ministrations, relieving them in distress or sickness and guarding them from abuse’, but, wherever possible, taking care ‘not to draw the people away unnecessarily from their tribal life’.²⁶ He advised that a chain of missions along the coast of Arnhem Land was the best prospect for protecting Yolngu against unwanted intrusion and exploitation, but he foresaw this as only a temporary measure, since ‘[t]he native, once having come into contact with the white man or alien and acquired a taste for his foods and luxuries, is not likely to longer remain a contented savage’.²⁷ Thus, he recommended that an Aboriginal reserve be created in Arnhem Land, and it was one of the few recommendations made by Bleakley that the Commonwealth, in the thick of the Great Depression, chose to implement.

More than 31,200 square miles (49,920 km²) was gazetted as the Arnhem Land Aboriginal Reserve in April 1931, and in 1940, with the addition of a southern section,

22 CPP 45/1913, pp. 48, 51.

23 Frank Paton of the Presbyterian Church to Atlee Hunt, Secretary, Dept of External Affairs, 20/12/1912. In the event the Presbyterian Church did not take up its area, which subsequently was held by the Methodist Church (NAA A659 1943/1/1376).

24 The massacre was at the Forrest River in Western Australia (Austin 1997, p. 121).

25 CPP 1929/12, pp. 24-5.

26 *Ibid.*, p. 26.

27 *Ibid.*, pp. 26, 33.

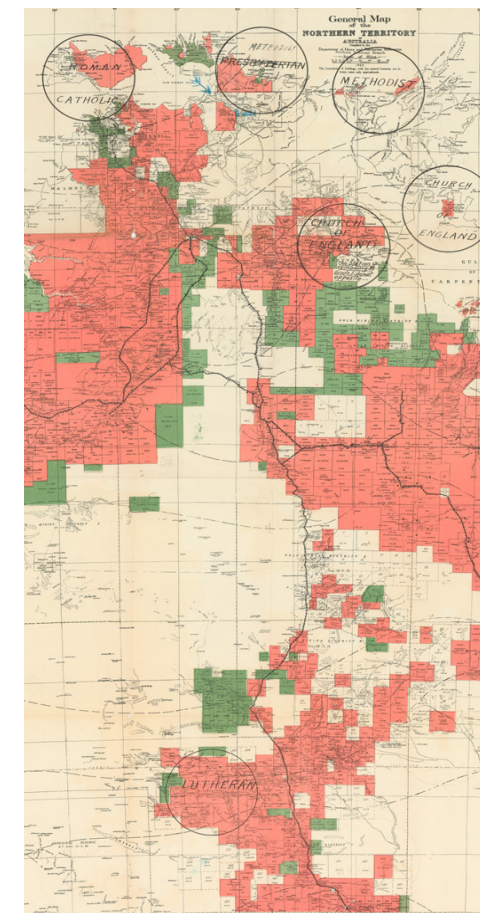


Fig. 1.3: The ‘spheres of influence’ of various denominations, Northern Territory, 1913

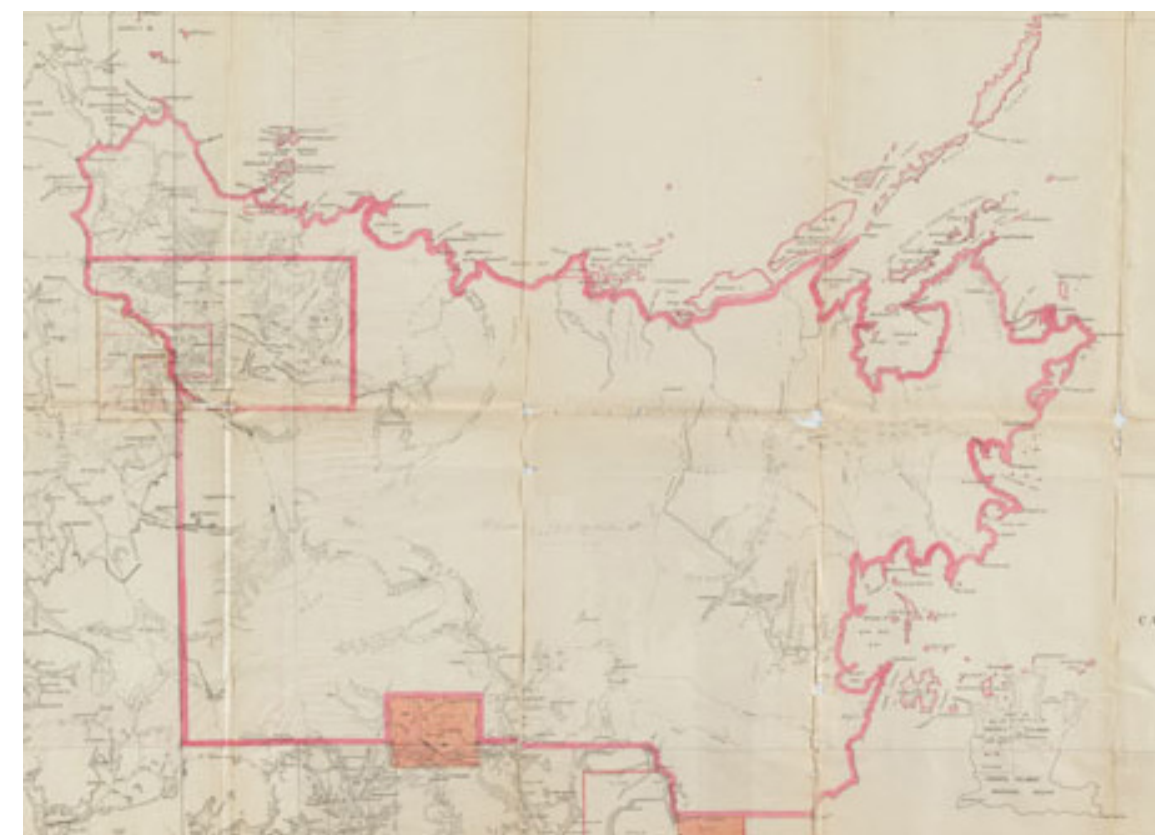


Fig. 1.4: Extent of the Arnhem Land Aboriginal Reserve, 1941

the reserve expanded to 66,000 square miles (105,600 km²) (Fig.1.4). As Ronald and Catherine Berndt would later note, from ‘the natives’ point of view, the formation of the Reserve meant nothing at all’ since it was ‘their own territory, where their ancestors had lived and they were bound to it by strong spiritual ties’.²⁸ To Bleakley there were few other contending purposes for the land: ‘the country is very poor, no one requires it, and those [pastoralists] who previously have taken some of it up have abandoned it’.²⁹ By the time of the gazettal, a number of Christian missions were already operating in the region. The Methodist Missionary Society (later known as the Methodist Overseas Mission or MOM) was running missions at Goulburn Island (established in 1916) and Milingimbi (1921); the Anglicans’ Church Missionary Society was operating at Roper River (1909), Emerald River (Groote Eylandt, 1921) and Oenpelli on the western edge of Arnhem Land in 1925. Missionaries, whatever their denomination, set about building their settlements with Indigenous labour, establishing routines of worship and discouraging traditional practices with varying degrees of zeal and success.

III

While Macassans had been prohibited from their long-standing practices of harvesting trepang (*bêche de mer*) in waters off the northern Australian coastline from 1907, illicit visits by Japanese trepangers and pearlers were becoming more numerous by the 1920s, and the Northern Territory Administration (NTA) called upon coastal missions to report any unusual movements or landings. Sporadic violence against the alien trepangers and pearlers helped give Arnhem Land a reputation as ‘the abode of aggressive Aborigines’,³⁰ a reputation that was confirmed by the murder of five Japanese trepangers and three white men, including police constable A.S. McColl, in three separate events, which collectively became known as the ‘Caledon Bay incident’ of 1932-33. Newspapers in Darwin and in the populous south called for a punitive expedition to catch those responsible, but the Commonwealth government instead chose the offer of three Anglican missionaries to persuade the offenders to give themselves up. With the help of the white trepanger Fred Grey and the legendary Yolngu warrior Wonggu, the ‘peace mission’, as it became known, succeeded in rounding up the culprits — three of Wonggu’s sons (Natjiyalma, Maaw and Ngarkaya) who had killed the Japanese; Dhakiyarr, who had killed McColl; and another man, Merarra — in March 1934 and in delivering them to Darwin, where they languished in jail for four months before being tried by Judge Wells. Wonggu’s sons were sentenced to 20 years’ imprisonment; Merarra was released for lack of evidence; and Dhakiyarr was sentenced to death. In reviewing Dhakiyarr’s case on appeal, the High Court ordered his immediate release, but, upon release, he vanished without a trace, presumed murdered. The publicity and furore generated by the cases also led to calls for the immediate release of Wonggu’s sons.³¹ Donald Thomson — anthropologist, zoologist, journalist and adventurer — was duly given a commission ‘to go to Arnhem Land to establish friendly relations with the

28 Berndt & Berndt 1954, pp. 177-178.

29 CPP 1929/12, p. 34.

30 *Ibid.*, p. 22.

31 Further details can be found in Egan 1996, Austin 1997, Dewar 1992, Thomson 2003.

people, to restore peace in the area, and to study and report on the problems of these people’.³² After lengthy negotiations with the federal government, he finally set out from Melbourne early in March 1935 — that is, some 15 months after the missionaries had succeeded in rounding up the Yolngu culprits. In Darwin at the end of May, Thomson visited Wonggu’s three sons in Fanny Bay jail; they gave him ‘a message stick, accompanied by an oral message for their father, 500 miles away in Arnhem Land’.³³ Thomson began his fieldwork in earnest in June 1935 and over the next six months, until he returned to Melbourne, he carried out five major expeditions ‘of more than 500 miles [800 kms] on foot and by canoe through the worst of the territory, in addition to journeys by sea amounting to 3,000 miles’ (4,800 kms). Once back in Melbourne, he was able to report that ‘not a single Aboriginal was killed in eastern Arnhem Land while I was in the area’ and he was confident that ‘the whole area was now under control’,³⁴ but still he, like Bleakley, insisted that the ‘absolute segregation’ of Arnhem Land was essential for the continuation of peace and for the nomadic way of Yolngu life. He advised the Department of the Interior that Yolngu not be encouraged to congregate at missions or stations and advocated for regular patrols by officers who had some anthropological training. In his report he also called for ‘a settled, uniform, policy for the treatment of the whole of the Aboriginal population of Australia’ and for a national Department of Native Affairs to oversee this policy.³⁵

Sometime before Thomson’s arrival, the superintendent of the Milingimbi mission, Theodor Webb, advocated a very different solution for the restoration of peace in eastern Arnhem Land: that another mission be established in the vicinity of Caledon Bay. Even though Thomson had tried to urge the federal government in October 1934 that ‘no approval be given for the initiation of fresh enterprises in Arnhem Land’ until he had completed his investigations,³⁶ the NTA now approved the search for a suitable location for the new mission by Wilbur Chaseling, another MOM missionary. After surveying the coast as far as Caledon Bay, Chaseling pronounced Yirrkala the best site. Despite ‘an exposed anchorage and poor soil’, Yirrkala at least had ‘fresh water, an elevated site and clean beaches’.³⁷ By mid-November 1935, sufficient timber had been cut and ferried from Milingimbi to construct a large shed at Yirrkala, and with this the mission was declared opened. A 21-year lease of 175 square miles (280 km²) was eventually issued in July 1936 to MOM for its operations at Yirrkala. Chaseling moved quickly to establish a number of operating principles at the new mission, one being ‘no work, no pay’. Schebeck later recorded the way this was accomplished:

In 1966 I recorded from an old clan leader the story of the arrival of the missionaries: these men came around, distributing flour, tea, sugar and tobacco. When the people started getting used to this treatment, the old man remembered laughingly,

32 Thomson 2003, p. 31.

33 *Ibid.*, p. 37.

34 *Ibid.*, p. 113. Here Thomson says ‘I received instructions to return south’, but a memo of 6/2/1936 reads: ‘On 1 November 1935, the Minister indicated that he had agreed to a request that Dr Thomson be allowed to come south for a spell during the wet season’ (NAA A659 1939/1/5250).

35 Thomson 1936, p. 46. Thomson submitted this report to the Minister for the Interior, Thomas Paterson, on 9/4/1936.

36 Thomson 1939, p. 15.

37 Chaseling 1957, p. 14.

they thought this would go on like this for ever. But one day, the white people said: ‘Wait a moment, before I give you this, just do a little job for me.’ Thus, the mission work started.³⁸

Another principle was that the mission should be, as far as possible, ‘neutral territory’.³⁹ Chaseling also followed the example set by Webb at Milingimbi of tolerating Yolngu traditions while at the same time promoting Christianity and in encouraging the production of Yolngu arts and crafts to supplement the mission’s income. Chaseling would remain at Yirrkala for the first two years of World War 2.

Donald Thomson began his second tour of Arnhem Land by collecting Wonggu’s three sons from Fanny Bay jail and a few other Yolngu, who ‘were then derelict’ in Darwin’s Chinese quarter.⁴⁰ They set sail from Darwin on 28 June 1936 and, after calling in at Goulburn Island and Milingimbi, eventually arrived at the new outpost of Yirrkala, where Wonggu happened to be visiting at the time.⁴¹ Having repatriated his charges, Thomson immediately set out to investigate widespread ‘tribal fighting’ that had been reported by the southern press to have erupted in ‘the area between Blue Mud Bay and Arnhem Bay’.⁴² Thomson concluded that ‘in almost every case [the trouble] originated among natives who have been much in contact with outside influence’.⁴³

Thomson detected much greater activity by outsiders — particularly Japanese tre-pangers and pearlers — in the region since his previous visit. ‘Throughout 1937, the steadily growing number of Japanese-manned pearling vessels in the waters of the reserve was a most potent factor in the growing unrest that was becoming steadily more serious each month,’ he reported.⁴⁴ In May he witnessed ‘upwards of 70 vessels’ operating around the Crocodile Islands (in the vicinity of Milingimbi) alone and from this calculated that perhaps as many as 700 Japanese were in the waters of Arnhem Land. The fleets had established ‘watering depots’ at various locations, and Yolngu ‘congregated at [these] various rendezvous to wait the return of the boats and the orgy that they grew to expect’. Women and girls were prostituted for food, clothing and tobacco; all too often the prostitution led to ‘serious friction’ or risked the danger of disease.⁴⁵ To make matters worse, ‘the aborigines knew that all this was in defiance of the white man’s law’ and, in consequence, ‘the prestige of the white man fell greatly in their eyes’.⁴⁶

In Thomson’s view ‘the highly complex organization of these people breaks down as soon as it comes in contact with outside influence’.⁴⁷ The NTA had contributed to this situation, in his opinion, through its failure to regulate the issue of entry permits to the

38 Schebeck 1973, pp. 75-76.

39 Chaseling 1957, pp. 17, 22.

40 Thomson 1939, p. 3.

41 Chaseling reported that Thomson effectively ‘dumped’ the three prodigals on the mission, causing unrest. ‘This greatly retarded our work as these boys regarded the episode as a joke in that they had been taken to Darwin where they had lived in luxury in gaol and were then returned home all because they had slaughtered some Japanese.’ Chaseling to Burton, 16/3/1938 (Elkin Papers, Box 97, 1/14/57).

42 Thomson 1939, p. 5.

43 *Ibid.*, p. 14.

44 *Ibid.*, p. 15.

45 *Ibid.*, p. 15.

46 *Ibid.*, p.15.

47 *Ibid.*, p. 14.

Arnhem Land reserve (which he had suggested in October 1934) and through its failure to establish a presence in the region. Thomson recommended that the reserve be rendered ‘inviolable’ so that its residents were ‘absolutely segregated ... to preserve intact their social organization, their social and political institutions, and their culture in its entirety’.⁴⁸ Thomson was not, however, advocating ‘a permanent segregation for all time’, but thought his recommendations should suffice until ‘a sound working policy and one in the best interests of the aboriginals is established, tested, and proved by experience over a long period’.⁴⁹

It is clear from Thomson’s various writings about his second tour that this aspect of his investigation caused him considerable distress, though he derived great satisfaction, if not outright pleasure, from other facets of his work. His official reports and other writings from this second and longer expedition are peppered with references to his anthropological investigations and to his other endeavours. On the anthropological side, he had ascertained ‘the names of the areas occupied by the various tribes and local groups’; he had studied Yolngu social and kinship organisation; investigated their legal and moral codes; and inquired into the ‘magical beliefs and practices which play a large part in the regulation of native conduct’.⁵⁰ He also studied fishing techniques and canoe construction, though the highlight of this trip was witnessing the goose-egg gathering in the Arafura Swamp, now immortalised in the film, *Ten Canoes*.⁵¹ He promised the Commonwealth a full and separate anthropological report, which he would write while visiting Cambridge University the following year and for which he received payment in advance. Unfortunately, it was a promise Thomson failed to keep. Nicolas Peterson suggests that the publication of Warner’s *A Black Civilization* at about this time ‘pre-empted’ much of what Thomson intended writing and so he abandoned the project.⁵²

Through family connections Thomson managed to have an amphibian aircraft from the RAAF put at his disposal over a three-week period, enabling him to undertake ‘a number of extended reconnaissance flights’.⁵³ Later he would write that the region from the air ‘presents a barren, desolate, almost forbidding appearance, though it is by no means the inhospitable territory of the popular imagination’.⁵⁴ His more immediate interest, however, was in trying to settle the location of various rivers in north-east Arnhem Land, though, as Peterson notes, some confusion persisted in various maps (including Thomson’s) until the 1950s.⁵⁵

48 Thomson 1938, p. 5 (recommendations 1 & 2).

49 *Ibid.*, p. 7.

50 Thomson 1939, p. 6.

51 *Ten Canoes* is ‘a film by Rolf de Heer and the people of Ramingining’, produced in 2006 by Palace Films and Madman Films.

52 Peterson 2003, p. 20. He did publish accounts of the egg hunt and fishing techniques in the journal, *Man*, in 1938 and 1939. He had given basic accounts of social organisation and kinship in his two reports (Thomson 1936, 1939). As late as 1954, the Minister for Territories, Paul Hasluck, was still trying to get the anthropological report out of him; it was cited as a reason for not providing funding to Thomson, though no one in the department had explained this reason to Thomson (NAA A462 743/7).

53 Thomson 1939, p. 10. Peterson (2003, p. 12) notes that Thomson’s brother-in-law was secretary in the Department of the Air.

54 Thomson 1949, p. 37.

55 He was most interested in tracing the courses of the Glyde, Goyder and Woolen Rivers (Thomson 1939, p. 10; Thomson 1949, p. 39; Peterson 2003, p. 12).

embarrassed by the lack of any reliable information about the country or the natives'. But now, after 'two years of intensive research on the problem', Thomson was again being told the 'experts differ'. While he found the response 'disconcerting', he took it to mean that his advice on segregation was 'an uncomfortable doctrine, it will embarrass us [i.e. the Commonwealth], let us go to some one else and see if he will give us a different opinion'. Thomson seemed to be counselling the government to choose its experts wisely by looking to 'the actual training and experience of the individual', since most people who discussed 'native problems' had only opinions, 'but very little real knowledge or training upon which to base' their discussions.⁶⁵

IV

Even though the incidents at Caledon Bay had been the 'most news-making' and 'the saddest' of events, they were, in Professor A.P. Elkin's view, 'in the long run the most helpful series of incidents', which marked a 'turning point' in public concern for Aboriginal welfare and for the way 'justice' was dispensed to Aborigines.⁶⁶ This turn of events also happened to coincide with a change in Elkin's fortunes: he had become President of the Association for the Protection of Native Races (APNR) during 1933 and appointed Professor of Anthropology at the University of Sydney at the end of that year.⁶⁷ By virtue of his university position Elkin was also anthropological advisor to the Australian National Research Council (ANRC) and editor of the journal *Oceania*.⁶⁸ From March 1934, Elkin sought to set his stamp on the way the Caledon Bay investigations were handled by recommending W.E.H. Stanner as the most suitable person for the job. Stanner had just completed his Master's degree under Elkin's supervision and would soon embark, at Elkin's instigation and under the auspices of the ANRC, on a not dissimilar investigation into the impact of mining for the Warramunga (Warumungu) people near Tennant Creek.⁶⁹ Since this intervention by Elkin sets the tone for his future interactions with governments — as well as the pattern for other of his behaviours — I consider the Warramunga case briefly. I do so too because Stanner's report resonates with later events in Arnhem Land, because that report is most astute for its time and because it affords an opportunity to introduce Stanner, who figures prominently in later events.

The Warramunga Aboriginal Reserve, covering 150 square miles (240 km²), had been proclaimed by the South Australian government in 1892, but when gold was found in the area in 1933, the NTA proposed revoking the reserve and gazetting a new one further to the north-east on country that had little by way of permanent water or game. When Stanner arrived in May 1934, he found very few Indigenous people remaining on the reserve. Several days before his arrival, Aboriginal representatives (Zulu and Charlie) had met the government geologist (Dr W.G. Wollnough) and the federal member for the Northern Territory (H.G. Nelson) and agreed to 'sell' or 'give'

⁶⁵ Thomson 1938, p. 3.

⁶⁶ Elkin 1957, p. 28.

⁶⁷ As already noted Radcliffe-Brown was foundation professor between 1926 and 1929, and after his departure Raymond Firth was acting chair of Anthropology until Elkin's appointment.

⁶⁸ The ANRC and *Oceania* had both been established by Radcliffe-Brown.

⁶⁹ Elkin to Perkins, 21/3/1934, quoted in Gray 2007, p. 116.

part of the reserve over to mining. In talking to Stanner, it became clear, however, that Zulu and Charlie did 'not now want to cede any portion of the Reserve to whites permanently'.⁷⁰ On the contrary they 'very much want to "hold" all the Reserve in perpetuity' as well as land to the south, which 'is honeycombed with sacred spots dating in the usual way from the *altjira* period'. Stanner proceeded to visit 'a good many of these sacred spots' and, remarkably for this time, to map their locations. He noted too that sacred objects (*tjuringa*) were 'still buried in cavities in the hills near where the provisional leases have been taken up' and accompanied the men to retrieve five *tjuringa* from a spot that was about to be mined.⁷¹ It would not be until the 1960s that the topic of sacred sites would be broached again or that anyone else would propose a mapping of such sites.

Stanner gained the 'impression' that a portion of the reserve could 'be thrown open to miners' temporarily 'with no great interference to the *food resources* of the Aborigines', but 'there can be *no* compensation for permanent occupation of the sacred spots and totemic and ceremonial centres on the land which is promising in mining prospect'.⁷² He warned that if anything interfered with Warramunga ceremonial life or religious belief, it would hasten 'the disintegration of the tribes'. Stanner concluded his six-page report with 12 'practical suggestions', which included: a) 'the government should affirm the principle of the non-violation of Aborigines' Reserves, and lay down some definite policy concerning them'; b) a specific portion of the reserve be opened for mining, but the rest should be surveyed and 'clearly marked, perhaps fenced' as Aboriginal reserve and c) taxes and royalties be payable by the miners for the upkeep of the Warramunga people.⁷³ Again, quite some time would elapse before others asserted that Indigenous peoples had rights to reserve land or that they be compensated for any loss of such land.

Stanner forwarded his report to Elkin in June 1934, but Elkin did not pass it on to authorities, because, as Stanner later sensed, his 'practical suggestions' were 'impractical' and his thinking 'too radical' to have been useful.⁷⁴ Elkin did, however, use Stanner's information to publicise the plight of the Warramunga in Sydney newspapers.⁷⁵ The episode set patterns for the way Elkin would henceforth use students and fieldworkers to gather information about Indigenous issues;⁷⁶ for the way he would deploy ANRC funds; and for the way he would choose to use information. The episode supports Wise's view that Elkin fancied himself as the 'sole commander of the anthropological empire'.⁷⁷

The Warramunga case also established Elkin's lifelong habit of recommending those connected with himself and Sydney University above any other comer. Thus, when Thomson's appointment to investigate the troubles at Caledon Bay was announced in

⁷⁰ Stanner 1980, p. 45. Stanner's report, which had been held by Elkin since 1934, was returned to Stanner following Elkin's death in 1979 and published by Stanner in the AIAS Newsletter the following year. Emphasis in original.

⁷¹ *Ibid.*, p. 45.

⁷² *Ibid.*, p. 46, emphasis in original.

⁷³ *Ibid.*, pp. 47-48. Note that my point (c) is an amalgamation of Stanner's points (k) and (l).

⁷⁴ *Ibid.*, p. 48, note 2. Gray gives the date as 20/6/1934 (2007, p. 241, note 26).

⁷⁵ Nash 1984, p. 6.

⁷⁶ Cf Gray 2007, p. 140.

⁷⁷ Wise, 1985, p. 141.

August 1934, Elkin was disappointed. He wrote to the Minister for the Interior, J.A. Perkins, that Thomson was not personally known to him, but noted dismissively that he had done ‘some research work for ANRC’, had written an article based on that research and held a diploma in Anthropology from Sydney University.⁷⁸ Elkin did not mention a disagreement between Thomson, the ANRC and Radcliffe-Brown, though it was probably this matter, together with the fact that Thomson was now attached to Melbourne University, that inclined Elkin to distance himself from Thomson.⁷⁹ One of Elkin’s main purposes in his August letter was to suggest that Thomson’s mission should be managed by the ANRC, which, according to Elkin, had over the previous six years commissioned six projects, four of which, he claimed, were ‘specific’ to the Northern Territory, and three of which concerned ‘Arnhem Land and one of these not far from Caledon Bay’.⁸⁰ Here Elkin was drawing attention to the ANRC’s expertise, but he was plainly exaggerating, because the only ANRC project that genuinely concerned Arnhem Land was Warner’s and then at some remove from Caledon Bay.⁸¹ Perhaps this overstatement can be seen in a similar vein to the nomination of his own candidates: that is, Elkin seems to have had a propensity for inflating projects and institutions close to him. It could be, as Geoffrey Gray suggests, that Elkin wanted the ANRC to be ‘responsible for all anthropological research in Australia’, although Elkin himself occasionally rebuffed such a suggestion.⁸²

In pamphlets, newspaper articles, academic journals and in his correspondence with Canberra, Elkin rarely wasted the chance to espouse the virtues of anthropological study, which he believed should inform government policy and which should be a pre-requisite for any official or missionary working with Aboriginal peoples. In his writings from the early 1930s he routinely talked about the need for a policy that was ‘positive and developmental’ rather than the existing one of protectionism, which he called ‘negative and protective’ and ‘laissez faire’ in operation.⁸³ By a developmental policy, Elkin meant helping Aboriginal people via ‘satisfactory education, health and employment measures’ to assimilate into white society.⁸⁴ Institutions were needed on Aboriginal reserves to inculcate ‘the natives [with] new interests and training in stock-work, agriculture and various crafts’, and without them there would be a drift of the Aboriginal population away from reserves.⁸⁵ He called for the NTA to be restructured

⁷⁸ Elkin to Perkins, 8/8/1934 (NAA A1 1938/31785). Gray (2005, p. 89) states that in this letter Elkin declared ‘Thomson was an unsuitable person for anthropological work’, but this is not the case.

⁷⁹ For details of the problem, see Gray 2005 (in Rigsby & Peterson), Peterson’s Biographical Sketch of Thomson in Thomson 2003, pp. 4-5 and Gray 2007, pp. 122-125. McGregor (1997, p. 185) puts the issue of a university base rather differently: by this time ‘Thomson had decisively split from the Sydney school’.

⁸⁰ Elkin to Perkins, 8/8/1934 (NAA A1 1938/31785).

⁸¹ Ten, not six, ANRC grants had been made by 1934, and only three applied to the Northern Territory. The grants were awarded to: Elkin (1927-28 for the Kimberley); McConnell (1927-28, Cape York); Warner (1927-28, Arnhem Land); Thomson (1928-29, Cape York); Hart (1928, Tiwi Islands); Porteus (1929-30, NW WA); Laves (1930, NW WA); Piddington (1930-31, Beagle Bay, WA); Strehlow (1932-34, central SA); Stanner (1932, Daly R, NT). (Gray 2007, Appendix 1, p. 228.)

⁸² Gray 2005, p. 89 and Elkin 1939, p. 5.

⁸³ Elkin 1933, pp. 1, 6.

⁸⁴ Elkin 1958, p. 28.

⁸⁵ Elkin 1933, p. 7.

to resemble the government service in the territories of Papua and New Guinea (PNG): appropriately-trained patrol officers and a government anthropologist were required. Chief Protectors should be adequately funded, given some autonomy and encouraged ‘to do more than help the aged and the sick’; Aboriginal protectors should not come from the ranks of the police force; and female protectors should be appointed to ensure the welfare of Indigenous women.⁸⁶

In the wake of the events at Caledon Bay, Elkin’s ideas were met with increasing favour in Canberra from the various Ministers for the Interior in this period — John Perkins (10/1932 – 10/1934), Thomas Paterson (11/1934 – 11/1937) and John McEwen (11/1937 – 4/1939)⁸⁷ — and their departmental secretaries, H.C. Brown and then J.A. Carrodus, because, as McGregor remarks, Elkin adopted the stance of ‘the moderate, well-informed and constructive critic’⁸⁸ and because the federal government was under domestic and international pressure to do something more for Aboriginal people. Elkin in hindsight would say that his was but ‘one voice’, though ‘not a lone voice’ in advocating a new policy direction.⁸⁹ Another to suggest a policy along similar lines to Elkin was Dr Cecil Cook, who had served simultaneously as the Chief Protector of Aborigines and Chief Medical Officer for the Northern Territory since 1926. Cook had delivered an outline of his ideas to Paterson in October 1935, though it would take more than a year for Paterson to publicly endorse ‘a comprehensive long-range policy, put forward by the Chief Protector, for the betterment’ of the territory’s Indigenous population, but the actual policy was not implemented.⁹⁰

A preponderance of the ideas presented at the first conference of Commonwealth and State officials responsible for Aboriginal affairs appears to be those of Cook, who argued his case forcefully and who found himself in ready agreement with other Chief Protectors like J.W. Bleakley of Queensland and A.O. Neville from Western Australia. This conference, held over two days in Canberra in April 1937, is often nominated as the starting point of the assimilation policy,⁹¹ though its notion of assimilation differs markedly from what was later understood by that term. The first of the conference resolutions declared ‘the destiny of natives’ to lie ‘in their ultimate *absorption* by the people of the Commonwealth’, but, echoing Thomson’s calls for segregation, ‘uncivilized’, ‘full blooded’ Aborigines were to be spared such a fate, at least temporarily, and would instead be preserved in their ‘normal tribal state’ on ‘inviolable reserves’. By ‘natives’ the resolution intended half castes and by absorption it intended a biological assimilation or a breeding out of colour, in keeping with the ideas of Cook and Neville.⁹² Perhaps to distinguish his ideas from those of Cook or Thomson, Elkin around this time began to emphasise the social and economic facets of assimilation or advancement, in which ‘the fundamental task was to raise a primitive, nomadic, food-gathering people to the higher cultural stage of settled agriculture and industry’, while at the

⁸⁶ *Ibid.*, pp. 6-9.

⁸⁷ E.J. Harrison, MHR for Wentworth, served as minister for the month between Perkins and Paterson.

⁸⁸ McGregor 1997, p. 194.

⁸⁹ Elkin 1958, p. 27.

⁹⁰ Press statement, 29/6/1937 (NAA A1 1937/70).

⁹¹ See, for example, Hasluck 1988, Chapter 4.

⁹² For further details, see McGregor 1997, Chapter 4.

same time retaining elements of Indigenous cultures, especially ‘the trappings of traditional art, ceremony and ritual’.⁹³ Elkin’s ideas seem to have struck a chord with the new minister, John McEwen, because within two months of his coming to office, these two men, together with departmental secretary Joseph Carrodus, had drafted a fresh policy, dubbed ‘the New Deal for Aborigines’, which is often cited as another starting point for the assimilation policy and which was finally endorsed by Cabinet in February 1939. While many of the ideas contained in this policy document can be traced to Elkin, others can be attributed to Cook and also to McEwen himself.⁹⁴

With one or two exceptions, I do not intend to describe McEwen’s New Deal in any detail, since it was not implemented, largely because of the hiatus caused by World War 2. One significant departure from earlier policy statements was the inclusion of a ‘final objective’ towards which the policy would strive: it would aim to raise the status of all Indigenous people ‘so as to entitle them by right, and by qualification to the ordinary rights of citizenship, and enable them and help them share with us the opportunities that are available in their own native land’.⁹⁵ It was, so far as I am aware, the first official mention of citizenship in relation to Indigenous people and, as such, it signals eventual equality of Indigenous people with other Australians. I suspect that the inclusion of citizenship in the statement was at McEwen’s insistence.

While Elkin would later advocate Aboriginal citizenship (see below), the term was not part of his vocabulary in 1938. At this stage, calls for Aboriginal citizenship came almost exclusively from southern Aboriginal activists and groups — and none more so than William Cooper and his Australian Aborigines’ League — who lobbied McEwen incessantly. By citizenship rights, these activists meant having the same access and opportunities as white citizens to ‘education, labour awards and conditions, health, housing, rights to ownership of property, control of personal savings and receipt of Commonwealth and State welfare benefits’; they further demanded a ‘Special Policy of land settlement, based on the unique right of Aboriginal people as prior owners of the land but to be implemented on lines recognisable to Europeans, such as the Soldier and Immigrant Settlement schemes’.⁹⁶ These southern Indigenous activists were always at pains to distinguish themselves from the ‘uncivilised blacks’ of the north. Their demands were well publicised in January 1938: first in the ‘Day of Mourning’ manifesto and, a few days later, and at a meeting between an Aboriginal delegation, Prime Minister Joe Lyons, Dame Enid Lyons and John McEwen.⁹⁷ The reference to citizenship in McEwen’s statement was perhaps a token gesture to the Aboriginal activists, rather than an endorsement of their platform.

The New Deal called for a restructuring of the administration of Aboriginal affairs in the Northern Territory along the lines that Elkin had consistently advocated. It proposed the creation of ‘a separate branch of Native Affairs ... thus divorcing the aboriginal work from that of the medical service’ that would be headed by a Director, rather

93 McGregor 1997, pp. 207-208.

94 McEwen 1939, ‘Commonwealth Policy with respect to Aborigines’, released 2/1939.

95 McEwen 1939, p. 1.

96 Goodall 1996, pp. 196, 239-40.

97 The Day of Mourning, organised by Jack Patten and Bill Ferguson, was held in Sydney on 26/1/1938; the meeting with Lyons and McEwen was held on 31/1/1938. For further details, see Horner 1974.

than a Chief Protector.⁹⁸ The director would have ‘administrative ability and training in practical anthropology’ and would advise the Commonwealth on Indigenous matters. Upon reading a draft of the policy, Cook argued at length that his twin functions should remain entwined. He tried to guess at the reason for the splitting of functions, and concluded that it must stem from ‘the propaganda of individuals with an anthropological bias’. He did not comment on other aspects of the draft policy since the entire policy, in his opinion, had been ‘originally submitted and recommended by me in detail’.⁹⁹ In another and more candid response to the draft, Cook commented bitterly that his own policy ‘is now returned to me complete in broad outline for my comments with the variation that it is considered necessary to appoint another officer to implement it’. In this other response, he said he had lived with the knowledge that he would be superseded for more than a year, concluding that ‘that part, at least, of the policy has originated with an outside individual or an outside organization, probably not very remote from Professor Elkin’.¹⁰⁰ From as early as January 1936, Cook was hearing rumours that Donald Thomson would supplant him.

The man Elkin had in mind for the position of Director of Native Affairs was E.W.P. Chinnery, who had served as the government anthropologist since 1924 and as the Director of Natives Affairs and District Services since 1932 in New Guinea. In late 1937 he was in Australia on long service leave, four years away from retirement and casting around for something else to do. Chinnery was invited to join McEwen and others on a two-month tour of the Northern Territory during the winter recess of parliament of 1938.¹⁰¹ (The trip covered some 8,000 kms between Mt Isa and Wyndham, mostly by road and, for the most part, camping out at night.) He had been invited along ostensibly to advise McEwen on matters of Aboriginal policy and perhaps to offer comparisons between the Australian and New Guinean situations, but, more than this, he had been invited along in order to acquaint himself with the Australian scene and to enable McEwen to become acquainted with him. From Alice Springs ‘Chin’ — as he was known to everyone — wrote to his wife in Melbourne that ‘the Aboriginal question is very complicated’ and while ‘the Minister is terribly keen’, ‘he is leaving most of the Aboriginal problem to me, which is a great compliment’. A little later, from Wyndham he wrote a hasty note before heading to Darwin, where ‘the Minister wants me to outline a policy and mechanism to operate it for discussion with the Administrator and Chief Protector’. ‘So I’ve got to jolly well find sometime during the journey to get it all written up, even roughly,’ he added.¹⁰² No doubt he would have been guided in this onerous task by the earlier draft thrashed out by McEwen, Carrodus and Elkin.

With Chinnery focusing on Aboriginal affairs, McEwen was free to concentrate on another, and perhaps a more important, matter — the economic development of the Northern Territory. From his predecessor Paterson, he had inherited the report of an

98 McEwen 1939, p. 2.

99 Cook to Abbott, 29/4/1938 (NAA A452 1952/541 Part 2).

100 Cook to Abbott, 28/4/1938 (NAA A452 1952/541 Part 2). Cook was told by Xavier Herbert in late 1936 or early 1937 that Elkin wanted him replaced. In his covering letter with which he forwards Cook’s responses to Canberra, Abbott says Herbert told him the same thing. For more detail about the campaign to oust Cook, see Austin, 1997, pp. 305-310.

101 Before embarking on the trip with McEwen, Chinnery had applied on 16/6/1938, for the position of Administrator of Nauru (NAA A452 1959/6066). See also Gray 2004, p. 21.

102 Letters of 25/7/1938 and 8/8/1938, Chinnery Papers (NLA, MS 766, Box 58).

inquiry into the use of the territory's land by W.L. Payne and J.W. Fletcher the previous year. McEwen had been considering their wide-ranging recommendations since taking up office, though, as he told parliament, '[b]efore submitting definite recommendations to the Government I propose to visit the territory for the purpose of gaining first hand knowledge'.¹⁰³

Once back in Canberra, McEwen set about finalising his response to the Payne and Fletcher report and his Aboriginal policy to take to Cabinet. If he expected swift endorsement from his ministerial colleagues, he was to be disappointed. Eventually, on the penultimate sitting day for 1938, he outlined the government's response to Payne and Fletcher.¹⁰⁴ He would have to wait until February for Cabinet to approve his new deal and within a week of this, McEwen announced the appointment of Chinnery as the director of the Natives Affairs branch and as the Commonwealth's advisor on native affairs. One of Chinnery's first duties was 'to lay down the standards that should be set for the conferring of full citizenship rights' for Indigenous people.¹⁰⁵ Chinnery duly advised that in order to 'acquire the privileges of a European', an Aboriginal person should: a) be capable of exercising the privileges and the obligations of citizenship; b) be of good character and be vouched for by a European; c) be capable of earning his own living; and d) be 'generally intelligent and be able to read and write, if possible, although if he cannot read and write he should not be barred if his general capacity is such as to enable him to lead a decent life'. In other words, he or she should have a capacity for education.¹⁰⁶

It was during the war years that Elkin turned his attention to ideas of citizenship. To Elkin the term came to be synonymous with the eventual and complete 'assimilation into the economic and political life of the country'.¹⁰⁷ He set out his detailed program in a lengthy pamphlet, *Citizenship for Aborigines*, of 1944. Elkin's program was both prescriptive and paternalistic, but thorough. The entire program, not surprisingly, hinged upon education and institutions. No matter the stage of their advancement, all Aboriginal people would receive some form of education from some form of institution. In order for Aborigines to 'go forth equipped to meet civilization and able to accommodate themselves successfully to modern conditions', they needed, among other things, the rudiments of hygiene and English, as well as the ability to earn a living, and they would receive instruction in these matters from missions and other training institutions. 'Incurably Nomadic Full-bloods', as Elkin called them here, would be offered the protection of reserves, while their children 'should be settled on Government or Mission Stations', presumably away from their parents.¹⁰⁸

Elkin did emphasise the importance of maintaining Indigenous group life, since it was the only way that Aborigines could be 'assured of friendship and a community of interests in the midst of a somewhat cold world'.¹⁰⁹ He also suggested that 'some measure of local self-government' be introduced onto reserves, settlements and missions, since

103 CPD, HR, 12/5/1938, V. 155, p. 1193.

104 CPD, HR, 8/12/1938, V. 158, pp. 2979-2986.

105 Carrodus to Chinnery, 17/3/1939, Chinnery Papers (NLA MS 766, Box 18).

106 Chinnery to Carrodus, 5/4/1939, Chinnery Papers (NLA MS 766, Box 18).

107 Elkin 1957, p. 32.

108 Elkin 1944, pp. 38, 45.

109 *Ibid.*, p. 22.

such 'experiments' were 'just and democratic in themselves' and a useful 'preparation for ultimate citizenship'.¹¹⁰ Those Aborigines who were capable of 'living independently in the general community' should be granted full citizenship immediately and should be issued with an exemption certificate to that effect. Others would be gradually 'uplifted' through education to the status of citizen.

The story of how citizenship became further entwined in assimilation policy of the 1950s is taken up in the next chapter. I want to conclude this section with another, though starkly different, option for policy — one put forward by Donald Thomson in 1946 in a brief pamphlet, *Justice for Aborigines*. His manifesto was as 'simple' as it was radical. He insisted that Indigenous people should have the 'fundamental right' to live their lives as 'free, independent human being[s]', by which he intended 'complete cultural, political and religious freedom'. He advocated that 'the territorial rights of the aborigines and hereditary ownership of land by clans' be recognised; and that 'marginal areas in regions still populated by the natives to be resumed by the Government for the aboriginal owners'. He, like Stanner, understood that

... among these people, land ownership and land tenure are of the greatest importance, for, though nomadic, living by hunting and collecting — the ownership of land is well defined and scrupulously respected and is generally vested in the clan, each group living only within its territory or that of neighbouring groups over which it has hereditary rights, or into which it has been invited.¹¹¹

He again called for all Aboriginal reserves to be 'rendered inviolable' and 'administered solely in the interests of the aborigines themselves'. Once again, Thomson was mainly concerned with 'tribal' people, living on their own country, though in spirit his program was much closer to the demands of the pre-war Indigenous activists. In *Justice for Aborigines*, Thomson again suggested that Indigenous policy should be guided by direct knowledge and experience of Indigenous people and their circumstances. In this pamphlet he portrayed Aboriginal people as both knowable and knowledgeable, imbued with a sense of history and capable of making appropriate and sensible decisions.¹¹²

V

Ronald Berndt, 24 from Adelaide, and Catherine Webb, 22 from New Zealand, enrolled in the Anthropology diploma course at the University of Sydney — the only university course then available in Australasia — in 1940. By the end of that year, they received a small ANRC grant to conduct their first fieldwork at Ooldea, on the trans-continental railway line in western South Australia. They married en route in Adelaide,¹¹³ thus beginning one of the longest and most productive partnerships in the history of

110 *Ibid.*, p. 36.

111 Thomson 1946, p. 3.

112 Wise (1985, p. 171) compares Thomson 1946 and Elkin 1944: 'one so shrill [i.e. Thomson], one so measured [i.e. Elkin], had the effect of putting Elkin firmly in the government's books as the voice of sanity'. Obviously, I take a rather different view of the two pamphlets.

113 Tonkinson & Howard 1991, pp. 21-24. The authors note that the Berndts honeymooned in the Adelaide Hills, where Ronald wrote a paper on burial rituals at Ooldea, while Catherine wrote a paper on Durkheim (p.24). According to Gray (2001b, p. 31), the Berndts married in 1941 and thereafter went to Ooldea.

Anthropology. Ronald had paid an earlier brief visit to Ooldea in 1939 as a junior member of an expedition for the Board for Anthropological Research, based at the University of Adelaide; the expedition came just three months after his appointment as an honorary assistant in ethnology at the South Australian Museum, and it is said that the expedition propelled him into applying to study with Elkin.¹¹⁴

The Berndts' report from this six-month expedition was published by installment in *Oceania* between 1942 and 1945; on the strength of it, Elkin declared the Berndts to be 'the best field workers in Australia to date'.¹¹⁵ Henceforth (at least until Elkin's retirement in 1956) Elkin was generous in his patronage of the couple, regularly finding them research opportunities and monies and actively moulding their academic careers. For example, Elkin, with some assistance from Chinnery, secured a contract for the Berndts with the Australian Investment Agency (better known as Vestey's) to conduct a survey of Aboriginal working conditions at various of its cattle stations in the Northern Territory for 18 or so months between 1944 and 1946. The assignment proved most difficult for the Berndts, but, as at Ooldea, the Berndts made a collection of crayon drawings from the stockmen at Birrundudu, the harshest of all Vestey's stations.¹¹⁶ Ronald Berndt had acquired the habit of taking brown paper and crayons into the field from Charles Mountford, another (though more senior) amateur ethnologist at the South Australian Museum, who had in turn been introduced to the practice by the museum's Norman Tindale.¹¹⁷

Being keen to put the episode of Vestey's behind them and to prove their worth as anthropologists, the Berndts — in May 1946, perhaps while still at Birrundudu¹¹⁸ — wrote, with Elkin's encouragement, a two-page proposal to conduct another survey, this time for 'the northern parts of the Northern Territory'. They intended the survey to have a contemporary focus on 'important aspects of acculturation' (e.g. a census, genealogies, distribution of population and tribes, training, employment, diet), though they would also consider other aspects of more 'traditional culture' (e.g. 'sacred and non-sacred corroborees' and 'the collection of phonetic texts and other linguistic data'). They proposed carrying out the work at 12 locations in the Top End.¹¹⁹ Given Elkin's involvement, it is not surprising that their application was approved with alacrity by the ANRC.

¹¹⁴ Gray 2007, p.149; Jones 1987, p. 88.

¹¹⁵ Elkin to Raymond Firth, 13/11/1948 (cited in Gray 2001, p. 6, note 30). Gray (2007, pp. 155-158) notes that the Berndts fell foul of the resident missionary at Ooldea; and this circumstance eventually led to the Berndts being unable to conduct further fieldwork in South Australia.

¹¹⁶ For examples of the drawings, see Stanton's entry in Kleinert & Neale (eds) 2000, pp. 222-223. The Berndts experienced many problems, chief amongst which was lack of cooperation on the part of Vestey's; on their side the Berndts were unrealistic about what they could accomplish and perhaps even a little intransigent. See Berndt & Berndt 1987, *End of an Era*; Gray 2001b.

¹¹⁷ The use of crayons and paper seems to have been peculiar to the South Australian practice of ethnology. Before Mountford and Tindale, Daisy Bates and Herbert Basedow had made it part of their practice (P. Jones 2009).

¹¹⁸ There is a tantalising reference to a northern survey in a letter from Bill Harney in Birrundudu, dated 25/5/1945, to Chinnery: 'I am with the Berndts and they have picked up quiet [sic] a lot of good stuff, but I am afraid they are not too popular with the powers that are. I would like to see these people doing a survey of the natives in the northern camps with a veiw [sic] of post war work in native welfare.' (Chinnery Papers, NLA MS766, Box 21, F41.)

¹¹⁹ They nominated: Darwin, Port Keats, Bathurst Island, Melville Island, Oenpelli, Croker, Goulburn and Elcho Islands, Milingimbi, Yirrkala, Groote Eylandt and Roper River (ANRC Papers, NLA MS 482 Box 59, F840).

Elkin had an ulterior motive for the Berndts' latest project: since 1945 it had been well known that Charles Mountford had been granted £10,000 to mount the American-Australian Scientific Expedition to Arnhem Land (AASEAL), which, for a variety of reasons, had been delayed and would eventually reach the field only in April 1948. Elkin was irked that Mountford, whom he regarded as an untrained amateur from a rival institution, had found favour with, and lucrative grants from, the National Geographic Society and the Smithsonian Institution, and Elkin was keen to 'thwart' the expedition and Mountford in any way he could.¹²⁰ He had already sent disparaging letters to the American institutions and others, and now not only would he despatch the Berndts pre-emptively to the field, but he himself would also venture into that field.¹²¹ By August the Berndts were in Darwin and, having arranged for supplies, they prepared to sail to Yirrkala on 21 August, 1946.¹²² The voyage was a leisurely one, with stopovers at the missions at Croker Island, Goulburn Island, Milingimbi and Elcho Island. The Berndts found themselves in 'almost another world, far removed from the squalor of post-war Darwin' and one far more congenial than Vestey's stations.¹²³ They lingered for four days at both Milingimbi and Elcho Island; just as they were about to leave Milingimbi on 4 September, the Berndts crossed paths with Elkin and his entourage, which included patrol officer Bill Harney, the cartoonist Eric Joliffe and *Pix* photographer Alex Iverson.¹²⁴ This band of travelling companions had sailed from Darwin on the second leg of their tour of the Northern Territory on 27 August, visiting the same missions as the Berndts but in reverse order and making the round trip in just a fortnight.¹²⁵ Elkin soberly reported to the ANRC that on this, his first, trip to the Northern Territory, he spent seven weeks in Arnhem Land 'on anthropological research into native culture and into contact problems' and 'at the same time I was able to advise the Berndts on their work'.¹²⁶ It is likely that in their brief exchange at Milingimbi, Elkin requested particular genealogies from Elcho Island and Yirrkala and forewarned the Berndts about how little English was spoken at Yirrkala.¹²⁷

¹²⁰ Gray 2005, p. 90.

¹²¹ For further details, see Gray 2005.

¹²² Catherine dashed off a quick note, dated 21/8/1946, to Isabel Houison before the *Aroet-ta* was due to sail (NLA ANRC Papers, MS 482, Box 58, F840).

¹²³ Berndt 1979, p. 281.

¹²⁴ According to Catherine, Elkin 'flashed through these parts like a comet' (CHB to Chinnery, 16/9/1946, NLA MS 766, Box 22, F42). Joliffe had been stationed at the RAAF base at the Drysdale River during the war and was about to publish a book of drawings from there and wanted to include extracts from Bill Harney's book *Taboo* (Harney Papers, NLA MS 8540, Box 1). *Pix* (7 & 14/12/1946) gave ample coverage to Harney, and less so to Elkin, but did note that the two had been 'firm friends' for six years, after Elkin had read Harney's manuscript of *Taboo* and recommended it for publication.

¹²⁵ According to Elkin's diary for 1946 (NLA MS9834, Box 1), the party visited Elcho Island (29-31/8/1946), Yirrkala (1-2/9), Milingimbi (4-5/9), Goulburn Island (6/9), returning to Darwin on 10/9. Beside 17 August, Elkin makes two notes, 'Leave Darwin' and 'E. Joliffe & co'. According to Wise (1985, p. 173), it was after leaving Elsey station on the first leg of their tour that Elkin and Harney picked up Joliffe and Iverson 'stranded without transport somewhere along the way'.

¹²⁶ Elkin to ANRC, 24/7/1947 (NLA MS 482, Box 59, F840). By 20 August 1947 he was back in Darwin about to embark on his second field trip. Wise (1985, p. 210) notes that Elkin 'was always the master of the quick thorough survey, rapidly sorting out the wood from the trees'.

¹²⁷ RMB to Elkin, 20/9/1946, Elkin Papers (University of Sydney Archives, P130, Series 41, Item 612), henceforth 'EP'.

By 10 September or thereabouts, the Berndts found themselves in Yirrkala and would spend the next ten months there. At first they shared quarters with the Fijian missionary, Kolinio Saukuru and his wife, but within a few weeks moved to their own newly-constructed quarters. In her first letter from Yirrkala, Catherine expressed surprise at the lack of English among Yolngu, given the close wartime contact between them and armed-services personnel, and suggested that this contact was worthy of further investigation, though as yet there had been no time ‘to settle down to any but desultory work’.¹²⁸ A few days later, Ronald was able to report that he had begun collecting the genealogies Elkin wanted and had already been “‘loaned” quite a good native by Kolinio, for four weeks’¹²⁹ and, like Catherine, felt they would be rewarded by studying past and present contact.¹³⁰

According to the Berndts, the impact of the military presence on the Yolngu way of life was ‘intensive’, ‘sudden’ and disruptive.¹³¹ ‘[T]he activity of Army camp life and entertainment, and other phenomena of an artificial and abnormal life, heightened and altered the tempo of indigenous life’ with ceremonies interrupted and the collection of food erratic.¹³² Contact with this latest and largest influx of strangers left some Yolngu bewildered, though others ‘genuinely desired to find [the] means of adjusting themselves and their culture to European ways’.¹³³ They were exposed to new foods, ideas, work routines and movies at the Gove base, located just five miles from the Yirrkala mission.¹³⁴ Even though the last of the armed forces had quit Gove a couple of weeks before the Berndts’ arrival¹³⁵ and even though their research was supposed to have a contemporary focus, the Berndts appear to have had little interest in undertaking an empirical study of the effects of this most recent contact, and they had very little else to say about the subject in their history of Yolngu / alien contact in *Arnhem Land: Its History and Its People*, published in 1954.¹³⁶

Apart from the little the Berndts offer, virtually nothing on the interchange between Yolngu and military personnel has been recorded for Yirrkala, and only minimal information about the base or its operations is available. From the scant material uncovered to date, it is possible to say that military authorities had identified the need for a joint air and sea operational base in the Northern Territory as ‘a matter of extreme urgency’ and by July 1943 had selected Melville Bay as the most suitable location.¹³⁷ The Minister for Air, A.S. Drakeford, requested £100,000 from the War Cabinet to build the base and, although his submission was very short on detail, it was approved by Prime Minister

128 CHB to Chinnery, 16/9/1946 (NLA MS 766, Box 22, F42). Here she thanks Chinnery for suggesting Yirrkala as a site for their fieldwork.

129 RMB to Elkin, 20/9/1946, EP.

130 RMB to Elkin, 5/10/1946, EP.

131 Berndt & Berndt 1954, pp. 194-195.

132 *Ibid.*, 1954, p. 21.

133 *Ibid.*, p. 195.

134 The base was named in honour of Sgt William Julius Henderson Gove, a pilot, who, along with nine others, was killed in a mid-air collision over Milingimbi (between two RAAF planes) on 20 April 1943, two days shy of his 22nd birthday (NAA A705 166/16/72).

135 Berndt 1979, p. 283.

136 In this 200-page book, discussion of wartime contact occupies a little over four pages. Before arriving in Yirrkala, CHB noted ‘we hold most of the data relating to the now-abandoned army compounds ...’ (to Isabel Houison, 30/7/1946, quoted in Gray 2007, p. 193.)

137 NAA A705 7/1/1738.

Curtin on 6 September 1943.¹³⁸ A month before Curtin’s endorsement, however, a forward party and equipment had already been shipped to Melville Bay from Milingimbi.¹³⁹ Construction was well underway by the end of October: roads had been made from the anchorage near Dundas Point to the base; the airstrip had been surveyed and pegged; the bomber camp was expected to be completed by 13 November. Work had yet to start on either the fighter camp or the flying boat base at Drimmie Head.¹⁴⁰ The project was said to be ‘the largest yet undertaken by the Air Force’.¹⁴¹ The base was ready for occupation by January 1944, and was only ever home to two RAAF squadrons — No. 83 (January- August 1944) and No. 13 (August 1944-June 1945) — and ground support staff.¹⁴² In all, some 500 personnel were stationed at Gove, their main duties being to escort ships through the Torres Strait and the Arafura Sea and to intercept enemy aircraft. In July 1944 the Squadron Leader of No. 83, R.F. Goon, reported that a lack of spare parts made the maintenance of planes ‘very difficult’ and because of the consequent lack of flying his men had grown ‘restless’. The tedium was relieved in part by the arrival ‘at last’ of ‘a permanent picture show’ and in part by sending the men out on three-day bivouacs. Apart from ‘the monotonous meals from cans’, Goon wrote that living conditions at Gove were ‘ideal’, but by July even the food had improved with the twice-weekly delivery of fresh meat and vegetables.¹⁴³

VI

For their first two months at Yirrkala, the Berndts were investigating phenomena associated with ‘past and present contact’, though it becomes clear from a letter to Elkin on 2 November 1946 that they were already inclined more towards previous contact with Macassans than more recent contact with the RAAF:

Apart from Mission and Air Force contact and Indigenous religious life, most interesting is Macassan (and other) contact and its effect on local culture; *detailed sketch maps* by natives stretching from Blue Mud Bay to the English Company Islands, *show dozens of Macassan trepang ‘landings’ and ration depots*. ... We intend to concentrate on these different forms of contact, from the historic period to the present day and it should yield very valuable data (emphasis added).¹⁴⁴

It is to the ‘detailed sketch maps’ that I now turn. The first of these maps, representing Blue Mud Bay, was collected by Ronald Berndt on 21 October; another ten maps had been completed by the time he typed this letter; and another three would be added over the next ten days, extending the series’ range to Milingimbi. Each of the maps is drawn in coloured crayon on large sheets of brown paper, and, taken together, these

138 NAA A2670 363/1943.

139 NAA A12274 245/1/W.

140 NAA A705 7/1/1738.

141 AWM 254 126.

142 The No. 56 OBU (Operational Base Unit) had a longer tenure at the base — from 2 December 1943 until 30 April 1946 — and this unit was probably responsible for decommissioning the base (*Squadrons, Formations and Units of the Royal Australian Air Force and Their Deployment*, AWM).

143 NAA A9435 Box 34. While he does not record the source, it is likely that at least the produce came from the Yirrkala mission.

144 Berndt to Elkin, 2/11/1946, EP.

maps cover something like 28,000 square kilometres. The sense I get of the maps is that they were designed to give Berndt an overview — or perhaps a summary or a review — of the broad sweep of Yolngu knowledge, not only of country but also of history. Perhaps they were drawn to help contextualise the stories of the ‘moderately large collection of bark drawings’ he mentions in the same letter. These space/time maps attest the intimacy and accuracy of Yolngu knowledge of their country — a veritable feat of mental geography or cartography. I find it remarkable that the maps have never been published; and only a handful of references to them can be found in Berndt’s publications and correspondence over the years. Berndt regarded them, like the crayon drawings described below, as part of his field notes or as another research tool.

Here I focus on Sheet H (Fig. 1.6), which was drawn on 30 October 1946 for the area between Yirrkala and Melville Bay.¹⁴⁵ Of the more than 200 places Berndt recorded for this map, I made my own list of 141 places, but I did not record any of the 63 sites he listed for Bremer Island, the dense cluster to the right of the map (see Appendix 1). For 82 of the 141 places (60 per cent) on the mainland, only names are given, and this suggests that the discussion was cursory and its purpose was, as already noted, to familiarise Berndt with Yolngu country. Had he probed further, Berndt no doubt would have uncovered stories for each of the named places. At five sites the gathering of a certain food is mentioned: dugong (27, 118), turtle (21), fish (21, 30), oysters (41). For 30 places their names are accompanied by a fleeting reference to some feature of the landscape: for example, a creek (126), a fresh-water swamp (125), a paper-bark swamp (123), a billabong (152), a reef (45), a spring (77). These references to food sources and landmarks suggest a pause in the discussion, in which Berndt requested an explanation. It seems curious that neither Mt Saunders nor Mt Dundas is mentioned by name, since they are the outstanding features in this otherwise flat landscape and are the most enduring English names in this area. They are marked simply as hills on the map, though it is noted that one of these (151) is ‘a hill with no name’ but has a ‘big tank’ upon it, probably installed by the RAAF — probably Mt Dundas.

European activity is nominated at 11 sites. The Yirrkala mission is shown at the top of the map, around 1; Melville Bay is at the bottom of the map. The twisting black line bisecting the map is the road linking Yirrkala with Melville Bay. The causeway to Drimmie Head, built by the RAAF, is shown at 75; a small jetty (65) and a slipway (68) share the same name, Galwuboi. The airstrip is shown at 132, and various buildings associated with the base are shown at 136 and 137. Note that site 138 is nominated as the 83rd squadron camp and that the place from which soil for the air strip was taken is 76. I find these two specific details extraordinary, because they show how detailed and contemporary Yolngu knowledge to be; they show how alive to developments Yolngu were. Curiously, Berndt chose not to make further inquiries about such contemporary phenomena; his proclivities, as already suggested, lay with the traditional and unchanging aspects of Yolngu life.

From my list, only six places are associated with an ancestral being, and then, with one exception, the mention is brief, even cryptic. For example, the entry for site 9 reads ‘Djalubaurinya — open rock — white paint dreaming’; site 10 is a human-like figure

¹⁴⁵ Berndt Museum of Anthropology, BP 1155H.

lying off the coast, for which Berndt records ‘Djambuwal himself — while 9 is his dreaming’.¹⁴⁶ This apparent neglect again suggests that the main purpose of the crayon maps was to provide Berndt with an overview of Yolngu country and with a context for the stories and bark paintings he had already collected. If the maps are taken as an overview of Yolngu knowledge, then they can be seen as helping the Berndts to chart the future directions of their research. Before considering such directions, however, I propose a different purpose for the maps: as a summary of what they had already learned. It is another occasion to choose to look either to the future or to the past. Berndt’s long letter of 2 November opens with the observation that ‘recent developments’ had soured their initial view of Yirrkala as ‘an ideal area through which to work’. Their main concern was that three officers from the Native Affairs Branch — Bill Harney, Ted Evans and Barney McGuinness — had recently installed themselves at the former Gove air base and, according to Berndt, they were instructed to convert the base into a training institution. Berndt complained that Harney had already ‘invited my best informant around to his camp, giving him presents, etc’, though ‘this [unnamed] native has not left me yet’. He worried too that many mission residents would gravitate to this new centre and such a prospect would ‘accentuate difficulties and ... interfere with our work’. Thus the Berndts were forced to reconsider their plans: if the situation did not improve over the next month, they would move on to Elcho Island. In light of their likely departure, the maps can thus be read as a summary or a review of what the Berndts had already learned.

In reply Elkin urged them to stay at Yirrkala, where he felt sure they would ‘see some most valuable ceremonies’, and reassured them that Harney and his colleagues were at Gove to make an inventory of the air base, rather than to establish a training centre.¹⁴⁷ At the start of 1947, the Berndts asked Elkin ‘how long [do] you think we ought to spend up here’ and where they might go next. Elkin responded that they ‘should stay in Arnhem Land until towards the end of the dry season, perhaps August’ and while at Yirrkala they should get ‘all you can’ on ‘the Aborigines’ philosophy of life and of the philosophical and theological meaning of the rituals’. He suggested Oenpelli (Gunbulya) as their next stop.¹⁴⁸ A little later Elkin reiterated the importance of their work: ‘I am sure you will be able to get further into the significance of the rituals and beliefs than Warner could, especially, of course, as we have his work to start with’.¹⁴⁹ This was

¹⁴⁶ Other mentions of ancestral beings include: ‘7. Djururawi – long reef. A is an island — it’s the djurwir bird canoe (possibly seagull)’; ‘11. Green back turtle dreaming place, Djarlboiyi. ... Two stones are the metamorphosed turtles’; ‘12. Buldjimara — their canoe metamorphosed into stone’; ‘150. The seagull Djarag made all the hills and the billabongs and the swamps around here — this was his home. 150 is a hill with no name.’

¹⁴⁷ Elkin to Berndts, 2/12/1946, EP. In his reminiscence for the NT Historical Society, Ted Evans recalls their mission was to ‘do an inventory and stocktake of the RAAF base’ (1991, p.2). According to official records, however, an inventory had already been compiled by 10/7/1946, well before the Berndts or Harney et al had arrived in Yirrkala. Further, a tender for disposal of the base’s assets had appeared in the Sydney *Sun* on 17/9/1946, though by 11/10/1946 the Commonwealth had decided not to proceed with the tender, and eventually the assets were acquired by the NTA and distributed to various missions and settlements (NAA CP672/1 13786).

¹⁴⁸ Elkin to the Berndts, 3/3/1947, EP.

¹⁴⁹ Elkin to the Berndts, 22/4/1947, EP. It is interesting to note that the Berndts had arrived in Yirrkala without a copy of Warner’s *A Black Civilization* and had requested a copy from Elkin, receipt of which Berndt acknowledged in his letter to Elkin of 19/1/1947.

to encourage the Berndts to stay on at Yirrkala, where they had increasingly found ‘the natives are more tiring ... than in other places, on account partly of the bad effects of the Air Force occupation, and partly of the absence of proper work and discipline on the mission’. They complained too, though not for the first time, that Yolngu were ‘consistently on “the make” and commercialise all their transactions even with one another’.¹⁵⁰ To put their supposed avarice into perspective, it is worth considering the Berndts’ expenses for Yirrkala: from a total expenditure of £167/16/9, £25/8/11 was for ‘incidentals for native informants’ — sugar, flour, tobacco — and a further £13/1/6 was paid in cash to informants. In other words, only about a quarter of the funds went to Yolngu.¹⁵¹

At the start of the year, Ronald Berndt had complained that Yolngu seemed ‘less able (or willing) to concentrate’ on tasks such as obtaining ‘long and detailed phonetic texts’. Inadvertently, Berndt had hit upon a solution to this supposed lack of concentration: he found his Yolngu informants were ‘more than willing to draw’, on ‘bark, cardboard and brown paper’.¹⁵² He collected his first crayon drawing on brown paper on 3 January 1947 from Mawalan and over the next six months would collect a further 364 of these luminous drawings. The story of this collection has been repeated down the years and has itself come to acquire an almost mythical status.¹⁵³ It is said that having collected a series of bark paintings (216 in all), Berndt became fretful about their durability, sought to have the paintings’ themes replicated in the series of drawings¹⁵⁴ and so asked his father in Adelaide to send paper and crayons. A statement to this effect is recorded on most, if not all, of the catalogue cards for the drawings. This explanation supposes that the series of bark paintings was completed before the introduction of the new media, but, as Berndt’s letter of 2 November 1946 clearly shows, he had already begun to experiment with crayon and paper and had already ‘assembled a moderately large collection of bark drawings’.¹⁵⁵ A more plausible explanation is that the Yolngu artists were so enthusiastic about experimenting with the new media in making the 14 maps the previous year that Berndt requested, perhaps by telegram, further supplies, which may have arrived around New Year.¹⁵⁶

In all, 27 men contributed drawings,¹⁵⁷ which Berndt later came to regard as ‘the “jewel” of his collection’.¹⁵⁸ Although a few of them were reproduced in a number of the Berndts’ publications over the years, he never managed to write further about them. For him, as noted on the catalogue cards, they were ‘extensions of his field notebooks, since they contained key notations’. It was not until the late 1970s that the drawings

150 Ronald Berndt to Elkin, 12/3/1947, EP.

151 Berndts’ grant acquittal, lodged with ANRC on 6/7/1947 (NLA MS482, Box 58, F857a).

152 Ronald Berndt to Elkin, 19/1/1947, EP.

153 See for example Hutcherson 1995; Berndt, Berndt & Stanton 1982; Stanton 2008.

154 Later Berndt (1983, p. 34) admitted that the drawings did not duplicate the paintings as he had ‘half expected’, but rather formed ‘an entirely new series’.

155 In this letter too he complains that the supplies they had ordered from Darwin six or more weeks earlier had not yet arrived. Thus, there’s a problem in the lead time necessary to get supplies from Adelaide. The story is complicated even further by Stanton’s statement (2008, p.117) that the series of bark paintings was collected between 2/12/1946 and 28/6/1947.

156 The suggestion of the telegram comes from Stanton (2008, p. 117).

157 For a list of the artists, see Hutcherson (1995, p. 7), but missing from this list is Mondukul.

158 Hutcherson 1995, p. 7.



Fig 1.6: Sheet H: Yirrkala to Melville Bay, 1946 (Brown paper and crayon)

were brought from the Berndts' home into the museum for cataloguing and not until 1995 that some of them were finally put on public display.¹⁵⁹ The series of drawings has since been placed on the Australian Register of the UNESCO Memory of the World.¹⁶⁰ Here I want to focus on just one of these crayon drawings. It is a map of Melville Bay, drawn by Mawalan on 14 June 1947, in which the topic of interaction with Macassans is explored in greater detail (Fig. 1.7). As if to confirm that Macassans were uppermost on their minds, Mawalan drew a similar map for Yalangbara on the same day.¹⁶¹

It is clear from the illustration and Berndt's accompanying notes that the main topic under discussion, as already suggested, was contact with the Macassans. Nineteen praus await their load of trepang; pots for processing the trepang are located around the shores (e.g. near 21, 30, 33, 49); and that most enduring symbol of Macassan presence, the tamarind tree, is found dotted around the bay (e.g. at 13, 30b, 46, 56). A number of Macassan houses are depicted on Drimmie Head, the frond-like peninsula just to the left of the centre of the drawing. The lower of the lines through the water (70) is recorded by Berndt as 'the Macassan track they walk along', though probably depicts the main navigable channel. As well as the Macassan references, the map locates European activity, and, while it is impossible to say at whose insistence these details were recorded, I suspect the choice was Mawalan's. The upper line through the water (71) is listed as the 'airforce track' — either the route for the flying boats or the main approach to the Gove airstrip. Other signs of this more recent contact include: the causeway linking Drimmie Head to the mainland (52); the road on that causeway (72); a slipway (45); a wharf (48); and a concrete landing 'where the "Larrpan", the Methodist Mission boat, was repaired' (55). Alongside the sites of Macassan and European activity can be found references to Yolngu *wangarr*: places associated with Djambawal the Thunder Man are located at 23 and 33, while Wuyal the Sugarbag Man is connected to sites 1, 2 and 4. These Dreaming places are, however, in the minority and, like the European sites, are not the main focus of the discussion to which I return in Chapter 5.¹⁶²

Rather than continue to concentrate on what the Berndts did not publish or preferred to keep to themselves, as I seem to have done, it is time to consider some of their accomplishments; and the Berndts did achieve a great deal in their ten months at Yirrkala. They collected sufficient information about Macassan trepangers and traders to produce their *Arnhem Land: Its History and Its People* (1954). As well, the couple published *Sexual Behaviour in Western Arnhem Land* (1951), a volume on South Australia's Aboriginal population (1951) and a general textbook, *The First Australians* (1952). Ronald collected many song cycles, some of which would later fill his first solo books — *Kunapipi: A Study of an Australian Aboriginal Religious Cult* (1951) and *Djanggalawul:*

¹⁵⁹ Hutcherson 1995; Stanton 2008, p. 120. The museum is the Berndt Museum at the University of Western Australia.

¹⁶⁰ Stanton 2008, p. 120.

¹⁶¹ Index cards for Melville Bay (WU 7152) and Yalangbara (WU 7153) are dated 14/6/1947.

¹⁶² Of the 75 sites recorded by RMB, 15 are associated with specific dreamings; 20 with Macassan activity; and nine with European activity. A further 25 sites carry only a name; another six sites carry specific references to andscape feature (e.g. creek, island, sandbank) (WU 7152, Berndt Museum).

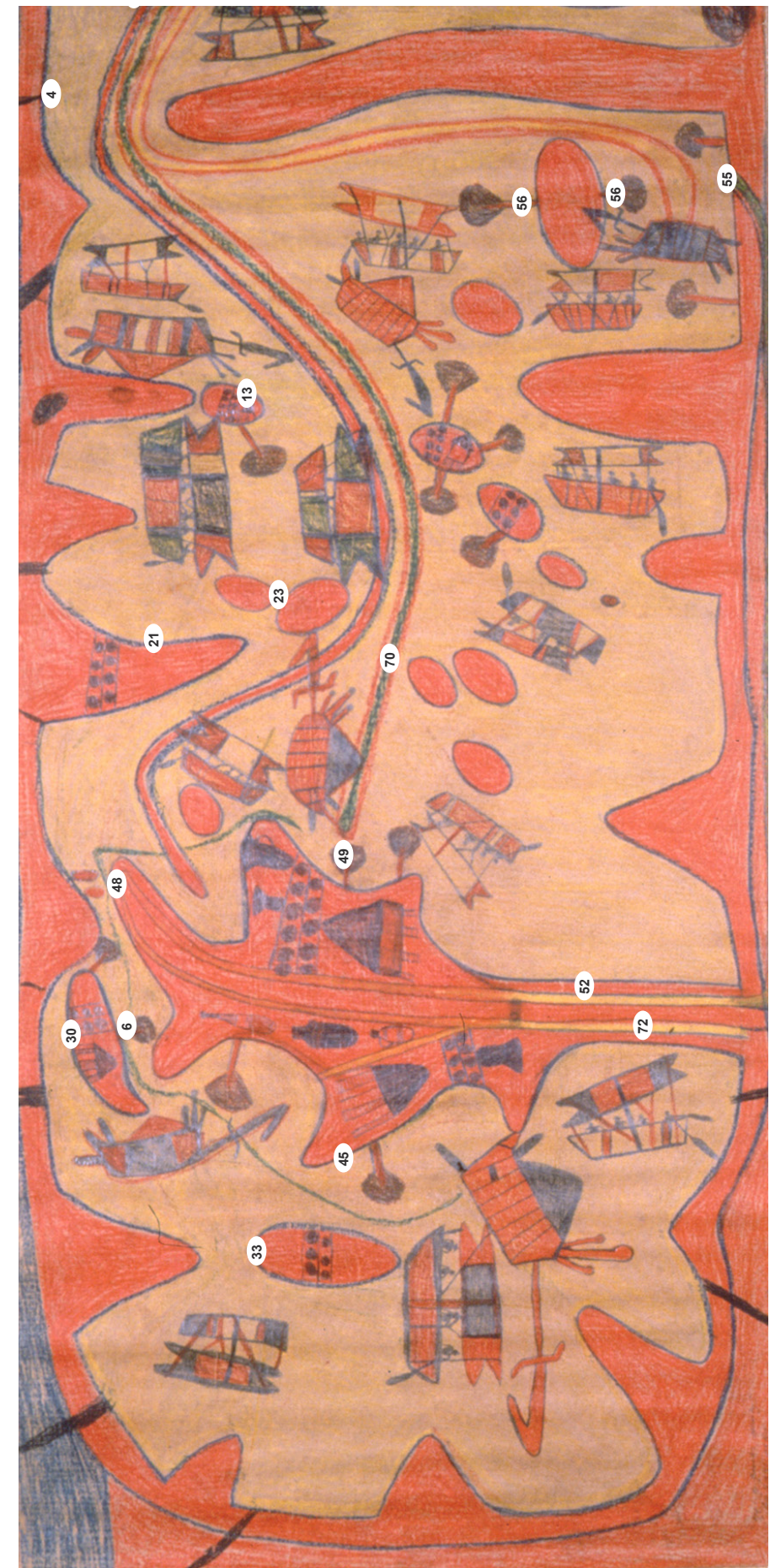


Fig. 1.7: Mawalan's drawing of Melville Bay, 1947

An Aboriginal Religious Cult of North-eastern Arnhem Land (1952).¹⁶³ The song cycles were gathered in roughly six months, largely with the assistance of Wandjuk Marika, who, by March 1947, had become Berndt's 'chief informant'.¹⁶⁴ In fact, Berndt had been collecting songs at such a furious pace that, as he told Elkin, he was 'obliged to "cut" drastically to avoid over-emphasising any one series'.¹⁶⁵ Further song cycles would eventually be published in *Love Songs of Arnhem Land*, originally intended for publication in the 1950s though finally published in 1976.¹⁶⁶ Catherine published her *Women's Changing Ceremonies in Northern Australia* in 1950. As well, together or separately, they published more than 20 articles in various journals, the majority of them on some facet of life in Arnhem Land, before embarking on field work in New Guinea in 1951. Such a publishing record puts Berndt's lamentations about Yolngu powers of concentration into a more suitable perspective.

As well as such intangible material, they, like Thomson, collected artefacts in such quantities as to delay their departure from Yirrkala. In May 1947 the Berndts went on a brief excursion with Frank Moy (who by this time had replaced Chinnery as Director of Native Affairs) to Groote Eylandt aboard the government launch and would have continued on to Darwin, except there was insufficient space for their collection, which was 'too precious to leave behind for the missionary to load on to the Mission boat', expected three weeks later.¹⁶⁷ It happened that they had a seven-week wait.¹⁶⁸ Catherine estimated their bounty to weigh between four and five tons, while Ronald thought it was more like three tons.¹⁶⁹ Some of the art and artefacts they collected at Yirrkala were put on show at the David Jones Art Gallery in Sydney in October 1949 and became the material for the Berndts' first book from this field work, *Art in Arnhem Land*, co-written with Elkin and published in 1950.

Before bringing this chapter to a close, there is one final aspect of Ronald Berndt's work at Yirrkala that needs to be considered — his conceptualisation of Yolngu social organisation. From his earliest writings, Berndt consistently employed the couplet *matha/mala* to explain the basic structure of Yolngu society, and, while the concept may have been

163 Berndt to Elkin, 23/4/1947. From his letters to Elkin it is also possible to date the topics: By December he was gathering Kunapipi material (10/12/1946); in January he was collecting dreams (19/1/1947); in March he was working on 'sacred and secular song cycles' (12/3/1947) and on Djang'kawu songs in particular (22/3/1947); by May he was working on the Wagilag cycle of songs (28/5/1947), EP.

164 Berndt to Elkin, 22/3/1947, EP. Berndt continues that Wandjuk is 'an introvert and takes himself very seriously: he was also 'spoilt' by over-attention during the Air Force period ... he is not in himself a good informant but his help is essential in translating and interpreting the songs etc which I obtain from the old men — as you will agree, it would be absurd for me to rely on my own knowledge of the language especially in matters relating to religious and ceremonial life.'

165 RMB to Elkin, 23/4/1947 EP.

166 An abridged Australian edition was published in 1976 by Nelson (Melbourne) under the title of *Three Faces of Love*, and two years later the University of Chicago published its edition. Berndt (1978:xi) says in the preface to this volume: 'The original version of this volume was assembled in the early 1950s, but I decided to withdraw it from the publisher who had accepted it. This was partly because I wanted to reorganize it, but also because I was not sure that its frankness and its erotic content would be appreciated by non-Aboriginal readers.' It features four of the crayon drawings, all of a sexually-explicit nature.

167 CHB to Isabel Houison, 26/5/1947 (NLA MS 482 Box 58 F857a).

168 RMB to Elkin, 6/7/1946, EP, reports the *Aoretta* 'arrived last night'.

169 CHB to Chinnery, 15/9/1947 (NLA MS766 Box 22 F42); RMB to Elkin, 29/7/1947, EP.

clear to him, it has left many others — anthropologists, linguists and lawyers included — perplexed. The concept, as we shall see, would cause unnecessary confusion in the eventual court case. Since *Art in Arnhem Land* is the Berndts' first volume and since it was supposedly written for a general audience, it is an appropriate text to consult. Here Yolngu are given the collective name of Wulamba, akin to Warner's Murngin. Wulamba territory is said to be 'divided among clans, *mala*'. So as not to misrepresent him, I quote Berndt directly. 'Each clan includes a number of *mata* [later rendered *matha*], or linguistic groups, or rather, of sub-groups of these, for each *mata* usually belongs to several clans of one moiety. The *mata* are especially important, for each exists almost as an entirely independent unit.'¹⁷⁰ A little later, on the same page, this statement appears: 'Clans are linked by common *mata*, and different *mata* are allied by belonging in part to the same clan, or to clans associated by totemic and mythological ties'. Rather than explaining what he meant by this, Berndt (and Ronald is solely responsible for the taxonomy) offered an elaborate table of 16 Dhuwa and 16 Yirritja *matha*. Some of these *matha* are associated with one *mala* only — this is the case for eight Yirritja and seven Dhuwa *matha* — while other *matha* have multiple links to *mala*. For example, the Dhuwa *matha* of Rirratjingu is associated with only one *mala*, Wururul; the Yirritja *matha* of Gumatj is linked with five *mala* — Raijang, Deiwaru, Bilkilji, Dulpoingu, Wulkawuta.¹⁷¹ As with Warner's naming of clans, I am in no position to comment on the status of these Gumatj *mala* or any of the other *mala* that appear in Berndt's table.

The problem, as Nancy Williams sees it, is essentially one of communication: while Berndt may have formed a reasonable understanding of group terms like *matha* and *mala*, he failed to comprehend that they were terms with the very specific meanings in very specific contexts.

What has been incompletely apprehended is the significance of context to Yolngu meaning. Yolngu use of rules of group designation is situationally governed ... It is the rule plus the situation that yields specific meaning. The rules may be applied in many different contexts to yield many different meanings.¹⁷²

All in all, Berndt applied the terms too broadly and in doing so created the impression that he was deploying the concepts in the same way as Yolngu used them. In fact, Berndt had created a theoretical or analytical concept that bore little resemblance to lived reality. As Williams comments: 'At issue is the tendency to assume "real" analogs for the [terms] that have been defined by analytic concepts and subsequently to relate them to other groups defined by Aborigines' concepts'.¹⁷³ For the sake of clarity, I adopt the widely accepted practice of equating clan with *matha* or language group throughout this thesis — hence Rirratjingu, Gumatj and so on.¹⁷⁴

170 Berndt, Berndt & Elkin 1950, p. 22.

171 *Ibid.*, pp. 23-24.

172 Williams 1986, p. 229.

173 *Ibid.*, p.223. I have substituted 'term' for her 'band', but in doing so I do not think I have not altered her original meaning.

174 For a list of the most common Dhuwa and Yirritja clans, see the Introduction.

VII

This chapter tells the story of the unveiling of north-east Arnhem Land to the outside world largely through the work of two very different anthropologists, Donald Thomson and Ronald Berndt. Happenstance brought both of them to this remote corner of Australia: the Calendon Bay incident propelled Thomson; the prospect of the Mountford expedition impelled Berndt. In some ways Thomson resembles Flinders: he has a penchant for adventure and map-making; he writes with passion and commitment about those he encounters.¹⁷⁵ Berndt, especially in his earliest published work, is much more like Warner — the cool, disengaged and seemingly impartial anthropologist. In his first books, Berndt’s focus is not on people, but on the timeless stories they tell him. The overall effect created by Berndt is to make his Yolngu subjects seem remote, exotic, unchanging and captive to eternal tradition. In his correspondence, however, Berndt is far less circumspect: he disparages his informants and is irritated by them. If for Flinders seafaring and writing are set along two axes, then for Geertz anthropology and writing exist on the same plane. For Geertz, anthropology has no life outside writing, and all anthropological writing lies on a continuum bounded by the purely personal and the utterly scientific — in his terms, between ‘the pilgrim’ at one extreme and ‘the cartographer’ at the other. In this schema, Thomson becomes the pilgrim and Berndt the cartographer; and yet Thomson inscribes maps, while Berndt merely transcribes Indigenous maps. While Berndt described the travels of ancestral beings throughout the region in great detail and named many of the places they visited in both *Kunapipi* (1951) and *Djanggawul* (1952), it is not until much later that he — and perhaps anthropology at large — began to think about sacred sites in a more theoretical and expansive way. And then, as we shall see in Chapter 4, Mt Saunders and Mt Dundas emerge, respectively, as the major sites of Nhulunbuy, closely associated with Wuyal the Sugarbag Man, and of Djawulpawuy, associated with Djambawal the Thunder Man.¹⁷⁶ In 1946, however, Mt Saunders and Mt Dundas are listed only as hills, and Djambawal lies off the coast.

175 Peterson (2003, p. xii) notes: ‘Thomson’s writing is unique in that it names Aboriginal people, presenting them as individuals and active agents in local history in a way few other writings do’.

176 From here on, I will use these as the standard spellings for these names.

Chapter 2: Father knows best

I

The preceding chapter described some of the earliest incursions into Arnhem Land by Europeans to map the country and its people. Until the end of World War 2, such efforts were sporadic: only missionaries and anthropologists ventured into this remote region for any length of time and came to know something of Yolngu ways. In this chapter the focus turns to the decade after the war, when the federal government began to assert control over Arnhem Land and its inhabitants in a systematic fashion. The man to oversee the harnessing of Arnhem Land was Paul Hasluck, who entered parliament in 1949 as the inaugural member for the seat of Curtin (WA) and who would serve as Minister for Territories from May 1951 until the end of 1963. In all he would spend 20 years in federal politics before becoming Governor-General in 1969. Hasluck came to parliament at the age of 44 and had by this stage made a name for himself as a journalist, diplomat and historian. He had written an MA thesis on the history of contact between Europeans and Aborigines in Western Australia, which was duly published as *Black Australians* in 1942. The dissertation, together with several speeches he gave as a backbencher, established Hasluck’s reputation as an informed and committed observer of Aboriginal affairs.¹ To the bureaucracy, however, Hasluck’s interest in Aboriginal affairs was taken to be his ‘pet subject’: that is, a topic area in which they might indulge their minister, thus allowing ‘him the vanity of feeling he was a creative force while in all other fields the public servants went ahead with the real business of government’.² As we shall see, Hasluck’s vision would be regularly undermined by bureaucratic meddling and inertia, and more than once Hasluck had to compromise his lofty ideals. Within four months of becoming minister, Hasluck, like his predecessors, had made a brief visit to Darwin to gain some first-hand knowledge of this part of his new domain and, unlike those before him, had convened the first of many Native Welfare Conferences.³ In his report to parliament on the conference — which happened to be his first major address on Aboriginal affairs since becoming minister — Hasluck affirmed assimilation as the government’s policy, though on this occasion he did not talk about assimilation in terms of citizenship, as McEwen had done. Rather, he said, his version of the policy was based on two ‘abiding and treasured principles of our Australian life’, which in turn derived from the vision of Australia as both ‘the land of opportunity’ and ‘the land of “the fair go”’. While he spoke of two principles, they were really just different facets of the tenet of equal opportunity, in which ‘the rights of the individual’ were to be balanced against ‘the general well-being of the community’.⁴ Thus, at this stage, Hasluck was not emphasising ‘the primacy of individuals’, which Rowse argues was Hasluck’s most ‘cherished doctrine’,⁵ though in this 1951 speech he was adamant

1 Porter 1993, pp. 193-4.

2 Hasluck 1988, p. 81.

3 The conference, which brought together all state ministers with responsibility for Aboriginal Affairs, was held in Canberra on 3 and 4 September 1951.

4 He called the first principle the ‘opportunity of equality’; the second he rather clumsily described as ‘there should be no division into classes but that men should stand on their own worth’ (Hasluck 1953, p. 15).

5 Rowse 1998, p. 122.

that there should be ‘no minorities or special classes’.⁶ This meant for Hasluck’s version of assimilation ‘that, in practical terms, in the course of time it is expected that all persons of aboriginal blood in Australia will live like white Australians do’; this did not however mean ‘the suppression of the aboriginal culture but rather that, for generation after generation, cultural adjustment will take place [and the] native people will grow into the society in which by force of history they are bound to live’.⁷ Many ‘coloured persons’, he added, had already learnt to live like white Australians, but ‘many more who by reason of ignorance and primitive habit certainly could not do so’ would in time and with guidance learn to do so.⁸

The following year, in his next major policy statement to parliament, Hasluck did talk of assimilation in terms of citizenship. He now focused on those ‘coloured persons’ in the Northern Territory for whom ‘the path to full citizenship [was] already open’ so long as they were ‘prepared for and capable of accepting the full responsibilities of citizenship’.⁹ All that stood in their way was the need to apply for exemption from the existing Aborigines Ordinance, a process that Hasluck knew was ‘irksome and even offensive’ to them¹⁰. Having previously been lobbied by the Half-caste Progress Association of Darwin,¹¹ Hasluck now proposed that ‘half castes’ no longer be subjected to the Ordinance, and, in due course, ‘[a]t one stroke of the pen in 1953 we ceased to regard as Aborigines about 1,500 persons of mixed blood who were previously so regarded’ and who henceforth were to be regarded as full Australian citizens.¹²

While the remainder of the territory’s Indigenous people was said to have ‘citizenship by birthright’, courtesy of the *Nationality and Citizenship Act* of 1948,¹³ they were not, according to Hasluck, as yet ready to accept the responsibilities of citizenship and would require the ongoing ‘guardianship and tutelage’ of the state ‘for many years to come’. In the meantime any rights as citizens they may have had would be suspended. All those in need of such guidance would no longer be known in legislation as Aborigines, but rather as wards. According to Russell McGregor, Hasluck, from his study of history, was convinced that the ‘ever more rigorous definitions of “Aborigines” brought about ever diminished Aboriginal rights and responsibilities’ and had only served to isolate them further from the rest of the Australian population.¹⁴ While Hasluck ‘was under no illusion that deleting “Aborigines” from legislation would, in itself, ensure [a] “coming together”’,¹⁵ it was, it seems, a way of beginning to halt such polarisation of Australian society.

6 Hasluck 1953, pp. 15-16.

7 *Ibid.*, pp. 16-17.

8 *Ibid.*, p. 16.

9 CPD, HR, 6/8/1952, p. 44.

10 *Ibid.*, p. 45.

11 Hasluck met the delegation in Darwin on 25/8/1951 (NAA A431 1950/597). See also Wells 2005, p. 125.

12 Hasluck 1965, p. 438.

13 Until this legislation the only legal identity of Australians was that of British subject. The 1948 Act was not the result of new-found nationalism, but rather an initiative promoted by Britain, which, after Indian independence was granted in 1947, did not want its colonial subjects, and particularly ‘coloured’ ones, migrating to the imperial hub (NAA A446 1962/65761 Part 2; see also Chesterman & Galligan 1997, p.119).

14 McGregor 2005, p. 515.

15 *Ibid.*

Henceforth, Hasluck insisted, need, rather than race, would be the sole criterion for the proposed Welfare Ordinance, and anyone — black or white — deemed to be in need of the (temporary) assistance or ‘special care’ of the state would henceforth be classified as a ward.¹⁶ To Hasluck’s mind, the introduction of the catch-all category of ward was a ‘logical’ step in ‘advancing’ Aboriginal welfare and recognising Aboriginal people ‘as having the same status and rights as other Australians’, even while obliterating the very mention of their Aboriginality and even while denying their newly-found rights.¹⁷ For him, it was a way of transforming a racial problem into a social one. In this way of thinking, it was also necessary to do away with the old Native Affairs Branch and to replace it with a more universally-oriented Welfare Branch. Shortly I will detail the difficulties associated with the passing and implementation of the new Welfare Ordinance, but first I need to attend to the second strand of Hasluck’s announcement that day, 6 August 1952.

Hasluck told the House of Representatives that only 6,000 Aborigines were then living on the Northern Territory reserves, and of these only 10 per cent were ‘living a fully tribalized life’. In saying this, he was neither seeking to quantify the scope of the new Ordinance nor suggesting that reserves — which had been established for the use and benefit of Aborigines in the era of protection — were no longer needed, but rather that they were now needed less extensively for ‘hunting grounds or for tribal ceremonial sites’. The government, he said, recognised ‘the force of the argument that reserved land which is not in fact being used by the natives should not be closed forever to exploration or development’. The government did, however, acknowledge that any ‘excision of land from reserves, or any exploration of reserves, must be handled with care and gradualness in order to safeguard the interests of the natives’. He proposed ‘some form of compensatory benefit’ to soothe any upheaval: any mining on reserved land would attract royalties at the rate of 2.5 per cent, or double the usual rate, that would be put into an Aboriginal trust fund. For good measure, he added: ‘As there is in no sense anything in the form of a personal title to the lands which the Crown reserved, that compensatory benefit will have to be accorded to the natives as a whole and not to any single person or family’.¹⁸

At this juncture I digress to draw attention to a significant landmark in the history of Indigenous land rights. It came when Kim Beazley (Snr), the Labor member for Fremantle,¹⁹ responded to Hasluck’s statement. Beazley noted that it was only through the establishment of Aboriginal reserves that ‘some of the interests of the Australian natives had been protected’, but now the interests of miners were coming to the fore. ‘We are only humbugging ourselves if we assume that the natives will ever own any of that land, or that they will start in an advantageous position in the exploitation of minerals in the reserves.’ He went on to articulate his concept of land rights, and, since this is the first such statement in the federal parliament, it is worth recording at length:

If citizenship is not to include such rights as ownership of property, the other conces-

16 CPD (HR), 6/8/1952, p. 45.

17 Hasluck 1988, p. 86.

18 CPD (HR), 6/8/1952, pp. 46-7.

19 He held the seat from 1945, following the death of the incumbent, Prime Minister John Curtin.

sions do not matter very much. The essential value of native land reserves was that the aborigines' rights there were established. If that right is to be destroyed, the only other system of rights in land is the right of definite ownership. The position of the aborigines in any scramble for land following the breaking up of reserves will be so disadvantageous that they will have to be buttressed by Government action to ensure that they get fair quotas of land. Otherwise, they will be landless and devoid of rights in land ...

.²⁰

In his turn, Hasluck countered that 'aborigines do not need land in the sense that it is necessary for them to have a plot of land to cultivate because, in their transitional state, they have no understanding of the art of cultivation'. He did, however, agree that 'there is an obligation on us to give land and show them how to use it, and to provide for them employment and a place in the community ... and bring them to a way of life that is novel to them'.²¹ As we shall see later in this chapter, it would be another 11 years before the House of Representatives again heard mention of Indigenous rights to land; and, significantly, on this second occasion it was again Beazley who raised the issue in response to another of Hasluck's pronouncements of another restriction to Aboriginal reserves — this time, the excision of the entire Gove Peninsula.

Before returning to discuss in some detail the ways in which the policies on welfare and Aboriginal reserves unfolded, it is also worth noting the effect of Hasluck's two-pronged announcement had on the administration of his portfolio. On the one hand, the minister and the department were supposed to ensure the welfare of the territory's Indigenous population; and, on the other hand, they were to promote the economic development of the Northern Territory.²² Hasluck would later recall that he was not unaware of a potential for a conflict of interests, but was not acutely troubled by the prospect. In his memoirs he did note, however, that if a strong case 'made in the national interest to allow mining on reserves' were put to Cabinet, he 'could not resist' it, but on such occasions he did try to impress upon his fellow ministers the need 'to protect the interests of the natives'.²³ I turn now to consider the history of the troubled Welfare Ordinance of 1953.

II

The Northern Territory Legislative Council²⁴ did not find any difficulty in lifting the restrictions on half castes: it simply passed amending legislation which deleted every mention of 'half castes' from the existing Aboriginals Ordinance.²⁵ The draft Welfare Ordinance, however, caused council members no end of bother with much acrimonious debate and a steady flow of terse correspondence between Canberra, Darwin and occasionally Perth over many months. No matter how often Hasluck or the Secretary of the Department of Territories, C.R. Lambert, attempted to explain the criterion of need,

20 CPD (HR), 12/8/1952, pp. 168-169.

21 *Ibid.*, p. 185.

22 Altman 1983, p. 5; Porter 1993, p. 211.

23 Hasluck 1988, p. 112.

24 When the Legislative Council was established in 1947, it had seven official and six elected members; by 1960 it had 17 members — six official, eight elected and three appointed by the Governor-General. The Northern Territory achieved self-government in 1968.

25 Ordinance No. 7 of 1953, reserved on 20/2/1953 and given assent on 17/4/1953.

council members simply could not follow Hasluck's logic. Lambert, for example, wrote to Frank Wise, the Administrator and chairman of the Legislative Council, that 'the Minister does not want legislation depriving persons of citizenship and creating special provisions for their care and welfare to be restricted in application to aboriginals or part-aboriginals'.²⁶

For his part, Wise wrote to Lambert in some exasperation on 14 April 1953: 'It is recognised by Members [of the Legislative Council] that all the difficulties would disappear if the people for whose protection the provisions relating to wards are included could be referred to simply as "aborigines"'.²⁷ Hasluck would have none of this. Having initially told council members that 'he did not wish to give them directions and that they were free to vote in the Council as they thought proper',²⁸ Hasluck now, in response to reading Wise's letter, restated the policy in no uncertain terms and a little later told the department that his restatement was to be regarded as 'a direction of policy' and it was up to Darwin to make the next move.²⁹

Council members rose to Hasluck's challenge in a most creative fashion: they came to rely upon the Northern Territory Electoral Regulations, gazetted in 1922. Regulation 22 specifically excluded 'Aboriginal natives' from enrolment and voting and so the definition of a ward became anyone who was not entitled to vote.³⁰ The 'drafting semantics' were, as Rowley wryly observed, 'ingenious',³¹ but reliance on the electoral regulations proved to be only a temporary solution. It was only one of the many problems that beset the ordinance in its short existence.

One immediate problem that arose with the passing of the ordinance — subtitled 'An Ordinance to Provide for the Care and Assistance of Certain Persons' — in the Legislative Council on 1 June 1953 concerned the identification and enumeration of wards.³² Section 14 (1) stated that anyone could be declared a ward by dint of: a) their manner of living; b) their inability, without assistance, to manage their own affairs; c) their standard of 'social habit and behaviour'; and d) their personal associations. Section 16 required a register of wards to be compiled, though there was no direction given here or in any other part of the ordinance as to how wards were to be registered. Common sense might suggest a piecemeal approach: that is, as people came to the attention of officials, they would be declared wards and entered upon the register.

The bureaucracy, however, followed a very different logic — one that might be called a dragnet approach. According to this logic, it was deemed necessary to compile a complete register of all wards *in advance* of the legislation's implementation. The methodology was in fact suggested by Lambert himself: he expected one of the first tasks for the

26 Lambert to Wise, 4/9/1952 (NAA A452 1952/162). Both Lambert and Wise were appointed to these positions when Hasluck became Minister.

27 Wise to Lambert, 14/4/1953 (NAA A452 1953/9 Part 1).

28 Cited in same letter from Wise to Lambert, 14/4/1953 (NAA A452 1953/9 Part 1).

29 Hasluck to Wise, 17/4/1953 and telegram, 1/5/1953 from Perth to Canberra: 'Refer you minute Welfare Ordinance 29th April [6pp, Assistant Secretary] instead of making these unnecessary interventions please regard my letter to Administrator 17 April as a direction of policy stop I am informing the Administrator to disregard your communication, the next move must come from Darwin' (NAA A452 1953/9 Part 1).

30 Welfare Ordinance, s. 14 (2) stated that anyone who was entitled to vote shall not be declared a ward. See also Rowley 1971 (a), p. 394.

31 Rowley 1971 (b), p. 297.

32 NTA Annual Report 1949-1953, p. 24.

new Welfare Branch would be ‘to ascertain and identify each of the aboriginals under its care’. In Lambert’s estimation it should take no more than two or three months to photograph and to record the names and other particulars of 80 to 90 per cent of the Aboriginal population if mission staff and others cooperated and if welfare officers were ‘sufficiently active’.³³ What seemed a sensible and manageable course of action in Canberra soon proved to be a set of thorny and protracted issues in Darwin.

The first hurdle was which name to record. There were many on offer: ‘personal names, secret names, nicknames, totemic or Dreaming names, section or sub-section names, local group or horde names, tribal or language group names, and [sometimes] European names as well’.³⁴ As the acting Director of Welfare, R.K. McCaffery, observed, it was necessary to ‘consider a reliable and sufficiently complete system of statistical data for each individual’ to further the aims of assimilation and to recognise ‘the growing importance of the individual aborigine as a potential citizen with full citizenship rights’.³⁵ McCaffery confined himself to the issue of naming and the standardisation of names. For him, this meant, in the first place, the invention of surnames: either ‘the local group or horde name’, where it was known; or ‘the aboriginal name of the locality’ where the person lived or was born; or a name ‘with definite associations with their aboriginal past, giving them ties with their aboriginal heritage’. When it came to personal names, a person’s ‘real and chief personal name’ should be ascertained, and any European name noted.

Another matter to consider was the identification of wards. Should they be photographed, as Lambert suggested? Finger-printed? Should they be obliged to carry some form of identification with them? The matter did not receive much attention until Hasluck received an unsolicited offer of help from J.W. Newton, the General Manager of Polarizers Pty Ltd, the Australian distributors of Polaroid cameras. While Mr Newton could claim no direct experience, he felt sure he could draw upon the expertise of ‘our sister subsidiary in South Africa’, which had photographed over 11 million ‘natives’ there.³⁶ In Wise’s opinion, there was no need for photographs, finger prints (the territory had no resident expert) or identity cards (which would be a reminder of the detested ‘dog tags’, as the old exemption certificates were known),³⁷ though section 16 (3) specified that the Director of Welfare ‘may’ issue a certificate declaring whether a person ‘is or is not a ward’.

Officers from the Welfare Bureau began their census in 1955, and when it was completed — sometime in 1956 — the register of wards contained 15,700 names, which represented ‘all full-blood Aborigines who could be counted’.³⁸ It may be noteworthy that this figure was significantly higher (in the order of 150%) than that given by Hasluck to parliament as the rationale for the introduction of mining on Aboriginal reserves. In the end, no surnames were collected; but people were entered by ‘personal’

33 Lambert to Wise, 4/9/1952 (NAA A452 1952/162). Lambert insisted that photographs were only for ‘official purposes only and not for publication’.

34 McGregor 2005, p. 527.

35 McCaffery, ‘Identification and Naming of Aborigines’, address to the Missions-Administration Conference, 12/1953 (NAA A452 1953/138).

36 Newton to Hasluck, 18/1/1955 (NAA A452 1954/617).

37 Wise to Lambert, 15/2/1955 (NAA A452 1954/617).

38 NAA A452 1957/1580.

or European name, by ‘group’ (sub-section?) or ‘tribal’ (clan) name, and by ‘sub-district’, ‘sex’ and (approximate) year of birth.³⁹ What struck me when I stole a glance at the wards’ register was that for Yirrkala only two European names appeared: ‘Roy’ beside ‘Darainga’ (Dadaynga), and ‘Harry’ beside ‘Barlun’. By way of contrast, for the settlement immediately preceding Yirrkala in the register, only two ‘traditional’ names were recorded: European names were given for the vast majority of residents at the recently-established Warrabri station. Among the Warrabri population were six Topsies, four Tommys, three Snowys, three Stephens, two Sambos and two Sandys. How authorities expected to distinguish between them is a complete mystery. I take the number of European names recorded to be an index of the degree of alienation and dysfunction within a community; the corollary is the number of ‘real, personal’ names, as McCaffery called them, bespeaks the level of cohesion and autonomy in a particular community.

The register was eventually said to have been ‘published’ on 13 May 1957, the date on which the Welfare Ordinance finally came into force.⁴⁰ The ordinance might have been gazetted earlier, except that it was found, at the start of 1957, that the accompanying regulations had not as yet been drafted. The oversight infuriated Hasluck, who wrote a blistering note to Lambert to say that he had been ‘constantly and increasingly embarrassed’ over the past four years ‘by the failure of the Northern Territory Administration to make possible the commencement’ of the ordinance. He attributed the failure to ‘either disregard of policy or incompetence’, and would countenance no further delays beyond the end of April.⁴¹

As if to appease Hasluck, a farcical attempt was made to bring the Welfare Ordinance into force two weeks later. On 18 April, 1957 the government Gazette announced the proclamation of both the ordinance and its regulations, but behind the scenes there was a flurry of telexes to Darwin. One advised Harry Giese, who had taken up the position of Director of Welfare in October 1954, that there were ‘very pressing reasons why the Welfare Ordinance should commence today’ and for this to happen the register of wards would have to be put on public display, if publication could not be achieved. ‘If you cannot get [the] list typed then pin original to notice board as part of the posted gazette and set a guard on it rather than delay’ was the instruction to Giese.⁴² Another

39 Long 1992, pp. 125-126.

40 Printing of the register also caused delays. Initially, the only copy of the register was sent to the NSW Government Printer to estimate the printing cost, but when it was discovered there would be an eight-month delay, the NTA sought Canberra’s assistance in having the register returned. A quote was then obtained from the *Northern Territory News* — 1,000 copies for £2,170. Expenditure had to be approved first by Hasluck and then by Executive Council (A452 1957/1580).

41 Hasluck to Lambert, 3/4/1957 (NAA A452 1958/4955). It is curious to note that the delayed implementation of the Ordinance retarded neither the establishment of the Welfare Branch, another creature of that Ordinance, nor the appointment of Harry Giese as its director in November 1954. Until the proclamation of the new ordinance Giese was known as both the Director of Welfare and the Director of Native Affairs ‘to enable him to exercise the functions vested in that office by the Aborigines Ordinance’ (NTA Annual Report 1953-1955, p. 37). Giese had originally trained and worked as a physical-education teacher in Perth and Melbourne, before becoming the Queensland Director of Physical Education in 1942, the National Fitness Officer for the Commonwealth in 1947 and in 1953 an assistant principal training officer with the Public Service Board (Long 1992, p. 114).

42 Marsh to Giese, 18/4/1957 (NAA A452 1962/4360).

telex contained the regulations: in this Lambert also informed the newly-installed Administrator, James Archer,⁴³ that the same regulations, which had just arrived from the parliamentary draftsman, were being forwarded to Hasluck for his signature ‘and you will be advised by teleprinter or telephone should the Minister make any alterations’.⁴⁴ Indeed on that day, a typed notice which ‘purported to be a Government Gazette’ was found ‘hanging from a peg on one of the walls’ near the Legislative Council chamber; and on a table nearby was ‘a heap of papers, most of them typewritten’ with ‘a number of names of people who presumably were aborigines’. Some of the names had been crossed out, others were added in ink.⁴⁵ All this desperate activity was, however, in vain, because the posted regulations neglected to specify a commencing date and so were held to be ‘ineffective’.⁴⁶

A new notice proclaiming the ordinance and a new set of regulations was duly published in a one-page edition of the Commonwealth Gazette on 13 May 1957, though it would be months before printed copies of the wards’ register were available.⁴⁷ The commencement of the Welfare Ordinance caused another immediate difficulty: the definition of ward now lacked the necessary legislative underpinning. That definition had, of course, relied on regulation 22 of the Electoral Ordinance, which in its turn depended on the Aborigines Ordinance, which now had fallen into abeyance with the introduction of the Welfare Ordinance; and so it was necessary to amend the electoral regulations. Thereafter an aboriginal person who ‘is not a ward as defined by the Welfare Ordinance 1953-55’ was eligible for enfranchisement. The amendment was gazetted on 7 November 1957 and led to a fresh conundrum. The Crown Law Officer in Darwin, R.J. Withnall, had earlier predicted that ‘an impossible position could arise’ if this form of amendment were adopted. Henceforth, he said, a right to enrolment would depend upon a person’s status as a ward, while under the Welfare Ordinance the declaration of a ward would hang on ‘the absence of the right to vote’. As Withnall saw it, ‘the two legislative provisions would merely chase each other and freeze the position as at the time when the later one of them came into operation; for if the power to declare is dependent upon not being entitled to enrolment then all persons not so entitled and only those persons could be declared to be wards’. In other words, any Aboriginal person who had escaped being registered (and so declared) as a ward by the date the electoral amendment came into force was eligible to enrol and to vote, ‘and thus be freed forever from the liability to be declared’.⁴⁸

When this definitional problem came to his attention in May 1959, Hasluck must have derived some small satisfaction in writing that this — rather than the conceptualisation

43 Archer replaced Wise on 1/7/1956 and would hold the post until 31/3/1961.

44 Lambert to Archer, 18/4/1957. Another telex of the same day explained that the ordinance and the regulations had to appear before the lists of wards’ names because ‘declaration [of wards] is not valid until after the Ordinance commences’ (NAA A452 1956/210).

45 The description of the postings comes from Dick Ward, the elected member for Darwin, who recounted the story in the Legislative Council (NTLC Debates, 11/6/1957, p. 205).

46 Advice from the Secretary of Attorney-General’s Dept, K.H. Bailey, 8/5/1957 (NAA A452 1956/210).

47 An order for 1,000 copies of the register was placed with the *Northern Territory News* on 24 April, 1957 (NAA A452 1957/1580). The lack of readily available copies compounded the problem of identification of wards, and this caused problems in all sorts of areas, but particularly with the sale and consumption of alcohol.

48 Withnall to Giese, 1/9/1958 (NAA A452 1960/8435).

of ward — was ‘the initial error’ in the Welfare Ordinance and since this fault had been exposed he thought ‘the most logical step’ now would be to devise ‘some other means of identifying the persons who cannot be declared wards’.⁴⁹ Suggestions for alternative definitions and criteria were circulated, until finally in 1962 Hasluck directed that ‘[w]e should regard the declaration of a person as a ward as the last resort’.⁵⁰ By this time, however, other Commonwealth legislation had rendered the ordinance redundant. Following a parliamentary inquiry into Indigenous voting rights in 1961, the federal Electoral Act was amended in the following year to permit all adult Indigenous people to enrol and vote in national elections. The Welfare Ordinance was replaced in August 1964 with the Social Welfare Ordinance, which made reference to neither wards nor Aborigines, but which gave the Director of Welfare ‘a special responsibility to provide assistance to those people in need’.

Curiously, in a reminiscence of these times, Harry Giese chose, without the slightest hint of irony, to characterise the exercise of compiling the wards’ register as the first census of Aborigines anywhere in Australia.⁵¹ Hasluck in his memoirs — whether through understatement or forgetfulness — wrote that he grew ‘a little tired of all the complications’ that were thrown in the way of his assimilationist agenda; and his response to these irritations was to concentrate ‘on the practical tasks of advancing’ Aboriginal welfare.⁵² From 1954, Hasluck did begin to note real change, which he attributed to ‘the energetic direction of Giese’, and the Commonwealth did start to invest in improving Aboriginal health, housing and education, but this is only part of the story. In 1955, Hasluck was still trying to control the runaway welfare policy by issuing a ‘cautionary minute’, warning departmental officers that it was not the objective of his policy to gather the territory’s Aborigines onto missions and government settlements.⁵³ Since 1953 the populations at such settlements had increased by some 23 per cent, and plans were, or were soon to be, afoot to open new government settlements at Warrabri and Maningrida; later at Papunya and Amoonguna; and perhaps also at Blue Mud Bay and Trial Bay (both in north-east Arnhem Land).⁵⁴ Hasluck would regard assimilation a failure if it only resulted in ‘a series of flourishing native settlements in which the majority of the native peoples were living apart from the rest of the community’. To stress the point, he added: ‘The final test of our policy is the progress made by the natives (i.e. the human beings to whom we are ministering) and not the flourishing state of a settlement (i.e. the institution we have created for our own purposes)’.⁵⁵ It is salutary to record that at the end of

49 Hasluck to Lambert, 18/5/1959 (NAA A452 1960/8435).

50 Hasluck to Administrator Roger Nott, 20/8/1962 (NAA A452 1960/8435).

51 Giese 1990, p. 9.

52 Hasluck 1988, pp. 86-87.

53 Hasluck to Lambert, 14/9/1955 (NAA A452 1957/761).

54 The combined populations of missions and settlements at 6/1953 was 6321 (NTA Annual Report 1949-1953); and at 6/1956, 7792 (NTA Annual Report 1955-56). Construction for Warrabri began in 5/1955 and when it opened in 6/1956 the residents from Phillip Creek settlement were relocated (NTA Annual Report 1955-56, p. 35). By 6/1957 100 adults and 90 children were living at Maningrida (NTA Annual Report 1956-57, p. 40). Work began on Papunya in 1957-58 and on Amoonguna in 1960-61. When these stations were opened, the respective populations of Haast’s Bluff and The Bungalow were transferred (NTA Annual Report 1957-58, p. 37). Blue Mud Bay and Trial Bay are mentioned in the NTA Annual Report for 1955-56, p. 35.

55 Hasluck to Lambert, 14/9/1955, NAA A452 1957/761.

Hasluck's tenure with the Department of Territories, the combined population for missions and government settlements in the Northern Territory stood at 9,417 — an increase of almost 50 per cent on the figure when he came to office.⁵⁶ Another relevant statistic to note is that, notwithstanding Hasluck's 1952 statement, the actual area of Aboriginal reserves in the Northern Territory had risen by 42 per cent — from 66,000 square miles (105,600 km²) in 1953 to 93,670 square miles (149,872 km²) by 1963.⁵⁷ Figures like these make it clear that there was a thriving place for both reserves and settlements within the policy of assimilation.

So slow too was progress in changing the circumstances of wards' lives that by 1959, it was estimated that only 17 out of the 15,000 or so wards had managed to be exempted from the Ordinance, and most of them had escaped through marriage.⁵⁸ Thus one of the criticisms levelled at the ordinance was that it proved most difficult to have the status of ward rescinded; another was that it was far too easy to be declared a ward; and another had to do Giese's excessive powers in these and other matters. There was, as Jeremy Long notes, a growing and discernible 'lack of fit between the assimilationist goal [of advancement] and the legal inequality maintained by the Welfare Ordinance'.⁵⁹ I did not set out to give such a lengthy account of the Welfare Ordinance, but the more I investigated it, the more peculiar the whole affair seemed. While it may be an aberrant example in the history of public administration, the entire episode is instructive in a number of ways. The story about how the category of ward came to be created reveals an inflexibility or a stubborn streak in Hasluck's mindset, which others like McGregor have also detected.⁶⁰ It shows Hasluck's deep conviction in the certitude of his thought and his determination that his will would be done. At no stage — not even in his memoirs — does Hasluck reflect upon or resile from his original idea. The story also bears out Marilyn Lake's observation that Hasluck's preference for the 'terminological nicety' of 'ward' was symptomatic of his abhorrence of difference, which to him spelt 'disintegration, division and deformity'. It was, as she points out, an attitude he formed while working at the United Nations at the time the Universal Declaration of Human Rights was being formulated;⁶¹ it was an attitude he did not seem inclined to revise. This attitude, it seems to me, also informs Hasluck's distaste for minority groups and, axiomatically, for special legislation targeting minority groups, but, as this story also shows, circumventing such personal repugnance caused confusion, even antagonism, and caused Hasluck to compromise his principles.⁶²

The elimination of difference was also the ideal to which Hasluck's policy of assimilation was said to be directed.⁶³ While his early speeches on the policy dwell on equality of opportunity, in later speeches he came to emphasise 'a single Australian

56 NTA Annual Report 1962-1963, Appendix XXII, Tables 3 and 4, pp.118-119.

57 These figures are taken from the NTA Annual Reports for 1949-53, p. 25 and 1962-63, p. 43 respectively.

58 McGregor 2005, p. 521. Wards did not live exclusively on settlements; some, for example, lived and worked on pastoral leases.

59 Long 1992, p. 151.

60 McGregor 2005, pp. 513-514.

61 Lake 2005, p. 253. Hasluck was part of the Australian delegation to the UN from 1945 until March 1947.

62 McGregor 2005, p. 520.

63 Rowse 2005, p. 238.

community', in which all were to be not only equal but also similar (if not the same).⁶⁴ In the story of the initial articulation and implementation of assimilation that I have outlined, the coupling of assimilation with citizenship occurs very early. In fact, the terms become almost synonymous for some officials, as already seen with McCaffery's proposed nomenclature. As previously mentioned, at this early stage Hasluck did not talk exclusively in terms of the individual citizen, though later he would and then it was usually in the context of the breakdown in Aboriginal communities.⁶⁵ It was Hasluck's abhorrence of difference, rather than a specific commitment to individualism, that motivated the Welfare Ordinance and his general approach to assimilation. If it is in fact necessary to choose a 'most cherished doctrine' for Hasluck, then my nomination would go to his attitude towards difference. Where Hasluck's bias towards individualism does come to the fore, as I show in due course, is in his blinkered view of title to land.

Finally, the stories of how the Welfare Ordinance came to be passed and how the wards' register was compiled are fine examples of the lengths to which legislators and bureaucrats can go when confronted with what looks to them like a minister's intransigence.⁶⁶ In these acts they were finding their own ways of making Hasluck's policy workable — of covering the fact that their emperor had no clothes — even while subverting it. In his memoirs, Hasluck lamented that in his domain he found 'far too many people who want to declare and adopt a policy and follow it as though it were a set of rails',⁶⁷ but these examples show officials taking initiative much to the displeasure of their minister. In his memoir too Hasluck wrote of his irritation at the rigmarole of legal definitions of ward and at the protracted census,⁶⁸ but all he could do was to issue fresh and ever more testy directives in the hope of keeping his policy on track.

In drawing this discussion of assimilation and the Welfare Ordinance to a close, I want to consider the views of a critic much closer to Hasluck's own time. I do so to show that perspectives radically different to Hasluck's were on offer at the time and that they were put directly to the Northern Territory Administration; I do so too to draw attention to a voice that has been seldom heard, but one that recurs in the course of this thesis. The voice is that of the Rev. Arthur Ellemor, who at the time was the Chair of MOM's Northern District and who had close and extended contact with Yolngu while Superintendent of the Milingimbi mission for almost all of the 1940s. Towards the end of 1953, Ellemor aired his views at the first Mission-Administration Conference in Darwin. For the most part his critique is measured and constructive; it is only in commenting on the ordinance that Ellemor becomes more strident. He pointed to the 'anomalous position' in the ordinance whereby an Aboriginal person, upon achieving citizenship status, 'would no longer be allowed to remain on his own country', and argued that if such a person passed the 'tests of worthwhile service to the community, regular employment, self-support' and so on, then 'citizenship should be granted "in

64 See, for example, Hasluck's letter to Leydin, 2/1/1952, an extract of which appears in Hasluck 1988 at p. 127.

65 See, for example, his address to the 1959 ANZAAS conference at Hasluck 1988, p. 133.

66 I have borrowed the term from McGregor 2005, p. 518.

67 Hasluck 1988, pp. 48-49.

68 *Ibid.*, p. 86.

situ””.⁶⁹ He also called the legislation ‘a farce’ and ‘a piece of hypocritical humbug’ for the way it ‘assiduously avoid[ed] using the term “Aborigine””. He insisted that Indigenous people were ‘not ashamed to use the term ... of themselves’, and asked why both the word and its referents were treated as ‘unmentionables’.⁷⁰

Ellemor recognised that assimilation was premised on cultural difference and, unlike Hasluck, insisted that the differences between Indigenous cultures and European cultures remain alive. He noted too that the term assimilation implied the absorption of one culture into another, but doubted whether the proponents of the policy had ever contemplated ‘an attempt to make European culture [more] like Aboriginal’ culture.⁷¹ So far as he could ascertain, while Aboriginal people were eager ‘to grasp at the benefits of European life’, they did not want to be assimilated, though they did favour ‘an amalgamation of their culture and ours’. For Ellemor, assimilation meant ‘a foreclosure on Aboriginal life and culture’, if not their extinction, whereas amalgamation meant ‘the recognition of Aboriginal culture as an element of continuing worth’, as well as allowing Aboriginal people ‘themselves to work out the modification of their culture and to adapt themselves to the European challenge’.⁷² He cautioned that Indigenous languages must be maintained, along with ‘all the precious things that language enshrines’ — ‘a people’s myths and legends, songs and corroborees, laws and religious beliefs’ — and that these languages should not be supplanted by English ‘and the social values it enshrines’.⁷³ Ellemor did, however, welcome the policy’s promise of integrating ‘full-bloods’ into the wider community, especially if this meant giving them the necessary skills to participate more fully in the mainstream economy. He also acknowledged ‘the already-existing political sense’ of tribal elders and welcomed any additional training so that they might ‘take their place in a widening circle of political affairs’. He urged close consultation between officials and Indigenous communities so that Aboriginal opinions could be factored into the development and implementation of the policy. At the meeting he also canvassed the issue of land rights, and I shall consider his suggestions on the matter at the close of this chapter. But in the meantime I turn to look at the way mining began to gain a foothold on Aboriginal reserves and more specifically how mining took hold on the Gove Peninsula. Like the stories of assimilation, these are stories about false starts, hollow promises, imperious attitudes, compromise and further disillusion on the part of the minister. Here too Ellemor offered a timely warning: ‘The present nibbling at reserves for mining purposes must be watched most carefully, lest the end result be nothing left for the Aborigines’.⁷⁴

III

One of the lessons the federal government had learned from World War 2 was that Australia needed a robust air force and thus needed to be self-sufficient in producing aluminium from which planes could be manufactured.⁷⁵ With the establishment of the

69 Ellemor 1953, p. 8 (NAA A452 1953/138).

70 *Ibid.*, p. 9.

71 *Ibid.*, p. 2.

72 *Ibid.*, p. 4.

73 *Ibid.*, pp. 5-6.

74 *Ibid.*, p. 7.

75 Hasluck 1988, p. 111.

Bureau of Mineral Resources (BMR, within the Department of National Development) in 1946, a methodical search of remote areas of the continent for bauxite and other minerals began in earnest.⁷⁶ Bauxite was first found in the Wessel Islands, off the coast of Arnhem Land, in 1949, and again in vast quantities on the Gove Peninsula in 1952. Within a month of the announcement that mining would be allowed on Aboriginal reserves, Hasluck permitted the Wessels to be excised from the Arnhem Land reserve.⁷⁷ By 1955 it was estimated that the Gove bauxite reserves stood at 2.5 million long tons of measured ore and a further 135 million tons of indicated ore.⁷⁸

From records of the time, it can be seen that Hasluck regularly (perhaps routinely) asserted the welfare needs of Indigenous people, but, more often than not, these came a distant second to the demands of mining interests and the national interest. For example, he originally intended that the Mining Ordinance allow prospecting and mining only on Aboriginal reserves, but not on mission leases within those reserves. In a minute to Lambert, dated 31 October 1952, he stated: ‘No rights for prospecting or mining are to be granted at present in respect of any mission lease or in respect of land occupied by a mission’.⁷⁹ Scarcely two weeks after this memo, however, Wise, the Administrator, wrote to Hasluck asking him to reconsider this position: the Aluminium Production Commission, which had quickly acquired prospecting rights in north-east Arnhem Land, sought Wise’s permission to prospect on the Yirrkala mission lease and he in turn had sought the reaction of the most senior MOM representative, Ellemor, who, according to Wise, foresaw no particular difficulty with the request.⁸⁰ Hasluck acquiesced, but added that ‘if mining is to take place in Arnhem Land it should commence on a portion of the reserve as far away as possible from any congregation of natives’.⁸¹ Again Hasluck was compromised, undermined.

As he had done with assimilation, Hasluck felt the need in 1957 to restate his policy on mining on reserve land. Any mining should, generally speaking, be ‘large scale’ and ‘of some national importance’; it should also benefit the Aboriginal residents. If the mining were for a lengthy period, the affected area should be excised from the reserve; and if mining were to take place on a mission it would require a great deal of advance notice ‘to enable satisfactory alternative arrangements to be made for the mission and for the wards on it’. For whatever reason, he also issued instructions that local missionaries were not to be involved in any discussions about mining; the only negotiations were to be ‘with the governing body of the Mission at its headquarters’.⁸²

Perhaps the restatement this time was for the benefit of the legal drafters, who would soon set about framing amendments to the Mining Ordinance. The amended legislation, in place by July 1958, only ever covered two agreements to mine on Aboriginal reserves — on mission leases at Gove (from 1958) and on Groote Eylandt (from 1963)—

76 Hasluck records that the Geological and Geophysical Survey of Northern Australia ‘had done the groundwork for a systematic search’ before the war (1988, p. 111).

77 Hasluck 1988, p. 113.

78 The survey was conducted by the New Guinea Resources Prospecting Co on behalf of the BMR (NAA A452 1963/5134).

79 NAA A4940/1 C2323 Part 1.

80 Wise to Hasluck, 26/3/1954, NAA F1 1952/649.

81 Hasluck to Wise, 12/4/1954, NAA F1 1952/649.

82 Dated 20/12/1957; NAA A452 1961/7074.

before the *Northern Territory (Land Rights) Act* came into force in 1976.⁸³ In the case of Groote Eylandt, the deal to mine manganese was struck directly between the Church Missionary Society and BHP in 1962; by 1965 actual mining had begun and the first royalties were flowing directly into the Groote Eylandt Aboriginal Trust.⁸⁴

For the bauxite deposits at Gove, negotiations and an eventual start to mining were much more protracted. The initial negotiations were conducted between the federal government, the Northern Territory Administration, mining company Comalco and the Methodist Overseas Mission.⁸⁵ On 17 November 1958 the Commonwealth granted Comalco a Special Mineral Lease (SML) over an area of 21.8 square miles (35 km²) to conduct a more extensive survey of the bauxite deposits. That lease was granted for 42 years and would henceforth be known as SML 1. The amended Mining Ordinance had created SMLs, which allowed for an area of up to 25 square miles (40km²) to be mined under terms and conditions set by the Minister for Territories and without reference or appeal to the Northern Territory Mining Warden's Court; by contrast, more usual mining leases covered areas up to only 80 acres (32 hectares) and were issued by the Mining Warden.⁸⁶

In January 1961 Comalco pulled out of Gove in order to concentrate on exploiting the world's largest bauxite deposits at Weipa and so transferred SML 1 to the British Aluminium Company (BAC).⁸⁷ By the time of the transfer, the Commonwealth had come to insist that any deal for mining bauxite had to have a 'value-added' component: while some raw bauxite could be exported, the federal government demanded that processed aluminium at best or refined bauxite (alumina) at least was to form a substantial part of exports from Gove. As Crough notes, the desire for processing 'reflected the "developmentalist" ideology of the governments of the time'.⁸⁸ Thus, under the terms of its agreement, BAC had undertaken to submit a detailed plan for mining and processing the bauxite by the end of 1962, but its proposal of 22 November of that year was judged by Cabinet to be 'very sketchy' and the company was granted a two-month extension to submit a more detailed plan, which was finally received on 22 February 1963. The main sticking point was that BAC was reluctant to commit to the construction of an alumina plant, though its revised proposal stated that, if it were permitted to mine 10 million tons, it would decide within three years whether to build an alumina plant, which it promised to have up and running by 1970 with an operating capacity of 250,000 tons a year.⁸⁹

Hasluck and the Minister for National Development, Senator W.H. Spooner, were clearly unimpressed and recommended to Cabinet in their submission of 24 April 1963 that

83 Altman 1983, p. 10.

84 *Ibid.*, pp. 9-11.

85 Comalco's formal title is the Commonwealth Aluminium Corporation Pty Ltd; it was a partnership between the British Aluminium Company (BAC) and Consolidated Zinc Pty Ltd.

86 Transcript, Select Committee on Grievances of Yirrkala Aborigines, Arnhem Land Reserve (henceforth referred to as SCT), p. 24.

87 In 1955 the extent of the Weipa deposits was estimated to be 200 million tons. Comalco was granted a lease over 2,380 square miles, some of which took in the Presbyterian mission at Jessica Point. The Comalco lease was for 84 years with a 21-year extension. Two-thirds of its output was to be refined in Australia (at Gladstone and Bell Bay) and the remaining third could be exported as raw bauxite. By 1971 it was extracting 10.5 million tons p.a. (Rogers 1973, Ch. 5).

88 Crough 1985, p. 8.

89 Cabinet Submission No. 643, 24 April 1963.

BAC forfeit its lease. As if to sway Cabinet's decision, they noted in that submission that 'world aluminium production capacity exceeds demand and the price of aluminium has fallen recently', though, oddly, no similar assessment was included in their earlier submission regarding new leases on the perimeter of SML 1 (see below).⁹⁰ Cabinet acceded to their recommendation on 8 May 1963, and the forfeit of SML 1 was announced in the same month.

In July 1961 the Gove Bauxite Corporation (GBC), a subsidiary of Duval Holdings, had been granted prospecting rights to the land surrounding SML 1. By March 1962, the Department of Territories was aware of discussions between Duval and the French aluminium giant Pechiney with a view to a joint venture. In May representatives from Pechiney were in Australia for further discussions and during their stay they held at least one meeting in Canberra.⁹¹ Perhaps it was the prospect of Pechiney's involvement that led Hasluck to observe in June that 'the plans for Duval Holdings may mature very quickly' and so he requested Lambert to have a survey of Melville Bay conducted by the Department of Works. Faced with the prospect of two mining companies (i.e., BAC and GBC) operating in the area, Hasluck felt sure that sooner or later he would be required to adjudicate on issues such as 'whether there should be one or two jetties, town sites, water supplies and sites for a treatment plant'. After five or so years of discussions with mining companies, Hasluck told Lambert that the time had come for the government to 'start to gather as much information as we can about the area'; he hoped the data might be useful 'in reaching our main objective, which is to bring about the early development of the deposits'.⁹² In reporting to Lambert the Department of Works officer recommended that all facilities be shared between the two mining companies, since '[i]t is considered desirable to have all white people living in one townsite rather than to permit each company to set up a shanty town of its own'.⁹³

On 18 January 1963 Cabinet agreed to issue three additional leases on the perimeter of SML 1 at Gove — SMLs 2, 3 and 4, covering some 57.3 square miles (91.7 km²) — to GBC. In granting these new leases, Cabinet made two significant concessions: the right to mine very close to the Yirrkala mission (see Chapter 3) and agreement to an excision.⁹⁴ The very next day, however, Hasluck and Spooner had to inform Cabinet that GBC was joining forces with Pechiney and that the joint project would have an alumina plant with a capacity of 500,000 tons in operation no later than the end of 1969 — an increase of 200,000 tons and an advance of two years on the original GBC proposal.⁹⁵ Cabinet instructed the Ministers 'to take a firm hand' in bringing the matter to a swift and satisfactory conclusion.⁹⁶ In a revised submission, Spooner was able to inform Cabinet that there was now a formal agreement between GBC, Pechiney and the Commonwealth, which 'may be subject to slight amendment depending on the outcome of discussions with the Methodist Overseas Mission regarding special conditions to safeguard the interests of the Yirrkala mission'.⁹⁷

90 *Ibid.*

91 NAA A452 1962/7372.

92 Hasluck to Lambert, 18/6/1962 (NAA A452 1962/3855).

93 NAA A452 1962/3855.

94 NAA A2354 1968/398 Part 2.

95 Cabinet Submission No. 531, 19/1/1963.

96 Cabinet Decision No. 611, 22/1/63.

97 Cabinet Submission No. 546, 6/2/1963.

Delays, including belated negotiations with MOM, meant that the leases for SMLs 2-4 were formally assigned to GBC only on 11 March, though it would be another two months until they reflected Pechiney's involvement: in April the leases were transferred to Gominco, Pechiney's Australian subsidiary, incorporated in the Northern Territory only on 19 March 1963.⁹⁸ None of these impediments, however, curbed the government's enthusiasm for the GBC/Pechiney project (henceforth referred to as Gominco), and, as if to cement the project, Prime Minister Menzies announced on 18 February the immediate commencement of the Gominco project, which, he said, would be worth £45 million and employ 300 people.⁹⁹ Just four days prior to this announcement, Senator Spooner had written to Hasluck doubting the wisdom of publicising the project: while he considered that 'there is some element of danger in making a press statement before the actual documents [are] signed', he did 'not think you can keep a deal as large as this quiet for any length of time'.¹⁰⁰ As Spooner predicted, the announcement did spark a flurry of publicity and protest, which, together with the MOM negotiations, is discussed in the next chapter.

IV

As part of its decision to grant the three additional SMLs to Gominco on 18 January, Cabinet also agreed to 'seek the Governor-General's approval to excise an area from the [Arnhem Land] Reserve for Wards', and on 15 March the Governor-General, Viscount De Lisle, duly allowed 140 square miles (224 km²) to be excised from the reserve — that is, 60 square miles (96 km²) over and above the total mineral leases, or, in other words, the entire Gove Peninsula (see Figs 2.1 and 2.2).¹⁰¹ Both Comalco and BAC had previously sought similar excisions, but 'because an excised area there would raise problems of welfare administration, no assurance [could] be given that the Gove Peninsula would be excised from the reserve', though by 1963 any such problem seems to have evaporated.¹⁰² As Hasluck would tell the House of Representatives on 9 April, the excision 'was regarded as the most practical way of handling the administrative arrangements to be made in respect of the mining venture and the welfare of the aborigines'. Remarkably, the excision was the first of a number of measures Hasluck listed that were designed 'to protect the interest of the aborigines'.¹⁰³ In reality, though, the excision was made for the pragmatic reason of allowing mining personnel free access to lease areas without the bother of having to apply for a fresh permit each time they wanted to traverse Aboriginal reserve land.¹⁰⁴ In this particular case, Hasluck told parliament, only 140 out of the 35,000 square miles (56,000 km²) that formed the Arnhem Land Aboriginal Reserve was being excised, implying that the Gove Peninsula was, in the larger scheme of things, a mere speck that would not be missed.

News of the excision generated a good deal of controversy and would quite soon lead to the direct political involvement of the Yolngu — matters which are addressed in

⁹⁸ NAA A2354 1968/398 Part 2.

⁹⁹ On the evening of the day of this announcement Menzies hosted a state banquet for Queen Elizabeth — the occasion of his famous utterance: 'I did but see her passing by, and yet I love her till I die'.

¹⁰⁰ Memo 14/2/63, NAA A452 1963/6178.

¹⁰¹ Cabinet Submission No. 528, 18/1/1963.

¹⁰² NAA A452 1956/1132.

¹⁰³ CPD, HR, 9/4/1963, p. 483.

¹⁰⁴ Cabinet Submission No. 528, 18/1/1963.

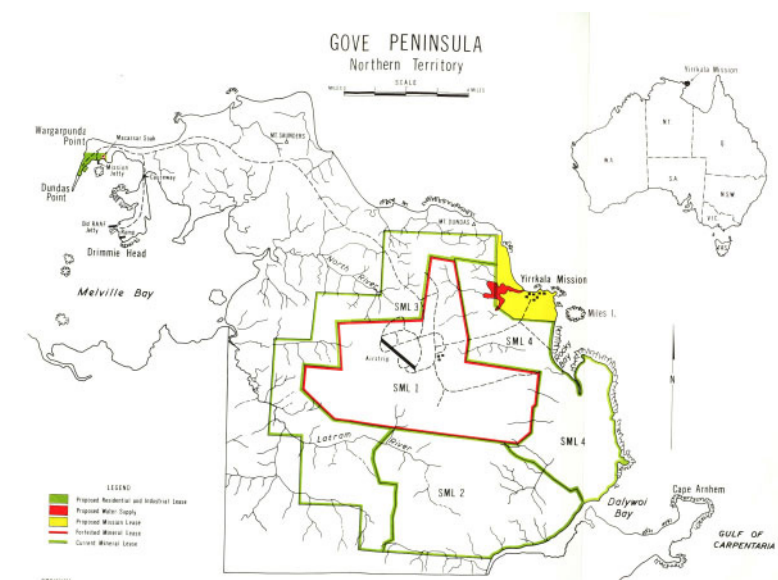


Fig 2.1: The extent of mineral leases, Gove Peninsula, 1963

detail in the following chapter. Reaction to the excision in the parliament was belated, though the delay was not of the Opposition's making, another matter discussed in Chapter 3. Six weeks were to elapse before Kim Beazley had the chance to respond to Hasluck's statement, and he did so in terms of land rights. In a motion he proposed that an Aboriginal title be created over all Indigenous reserves in the Northern Territory and that trustees be selected by Aboriginal people to manage this title. Beazley told parliament that the Commonwealth had created large reserves 'as land for aborigines', though this gesture was meaningless if 'when anything of any value is discovered' in particular areas, those areas were to be simply excised from the reserves. He said that until now no Australian parliament had 'faced the question of whether there is any aboriginal entitlement to land in the Commonwealth' and it was now time to adopt 'a revolutionary approach' by defining 'what rights in land and property' Aboriginal people actually had.¹⁰⁵

This time, Beazley's speech galvanised Hasluck into demanding a brief on the notion of Aborigines owning reserves from the head of his department. In his lengthy instruction to Lambert, Hasluck noted that the Opposition 'shows small appreciation of the many problems surrounding the granting of land titles', though he did concede that it might be possible 'to create a trust capable of receiving a title to [the] land' that comprised all Aboriginal reserves in the Northern Territory. He presumed the form of title to such land would be leasehold to be held by a trust, but foresaw a significant hurdle:

It is difficult however to proceed much further beyond this assumption unless we also assume that the aborigines are to remain in perpetuity as a separate community and that the use and benefit of the land held by the trust will be enjoyed not through individual ownership but through occupation by a whole community. The acceptance of the proposal made by the Opposition would seem to me to involve the acceptance of some form of collectivism.¹⁰⁶

¹⁰⁵ CPD, HR, 23/5/1963, pp. 1795-1797.

¹⁰⁶ Hasluck to Lambert, 27/5/1963 (NAA A452 1963/6064).

Given the parameters of the minister's request, Lambert's response was unsurprising. Since Aboriginal people 'lived by a hunting economy', Lambert noted, they had 'no settled communities, no commercial use of lands, no recorded system of titles, individual or collective'. The closest thing to any form of title was 'a customary recognition with not [sic] clearly defined boundaries of tribal land'. With the expansion of European settlement, reserves had been established for Aboriginal use and benefit, which 'was contemplated' as the 'freedom to live their customary life in a hunting economy'. Predictably the main objection to Aboriginal title over reserves was that 'it perpetuates segregation under a form of collective occupancy' and thus, Lambert concluded, it ran counter to assimilation policy. If, however, the government wanted to give some form of recognition to individual Aboriginal title, it could divide reserves into separate allotments — be they 'agricultural, pastoral or housing' — and grant 'preferential rights' to Indigenous individuals, analagous to those of soldier settlers. Collective title, in both the question and the answer, was considered somehow defective, whereas 'exclusive individual' title was somehow superior. One wonders what the response might have been had the initial request been put in more neutral terms.¹⁰⁷

Aside from 'collectivism', Hasluck further objected to the idea of Aboriginal land rights on the grounds that it would create a second and different system of landholding and, given his abhorrence of difference, this was inconceivable.¹⁰⁸ Further, as he would later argue, land rights would set Indigenous people on a path to 'separate development', and this again was anathema to his personal philosophy, since it implied segregation from mainstream society or even apartheid.¹⁰⁹ It would seem, however, that Hasluck did not pay undue attention to any claim of rights, since he would later insist that he 'was unaware at the time of any assertion of rights' to land or anything else.¹¹⁰ (Here, it seems, he intended claims by Indigenous people, rather than white sympathisers.) Had he given the matter serious consideration, Hasluck may have reached the same conclusion as others: that, as Rowley put it, land rights 'probably became inevitable once governments had agreed that "assimilation" implied a vague equality'.¹¹¹ It was a connection that Arthur Ellemor had made as early as 1953: he told the Mission-Administration Conference that if assimilation helped to secure 'some permanent Land Tenure' for Aboriginal people, it would have performed 'a great service to the remnant of a maltreated race'.¹¹² To state the matter in broader terms: if the ultimate objective of assimilation were full citizenship, then that entailed rights of every kind — civil, political, legal and economic rights.

It was also logical that Beazley should link, and limit, his initial calls for land rights to Aboriginal title over Aboriginal reserves. These were after all Crown lands that governments, state and federal, had set aside for Indigenous people to pursue their customary livelihoods. Over the years practices like hunting within the reserves had consolidated to such an extent that they came to be regarded not as customary rights but as legal ones. Such rights, Rowley noted, 'probably developed by default' from 'the

¹⁰⁷ Lambert to Hasluck, 26/6/1963 (NAA A452 NT 1963/6064).

¹⁰⁸ Hasluck 1988, p. 104.

¹⁰⁹ *Ibid.*, p. 115.

¹¹⁰ *Ibid.*, p. 115.

¹¹¹ Rowley 1970, p. 176.

¹¹² Ellemor 1953, p. 7.



Fig 2.2: The excision is marked in stripes; previous extent of the mission lease is shown by the dark line extending from Melville Bay to Port Bradshaw

long-held assumption that Aborigines posed a disappearing problem' and in turn 'may have created further claims [that] may be capable of legal defence'.¹¹³ On a reading of this kind, it was incumbent upon governments, which had 'fostered a special relationship between Aborigines and reserves', to ensure that their commitment to Aboriginal people continued and that their interests be given the highest priority. To deprive Aboriginal people of reserve lands would, according to Rowley, 'be seen as yet another tyranny and betrayal'.¹¹⁴ On Hasluck's more orthodox reading, Aboriginal reserves were created for a specific purpose, in the same way that other lands were reserved for 'recreation, water catchment, defence, public parks, forests' and so on. Reserves of all sorts were proclaimed over portions of Crown land, and the Crown alone 'could extend, reduce, cancel or devote [them] to new purposes'.¹¹⁵ Aboriginal reserves had been created with the original intention of ensuring Aborigines 'remained undisturbed', and in this, to use Hasluck's own metaphor, they resembled 'game sanctuaries where wild life was to be fully protected'.¹¹⁶ Aboriginal reserves were expressly created for the use and benefit of Indigenous peoples, but, according to Hasluck, this did not imply a bestowal of title; that title remained with the Crown in perpetuity.

¹¹³ Rowley 1970, p. 177.

¹¹⁴ *Ibid.*, p. 180.

¹¹⁵ Hasluck 1988, p. 103.

¹¹⁶ *Ibid.*, p. 15.

Hasluck even claimed that those who sympathised with the Aboriginal cause were not advocating land rights over reserves, but rather demanding that reserves be ‘maintained’ and ‘not whittled away bit by bit whenever someone found another use’ for them.¹¹⁷ Certainly, since at least 1952, Beazley, Ellemor and others consistently made their case for reserves being inviolable, but they always coupled this demand with the demand for Aboriginal tenure over reserve lands. I will have more to say on the emergence of land rights as a political issue in Chapter 5. As will be seen in later chapters, claims to Aboriginal reserves are among the first formal demands for land rights. Later still, in the wake of the Gove decision of 1971, even the conservative government of William McMahon was forced to consider Aboriginal title to Aboriginal reserves. In the meantime, it is time to consider how the Yolngu people of Yirrkala came to take matters into their own hands and came to national attention by petitioning the federal parliament. As Chapter 3 shows, even though their bark petitions were by no means the first Aboriginal petitions to white authorities, their grievances were the first to receive a response from those authorities.

117 *Ibid.*, p. 106.

Chapter 3: Protesting by petition

I
After ten years as superintendent of the Methodist mission at Milingimbi, Rev. Edgar Wells seemed quite content to put missionary life behind him for the relative comfort of life as circuit minister on Queensland’s Gold Coast. He could leave Milingimbi satisfied that he had turned it into a well-built, well-ordered and productive settlement. Any satisfaction Wells might have derived from his successes was, however, tempered by some measure of disappointment. He, as the most senior minister in MOM’s northern district, had fully expected to be appointed chairman of that district in 1958, following the transfer of Arthur Ellemor to MOM’s Victorian chapter. Instead, the top job in Darwin was given to Gordon Symons, who until then had been superintendent of the Yirrkala mission.¹ Any perceived slight from the church would have been offset by his appointment as Queensland representative to MOM’s governing body, the Board of Missions, in May 1961 and perhaps further with his appointment as superintendent at Yirrkala later that same year. He would surely have been buoyed by the letters of support he received from Cecil Gribble, the General Secretary of the Board of Missions, and from Gordon Symons, who assured Wells ‘you will be welcomed back in North Australia’.²

When Rev. and Mrs Wells arrived at Yirrkala in January 1962, they quickly came to realise that ‘something other than the humidity was responsible for the general lassitude of the whole community’.³ It stemmed from the uncertainty generated by the increasing activity of the mining companies: Wells noted in his memoirs that, as well as ongoing surveying and a steady increase in the number of visitors, a track was being cleared for a conveyor belt to take ore to Melville Bay, and aircraft were often buzzing overhead taking photographs.⁴ As he had done at Milingimbi, Edgar Wells encouraged mission residents to busy themselves with bark painting or in the mission’s gardens or in building projects, the most significant of which was a new church to replace the one ruined in the cyclone of 1952. For the new church he (on his account) commissioned 16 senior artists at Yirrkala to begin work on the two church panels described in the Introduction, though, according to Howard Morphy, Narritjin was in fact the person who proposed them.⁵

Just after Christmas 1962, Edgar Wells wrote to Gordon Symons in some agitation, informing him that mining surveyors were operating ‘within our fenced and farmed areas’.⁶ Around the same time Symons was visited in Darwin by Ted Milliken, who, because Giese was on leave, was acting Director of Welfare. It was the first time Symons had officially been told about the proposed Gominco mining leases (SMLs 2-4) on the Gove Peninsula. Milliken’s mission was in part to gauge, at the behest of Canberra,

1 ‘Statement by the Board of Missions of the Methodist Church of Australasia on the position at Yirrkala Mission ...’ in NAA A452 NT1963/6064. This statement makes it clear that Wells went so far as to appeal Symons’ appointment. See also Wells 1982, p. 21.
2 Wells 1982, p. 12.
3 *Ibid.*, p. 13.
4 *Ibid.*, pp. 14-15.
5 Morphy 2008, p. 63.
6 Wells to Symons, 28/12/1962, NTRS 43, Box 9.

MOM's reaction to the new leases.⁷ Until this point the deal-makers in Canberra and Sydney had assumed that because MOM had agreed to the terms of the lease for SML 1 in 1958 and because, from their point of view, the lease conditions remained substantially unchanged, the church body would simply acquiesce to the latest leases.

The new leases, however, departed from the original terms in one significant detail that seems to have escaped the notice of previous scholars: it was now proposed to allow Gominco to mine within one mile of the mission's boundary, rather than the two-mile limit specified in the 1958 BAC lease (SML 1). The latest surveys had shown that the richest deposits of bauxite lay closest to the mission: it was estimated that 8 million tons lay within a radius of two miles of the mission; 25 million tons were available at a radius of one mile; and 16 million tons at the radius midway.⁸

On his initial visit to Symons, Milliken's stated purpose was 'to ascertain the mission's needs for special leases in particular areas should the major part of Gove Peninsula be excised from the Arnhem Land Reserve'. At this stage he did not disclose the likelihood of a closer boundary; rather he awaited news of the mission's requirements. Two weeks later Symons, who had been briefed by Wells, responded to Milliken in person and followed this two days later (on 19 January) with a three-page letter. Symons noted 'a deep and growing distrust' among the Yolngu at Yirrkala and recommended 'consultation with the tribal owners of the country' affected by mining and some form of compensation be paid directly to Yolngu 'so that a more reasonable co-operation might be obtained in the matter'. Since local people would be employed by the mine, Symons suggested that the government provide 'housing at an economic value matching the proposed wage levels'; he further suggested that mining royalties be used to 'finance high pressure teaching in adult literacy' that would be needed in order to avoid 'a permanent master-servant relationship'. He then nominated some 'valuable extensions' be made to the core mission area to consolidate its agricultural enterprises and to protect some 'areas of native significance'. Specific areas were identified on an accompanying map, provided by Wells and reprinted here.

Upon receipt of Symons' letter, Milliken again contacted Symons, on the evening of 21 January, this time to gauge his 'reaction to the boundary of SML 4 coming within one mile of the mission'. Symons' response was swift and unequivocal: 'I would reiterate that we cannot see any matter of national economic development providing a necessity for a mining lease to approach any closer than within two miles of the mission settlement area'. Furthermore, he wrote, 'we are unalterably opposed to any suggestion of movement of the Mission from the present site' on two counts: the mission should remain 'to assist the natives who will be involved in the mining operations'; and no suitable alternative site for the mission was available in the vicinity. Symons reiterated too the need to involve Yolngu in negotiations.⁹

After receiving this latest letter on 22 January, Milliken again contacted Symons, this time with a view to reaching a compromise: now he proposed the boundary be set at

⁷ Milliken was acting Director of Welfare in the absence of both Harry Giese and Ted Evans, who were on annual leave: Giese's leave was from 7/12/1962 until 7/2/1963; Evans' from 12/11/1962 until 2/3/1963.

⁸ Letter from Nott to Lambert, 24/1/63 (NAA A452 NT 1963/767).

⁹ NAA F1 1962/2818.

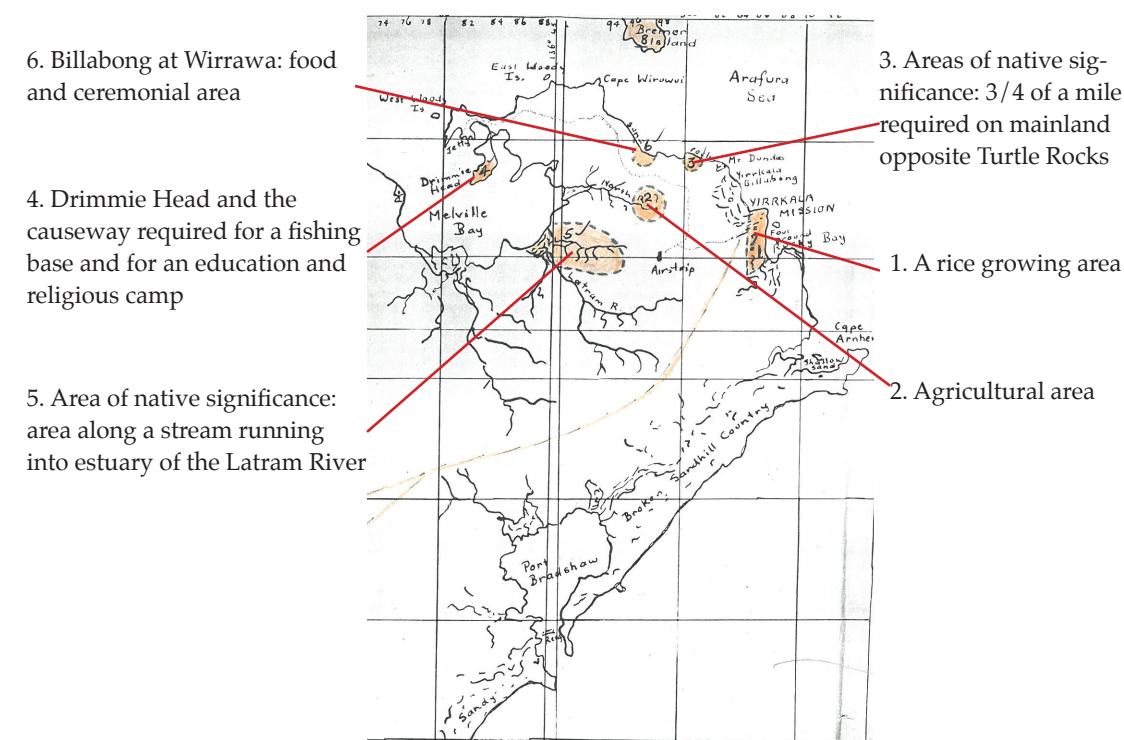


Fig.3.1: Wells' annotated map, provided to Milliken by Symons

one and a half miles. Milliken again contacted Symons on 23 January to gauge his reaction to the compromise. According to Milliken, Symons now responded that 'if indeed there were rich pockets within that half mile radius [i.e. between the 2 mile and 1½ mile radii] that could be worked by the Company without coming closer to the Mission than 1½ miles, he would raise no objection to it', though '[n]o doubt he will need to refer the matter to his Principals in Sydney'.¹⁰ In his telex to Canberra of 23 January — which detailed his activities to date — Milliken reported that none of his requests had been put in writing and that each approach had been made on a confidential basis. A memo from Canberra a week later instructed Milliken to desist from further efforts.¹¹ In reporting to the Assistant Administrator, Milliken endorsed Symons' requests that 'as soon as possible the aboriginal tribal holders of the land should be consulted and that this should take place before the leases are finally signed'.¹²

The first attempt to involve MOM's governing body, its Board of Missions, in the Gominco deal came on 17 January 1963, when the first assistant secretary of the Department of Territories (Robert Swift) contacted MOM's Sydney headquarters, only to learn that its General Secretary, Cecil Gribble, was away in Western Australia.¹³ Gribble responded by telegram on 22 January that the two-mile limit struck in the 1958 agreement should be upheld. He reiterated this in a longer letter to Lambert,

¹⁰ Milliken to Assistant Administrator (E&SA), 24/1/1963 (Appendix to Egan's report of 23/1/1970, Dexter Papers, Series 2, Item 9).

¹¹ The telex was only sent to Canberra after Hasluck requested, on 23 January, 'details of any contact within the last one month between anyone in Government, either in the Department or in the Administration, and the Methodists about the Yirrkala Mission and the effect of developments at Gove' (NAA A452 NT 1963/767).

¹² Milliken to Assistant Administrator (E&SA), 24/1/1963.

¹³ Minute from Swift, 17/1/1963 (NAA A452 NT 1963/767).

the departmental secretary, on 25 January, now adding that if the mission were to be relocated it would be done at Gominco’s expense.¹⁴ In response to Gribble’s telegram, Hasluck wrote that ‘the question of granting the mining lease is still under discussion with the applicants and you can be assured that it will be our endeavour to safeguard the interests of the aborigines in any arrangement that may be made’.¹⁵ Hasluck attached a copy of this letter to a note to Lambert on 24 January, in which he stressed the need for ‘discussion and negotiation’ and the need to secure the ongoing goodwill of the Methodist Overseas Mission. Without MOM’s support, it would be difficult to withstand attempts ‘in unfriendly quarters to allege that the granting of a lease over land previously contained within an aboriginal reserve is stealing the birthright of the aborigines’.¹⁶

Even before furnishing Symons with the needs of the Yirrkala mission in January, Edgar Wells seems to have made up his mind that somehow MOM was ‘party to secret and confidential committee work destined to rob [Yolngu] of any part of their inherited Reserve’. For Wells, his first duty as superintendent was to his ‘wards’. As he wrote to Symons: ‘They will, in their agony of the first dumb acknowledgement, look to [me] for guidance’.¹⁷ Wells did not share Symons’ opinion that ‘we have no hope of preventing the mining leases’; rather he thought they should appeal to ‘that exceedingly delicate thing called “public opinion”’ and went on to suggest that high-profile men from their own church, like the President General (Rev. Trigge) and Rev. Alan Walker of the Sydney City Mission, could ‘make attacks about the questionable ethics of the deal’. ‘This is not a small matter,’ he added, ‘but concerns the “tone of a nation”, and on our Methodist handling of our trusteeship the Nation has a right to judge us, either as fit or no longer worthy, to carry the responsibility of so many people.’ While he was ‘most unhappy’ about Symons’ injunction for confidentiality, Wells said he would try his best to uphold it, at least ‘until some major decision is intimated’.¹⁸ In his own account of these events, published 19 years later as *Reward and Punishment in Arnhem Land 1962-1963*, Wells characterised this letter to Symons as a ‘prophetic judgement about the political nature of coming events’, though, curiously, in the published version of the letter he omitted both his promise of confidentiality and the ethical dilemmas of the coming struggle. In the published account he further characterised the letter as a warning ‘of my possible move into public advocacy’.¹⁹

The opportunity for such advocacy came with the premature announcement by Prime Minister Menzies of the new leases on 18 February (see Chapter 2). Wells’ response was immediate and dramatic: he sent an identical telegram the next day to senior officials in MOM — including Gribble, Trigge and Walker — to Harry Giese, to the Leader of the Opposition, Arthur Calwell, to the secretary of Federal Council for Aboriginal Advancement (FCAA), Stan Davey, and to the editors of the *Sydney Morning Herald* and the *Courier Mail* on 19 February. It famously read:

14 NAA F1 1964/920.
15 NTRS 43, Box 12.
16 NAA A452 NT 1963/767.
17 Wells to Symons, 14/1/1963 (NTRS 43 Box 9).
18 Wells to Symons, 14/1/1963 (NTRS 43 Box 9); Wells 1982, p. 50.
19 Wells 1982, p. 50.

583 semi-nomads now squeezed by the bauxite land grab into half a square mile stop original holding 200 square miles stop impossible to house population in approved homes within area stop...loss of cultivated and grazing lands means we must eat the cattle before the miners arrive and import basic food crops afterwards. Signature Wells, Superintendent.²⁰

The telegram did provoke a string of newspaper articles and a series of telegrams to Hasluck, most of them from people closely connected with the FCAA, insisting that Yirrkala belonged in Yolngu hands and demanding the cancellation of mining leases.²¹ Wells’ telegram had a very different effect on Gribble, who, upon receiving it, wired Symons almost immediately: ‘Board officers disturbed [by] public statements being made by superintendent [at] Yirrkala which display lack of responsible approach to present situation’.²² It seems that Gribble was at that moment engaged in delicate discussions: on the evening of Menzies’ announcement, Gribble had secured his board’s endorsement of the new mining terms, including a new clause that the ‘lessee will not unless authorised by the Administrator conduct mining operations inside the existing mission boundary fence or within [a] one mile radius of the Mission, whichever is the greater distance’.²³ The rider to the MOM board’s approval was that an additional clause guaranteeing Yolngu employment in the mining project be inserted. Rather than holding out for a two-mile radius, Gribble accepted assurances from Hasluck that it would be ‘many years’ before the area adjacent to the mission was mined. Symons received a similar assurance from Hasluck, who also promised ‘to make arrangements for a Government official to go out to discuss the situation’ with the Yolngu people and to pay compensation ‘perhaps in some small cash payment for the transfer of the land’.²⁴ In these matters, Hasluck’s wishes seem to have prevailed over advice from Welfare Branch. Asked to comment on Gribble’s letter, Giese did not think that ‘the intrusion by the mining company to within one and a half miles radius would seriously affect the agricultural and pastoral operation of the Mission’; nor did he think there was any need to pay compensation.²⁵

It seems that Wells was unaware of these developments, because on 24 February he sent another telegram to Gribble and Trigge, urging them to postpone signing off on any new deal for 30 days to allow for consultation between government and Yolngu.²⁶ The two telegrams notwithstanding, Wells at this stage did not divulge what he knew to the Yolngu. He was caught in a dilemma: on the one hand he wanted to support and protect his Yolngu charges; on the other, he had sworn to keep secret such details as he knew about the arrangements for mining.²⁷ On the very same day that he sent the first telegram, he wrote to Symons: ‘I have been interviewed by a deputation and told them I would not tell them anything until we had it worked out for them. I have also

20 *Ibid.*, p. 42.
21 41 telegrams are filed at NAA A452 1963/1182; 25 of them were sent from the same Melbourne post office. Signatories include Kath Walker, Joe McGuinness, Doug Nicholls and Jack Horner.
22 Telegram from Gribble to Symons, 19/2/1963 (NTRS 43 Box 9).
23 NAA A452 NT 1963/767; F1 1962/2818.
24 *Ibid.*; see also Hasluck to Lambert, 5/3/1963 (NAA F1 1964/920).
25 Giese to Lambert, 7/2/1963 (NAA F1 164/920).
26 Wells to Gribble and Trigge, 24/2/1963 (MOM Papers, Mitchell MS 465).
27 Wells to Symons, 14/1/1963 (NTRS 43, Box 9).

intimated that the real full news will be spread by a Government man.’²⁸ A month later, he was still fretting that he could not forestall ‘the day when something must be said of a binding nature to the people’. So far he had managed his ‘best to hold them up with promises of future development, suggest[ing] possibilities of some type of *quid pro quo*’.²⁹ Wells’ dilemma was further compounded by his instinct for publicity and by his advice to others about the need to consult Yolngu. He, like Symons and even Hasluck, insisted that responsibility for informing Yolngu people about the mining deal lay with Welfare Branch, though Giese was equally adamant that, as an agent of the government, the mission was responsible for informing them.³⁰

In the meantime, the Yolngu were told nothing. It may have been that they discerned their mode for requesting information to be somehow defective and, since their oral requests came to nothing, they began to put their requests and demands in writing. At first they wrote to Wells, who took their letters as an indication of their desire ‘to communicate in a form representing the ideal of the European communication’, but who nonetheless did not see fit to reply in like manner.³¹ They then took to writing to Giese, a tactic which, as Wells would later suggest, ‘expresses the understanding the Aborigines had of where the real power was vested’.³² When Narritjin Maymuru wrote to Giese, he did, however, receive a response. These letters were the first direct communication about mining between the government and the Yirrkala mission, or, more precisely, between Welfare Branch and Yolngu. Here is part of Narritjin’s undated letter, written for him by Daymbalipu Mununggurr:³³

Mr Giese who looking after for all the Aborigines in the N.T. We want to help us belong to this country Yirrkala, please Mr Giese? Because the mining company will be here soon. All the Aborigines in Yirrkala are wondering about this country. What are we going to do Mr Giese? ... You going to help us Mr Giese? Or no. These mining people will [be] chasing us to other places, we don’t like that ... We like Yirrkala best. This is a word for all the people in Yirrkala. We want Yirrkala open country. So we may go hunting for meat. We don’t like the mining company will come close to the Mission area ... This time we don’t understand about the white mans [sic] ways yet. We going ask you for this country Yirrkala. ... If the mining people like to use this country, all right, they will stay away from the Mission, Mr Giese?

Giese replied that he ‘would not allow anything to happen that would harm you’ and his only interest was ‘in doing things that will help you people to learn how to live and work in the same way and side by side with the white man’. He went on to explain the mining operations: ‘the mining people are not going to push you out of Yirrkala and they cannot just go and work wherever they like. The Government has set down boundaries and the mining people cannot make mines outside of those boundaries. So you will see there will be plenty of country left to you for hunting in your tribal area.’

28 Wells to Symons, 19/2/1963 (NTRS 43, Box 9).

29 Wells to Symons, 18/3/1963 (NTRS 43, Box 9).

30 Here I am relying on Giese’s evidence to the Select Committee (SC); see, e.g., p. 21 of the transcript (SCT).

31 Wells 1982, p. 73.

32 *Ibid.*

33 Narritjin acknowledged Daymbalipu’s assistance in his evidence to the SC (SCT ¶771, p.53).

There was much else to say about the benefits of mining, he continued, but, rather than setting it all down in writing, he promised that he would be sending his Chief Welfare Officer, Ted Evans, ‘out there soon to explain to you all about the Mining Company, what they can do and what they cannot do, and how you people are going to get a lot of help from the mine being in your tribal country’.³⁴ Evans’ eventual visit is discussed in the following chapter.

II

Hasluck’s eventual announcement of the excision on 9 April 1963 was overshadowed by what appeared at the time to be a deepening political crisis. In the week prior to Hasluck’s announcement, the leader of the Opposition, Arthur Calwell, had introduced a motion of no confidence against the Menzies government: it was the third such motion in the short life of this 24th parliament, in which the government had a working majority of only one. (One consequence of this motion was the delayed opportunity for Beazley to respond to Hasluck’s announcement of the excision, mentioned in Chapter 2.) Another two censure motions would follow later that year. By mid-October, Prime Minister Menzies was very tired of ‘this almost daily problem of political survival’ and declared that he would soon dissolve parliament to allow a general election to be held at the end of November.³⁵ As we shall see, the instability of the government would have ramifications for the turn of events in Yirrkala, but its more immediate effect was that, on the day after Hasluck’s announcement, newspapers were full of the looming crisis, but devoid of any mention of the excision.

Of course, news of the excision did filter out to interested parties. The excision was, for instance, vigorously discussed by the Federal Council of Aboriginal Advancement (FCAA) a few days later at its annual Easter conference in Canberra, perhaps at the insistence of Stan Davey, FCAA’s general secretary, and Gordon Bryant, who, since 1961, had been FCAA’s vice president and who, since 1955, had been the Labor member for the federal seat of Wills. As it had done previously in response to the granting of the Gominco leases, the council called on delegates to the conference to send telegrams of protest to Hasluck. In the week following the conference, 42 telegrams of protest arrived at Hasluck’s office and evoked a quick response. To counter claims that ‘Aborigines desire land tenure at Yirrkala’ and ‘Aborigines should have an inalienable right to tenure of proclaimed reserves’, Hasluck’s staff wrote to each of the protestors that the creation of Aboriginal reserves in the Northern Territory ‘did not give the aborigines living on them any legal title either to the land [or] the resources of those reserves’.³⁶ The FCAA also decided at its 1963 conference to hold protest rallies in Melbourne, Brisbane and Sydney in support of its campaign for Aboriginal tenure over reserves,

34 Narritjin’s letter was written in early March 1963; Giese’s letter is dated 19/3/1963 (NAA F1 1962/2818; Wells 1982, pp. 71-72).

35 Elections for this parliament were held on 9/12/1961, at the time of the ‘credit squeeze’. The coalition held 62 of the 122 seats, but after the election of the Speaker, it had a majority of just one on the floor of parliament. The 24th parliament first sat on 20/2/1962. The first no-confidence motion came on 27/2/1962. The dates for the other no confidence motions were: 14/8/1962, 2/4/1963, and 20/8/1963 (CPD (HR), 15/10/1963, pp.1790-1795).

36 Many of the replies were sent to Stan Davey, as the telegrams did not contain return addresses (NAA A452 1963/1182).

announced by Davey at the end of February.³⁷ The annual conference also resolved that Gordon Bryant should personally investigate the situation at Yirrkala.³⁸ In the meantime FCAA's attention continued to be focused on its campaign for constitutional change, which Taffe describes as the 'longest, most widely supported and best remembered' of the council's many campaigns.³⁹ In October 1962 the council had re-launched its petition campaign to have section 51 (xxvi) amended and section 127 removed from the Australian Constitution, sections that were reputed to discriminate against Aborigines.⁴⁰ By the time of its 1963 conference, 52,000 signatures had been collected, one third of which had already been presented to parliament, and FCAA had determined that the campaign 'should continue until National Aborigines Day in early July'.⁴¹ According to Taffe, the flow of FCAA petitions into the parliament was the 'one constant' in the turbulent sittings in 1963,⁴² although it is more accurate to say that petitions, in general, made something of a comeback that year. Whereas the annual average number of petitions for the years 1901-1963 was 23, 140 petitions were presented in 1963, only a third of which concerned constitutional change (the rest were demands for increases in various pensions and for a nuclear-test ban treaty).⁴³ The sudden rise may possibly be explained by other organisations emulating FCAA by seeking to publicise their causes via petitions in 1963. As a recent report of a House of Representatives committee notes: 'While petitions clearly have great democratic potential, the reality is that petitions have been far more effective in strengthening community views on an issue than in actually having the issue heard and considered by the House'.⁴⁴ FCAA's petition campaign could be said to be the first to galvanise the mass support of white Australians for Aboriginal causes, though it was by no means the first time petitions had been used in support of Indigenous causes.

Petitions are archaic forms for expressing grievance and seeking redress, dating back to the 13th century and Edward I. At that time one of the most important duties of the king and his council in parliament was 'the hearing of petitions from all and sundry';

37 Bryant Papers, NLA, MS 8256, Box 182 (for Davey's announcement of 28/2/63) and Box 183 (for 1963 conference recommendations).

38 Taffe 2005, p. 174.

39 *Ibid.*, p. 85. The first petition was tabled in parliament on 14/5/1957 as part of a campaign by the Aboriginal Australian Fellowship. That campaign was taken over by the FCAA upon its formation in 1958, and since the start of FCAA's involvement, Gordon Bryant had directed the petition campaign (Taffe 2005, pp. 38, 60).

40 Under s. 51 (xxvi) the Commonwealth had the (ambiguous) power to make laws for 'the people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws'. S. 127 read: 'In reckoning the numbers of people of the Commonwealth ... aboriginal natives shall not be counted. 'The idea for the campaign originated with Jessie Street, whose understanding of the constitutional clauses was, according to Attwood and Markus (2007, p. 19), faulty.

41 *Smoke Signals*, April 1963, p.11. By the time parliament rose for the winter recess, nine FCAA petitions had been presented, though it is impossible to say how many signatures they contained (calculated from HR V & P 1963).

42 Taffe 2005, p. 98.

43 Calculated from Pettifer's *House of Representatives Practice*, 1st edition (1980), Appendix 27, pp. 776-7. The breakdown of the issues covered by petitions is taken from V & P 1963. Here I found 47 petitions for constitutional change; 46 for increases in pensions; 25 calling for a nuclear test ban treaty; and the four petitions from Yirrkala. The discrepancy in totals — 122 in V & P against 140 in Pettifer — is possibly due to the wording in V & P, from which the number of members presenting petitions on any given day is unclear.

44 HR Standing Committee on Procedure 2007, p. 3.

and petitions were one of the main ways in which the king and his council were kept informed about 'the state of the nation'.⁴⁵ The king and council regularly prescribed a relief to the petitioner's grievance, a function analogous to the way courts of law now impose penalties or award compensation in civil matters. By the 17th century the English parliament was no longer seen as 'the highest court of justice' but rather as a 'political and legislative body', and so petitions came to seek legislative remedies instead of judicial ones.⁴⁶ The 'modern' form of the petition dates from this time, when the right to petition became enshrined in England's Bill of Rights.⁴⁷ The linkage helped the act of petitioning become, as Pickering notes, 'an integral part of "popular constitutionalism"' and gave some petitions the reputation of 'constitutional icon[s]', even of the calibre of the Magna Carta.⁴⁸ Nevertheless, one essential feature of petitions has remained: that they do not directly challenge the authority of parliament, but rather address that authority, seeking a remedy for a grievance.

One might say petitions are anachronistic, except that, as books on parliamentary practice insist, they remain 'the only means by which the individual can directly place grievances before the Parliament'.⁴⁹ For Indigenous Australians, as Penny van Toorn notes, petitions represented a form of communication that allowed the community to speak and write 'as a collective' and in a form that was consistent with Indigenous protocols.⁵⁰ In the 19th century petitions were sent quite regularly to — among others — Queen Victoria, colonial parliaments, governors or premiers.⁵¹ The most persistent and effective Indigenous petitioners of the 19th century must surely have been the community of Coranderrk, 70 kms north-east of Melbourne (near present-day Healesville). With the imprimatur of elders William Barak and Simon Wonga, the community successfully petitioned both the Victorian government and the British monarch for land at Coranderrk, which was granted in 1863.⁵² They subsequently petitioned to secure that grant of land in perpetuity, to have their first superintendent reinstated and to have the practices of the Board for the Protection of the Aborigines investigated. In response to the frequent protests from Coranderrk, first a Royal Commission and then a parliamentary inquiry were established. For all this, however, the community was dispersed, their land was eventually subdivided for soldier-settlers and the final remnants of reserved land revoked in 1948.⁵³ Even so, writing petitions offered the people of Coranderrk a way of 'carrying their voices over the heads of local officials so they could be heard by higher authorities to whom the locals were accountable'. All in all, writing proved for the people of Coranderrk to be 'a great means of talking back to the white men who were abusing their power'.⁵⁴

45 Holdsworth, Vol. 2, 4th edition, p. 419.

46 Erskine May 1950, p. 811.

47 HR Standing Committee on Procedure 2007, p. 51.

48 Pickering 2001, p. 374.

49 The quote comes from J.A.Pettifer (ed) 1981, p. 689.

50 Van Toorn 2006, pp. 125, 137.

51 The earliest petition from an Aboriginal community noted in the relevant literature is one from eight Pallawah men at Flinders Island to Queen Victoria in 1846 (Attwood & Markus 1999, p. 38; van Toorn 2006, p. 119).

52 The community first lived on Acheron reserve, but when this was revoked, they petitioned for land at Coranderrk, which was declared a permanent reserve in 1884, but that status was rescinded in 1917.

53 For a full account of Coranderrk, see Barwick 1998.

54 Van Toorn 2006, pp. 125, 142.

Citizens, of course, can air their grievances through channels other than petitions, one of them being via their elected parliamentary representatives. William Cooper, who made a brief appearance in Chapter 2, was convinced that many Indigenous grievances could be redressed if, like New Zealand, Australian Aborigines had their own representative in the federal parliament. Thus — to cite one other example — Cooper, in 1933, drew up a petition beseeching King George VI to grant ‘us the power to propose a member of Parliament ... to represent us in the Federal Parliament’.⁵⁵ In this petition it was noted that ‘all petitions made on our behalf to Your Majesty’s Governments have failed’ to date and hence this latest appeal to the monarch. Over two years or so Cooper managed to collect some 2,000 Aboriginal signatures; but, to achieve this, he needed the permission of State and Commonwealth authorities. Queensland refused outright, but still the petition carried the names of 900 residents of Palm Island. While Dr Cook did not withhold his permission for circulation of the petition in the Northern Territory, he did observe that ‘the vast majority of Aborigines were incapable of understanding the significance of appending their names ... or comprehending the tenor and purpose of the petition itself’.⁵⁶ Nevertheless, nine residents of the Methodist mission on Goulburn Island provided signatures. For whatever reason, Cooper chose to lodge the petition via the federal government, though Cabinet decided, belatedly in 1938, against forwarding it to London, since, as McEwen argued, Aboriginal people in the Northern Territory ‘were already “virtually” represented’ by himself, and since, as one official put it, ‘very few aboriginals have the ability to exercise a vote’.⁵⁷

III

Thus, by the time Gordon Bryant, accompanied by Kim Beazley, visited Yirrkala in July 1963, a strong and longstanding connection between petitions and Aboriginal causes already existed. The new church, replete with the two large painted panels framing its altar, had been opened several weeks before the three-day visit by the politicians. It was while he was contemplating the church panels that Beazley thought of sending a bark petition to Canberra.⁵⁸ According to Wells, Beazley and Bryant, before leaving Yirrkala, gave Yolngu either the preamble or the entire text for the petition,⁵⁹ though it is more likely that the politicians left a complete draft, upon which Yolngu and mission staff did further work. Various Yolngu individuals quickly tried out the words left by the politicians by writing letters like this one, sent from Yirrkala on 23 July:

Dear Mr Bryant,
We undersigned people of the tribes living in the Yirrkala district ask you to help us to keep hunting land and food gathering land which we believe we will lose when land which is our place of living is handed to companies for mining. We are hurt that the Government told us nothing of this before it took place. We do not

55 Markus 1983, p. 53. Note that Cooper’s representative could be ‘of our own blood or white men known to have studied our needs and to be in sympathy with our race’.
56 *Ibid.*, p. 50.
57 *Ibid.*, pp. 51-52.
58 Beazley told an interviewer for the National Library: ‘I advised them to petition the Federal Parliament on bark, on an illuminated bark painting, because I felt this would arrest the attention of the media’ (transcript, p.22; Tape 10, Side 2). Beazley made a similar statement during the Select Committee’s hearing.
59 Wells 1982, compare p. 66 and p. 80.

believe that your Government would treat white people this way. We believe our occupancy of this land was lawful. We believe our age old occupancy of this land gives us rights which should not be brushed aside. We are afraid of the fate of the Larrakeah people a few years ago will be our fate in a few years if we lose our rights here.
We ask for your action to help us.
Yours sincerely,
Signed: Djalalingba, Dhunggala, Wulamybuma, Daymbalipu, Raiyini, Wawuny-marra, Djayila, Manunu, Nyabilingu, Dundywuy, Larrakan, Milirrpum.⁶⁰

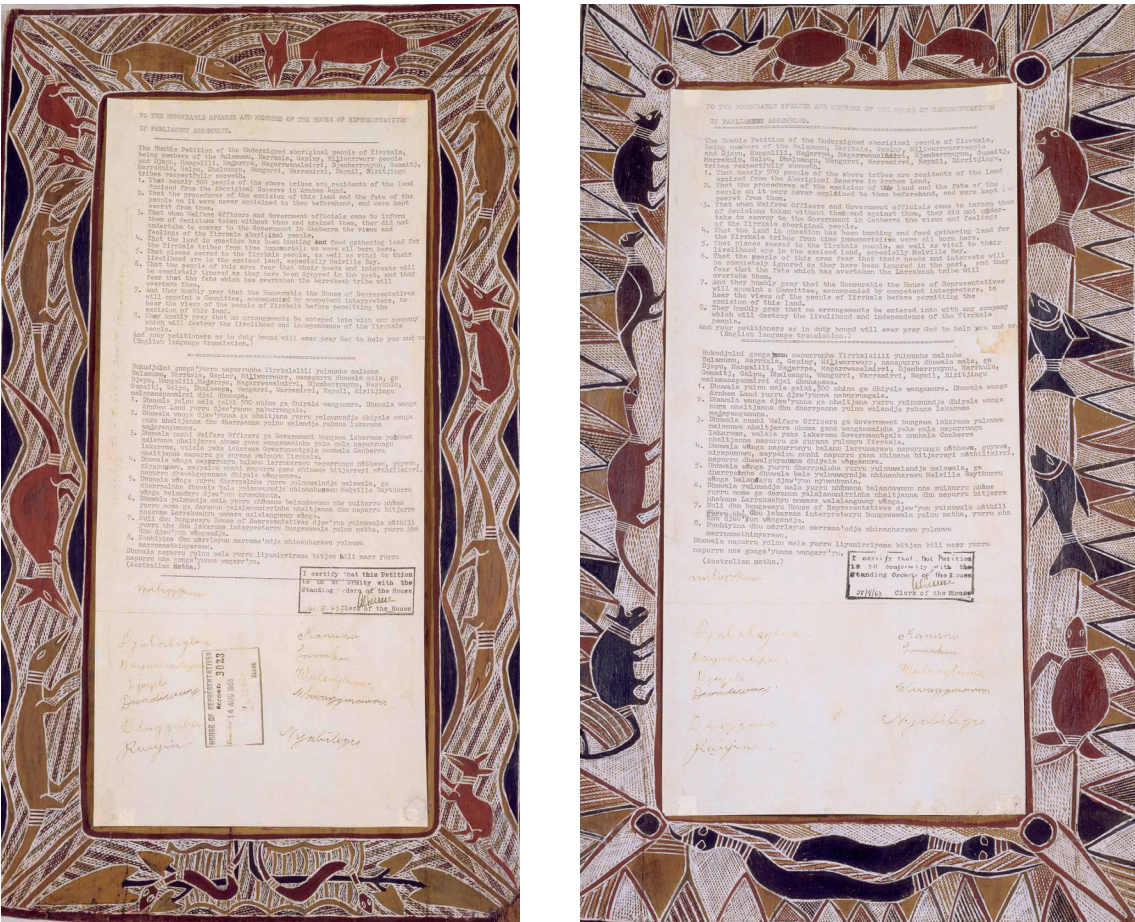
I cannot say why they felt it necessary to communicate this to Bryant within three days of his departure from Yirrkala, but perhaps the letter serves to show the commitment of these Yolngu to their chosen course of action. Perhaps too the letter demonstrates how adept these people — the same ones who signed the petitions presented to the House of Representatives the following month — were in learning this new style of writing and adapting it to their own purposes. According to Wells, it had been expected that Yolngu would be able to complete the translation of the politicians’ words into Yolngu *matha* (language) and that the senior painters could finish the bark surround while Beazley and Bryant were still in Yirrkala, so that they could personally convey the petition to Canberra. The work of translating and painting, it seems, took much longer than expected. In a later account, Wells noted that a small group of Yolngu had coalesced around Doug Tuffin, the mission’s agriculturalist, and had begun work on the bark frames, the translation and the typing of the petitions while Beazley and Bryant were still in Yirrkala. The Yolngu ‘committee’ included Narritjin and Mawalan, though Djalalingba and Daymbalipu appear to have been involved as well.⁶¹ Tuffin and his wife, together with schoolmaster Rev. Ron Croxford and his wife, helped with the translation work. When Wandjuk’s old typewriter was found to be inadequate, Tuffin brought the draft, handwritten text to Ann Wells, hoping she would type it on the mission’s superior machine. Mrs Wells agreed and set about the time-consuming work of producing four — and Wells in his later account is adamant on this number⁶² — flawless petitions in English and Yolngu *matha*, which seems to be a mixture of the Gumatj and Gupapuyngu languages and which is said to contain some ‘grammatical errors’.⁶³ The mixing of dialects and the errors are sure signs of European involvement. Despite *balanda* assistance, it was intended that ‘all the work could be done by the Aborigines’.⁶⁴

According to Wells, his wife was Tuffin’s last option for the business of typing; he had approached other mission staff — including two women who had worked as typists before joining MOM — but all had refused, knowing that such action would incur the displeasure of the Board of Missions in Sydney.⁶⁵ Furthermore, it seems that Tuffin and
60 *Smoke Signals*, August 1963, p.2. I have changed the spelling of the names to conform with contemporary orthography. Another exactly-worded letter, dated July 1963 and addressed to Arthur Calwell, can be found at NAA A452 NT 1963/1270.
61 Wells 1996, p. 14. According to Howard Morphy (pers. comm.), the school master, Ron Croxford, and his wife took leading roles in assembling the petitions.
62 *Ibid.*, p. 13.
63 Fenwick (2001, pp. 12-13, note 41) interviewed two interpreters, who noted the errors and who attributed these to European involvement.
64 Wells 1982, p. 80.
65 Wells 1996, p. 11.

his Yolngu committee went to some pains not to involve Edgar Wells directly in their business, although he certainly knew about it.⁶⁶ When his wife undertook the work, she carried it out in her own room, and, when the petitions were complete, she paid for them to be mailed. Mrs Wells was one of the few Europeans at Yirrkala not on MOM’s payroll; she also acted as the mission’s postmistress and so could send the packages without ‘the need for book-keeping entries’.⁶⁷ Mrs Wells began the typing while Beazley and Bryant were still at Yirrkala,⁶⁸ and, according to her husband, she had four completed petitions ‘ready for the outgoing mail which accompanied Doug Tuffin and myself to a District Synod meeting at Goulburn Island’.⁶⁹ That synod was held on 24 and 25 July.⁷⁰ Wells certainly knew of the petitions, but elaborate efforts were made to keep them away from him, and so he could safely write that ‘[t]hroughout all the manoeuvring I did not sight the petition’.⁷¹

It is unfortunate that Ann Wells did not record to whom the packages were sent, because confusion about the recipients and the actual number of petitions persists. It is known that one framed petition was sent to Stan Davey of FCAA, another went to Gordon Bryant and two, and possibly more, were delivered to Parliament House — perhaps to the MHR for the Northern Territory, Jock Nelson, or to Kim Beazley or Arthur Calwell, and perhaps even to Prime Minister Menzies. The existence of only four actual bark petitions is certain.⁷² It may be that additional, but unframed, copies of the petition were also sent at the same time, because on 14 August W.C. Wentworth, the Liberal member for Mackellar, presented a plain-paper version, while Nelson introduced a framed version, shown below as the Dhuwa petition.⁷³

In its vaults, the House of Representatives Tables Office holds five original plain-paper petitions, and one of its officers explained that four of them were actually presented to Parliament, while the fifth was held in reserve by Nelson, in case the House of Representatives disallowed the one in its bark frame.⁷⁴ Thus, four of the five petitions carry the signature of the Clerk of the House, as well as the signatures of the members presenting them, certifying the translation as correct (as demanded by Standing Order 117), although in this case the original text had been written in English and later translated into Yolngu *matha*. So far as I could tell when I inspected them, all five paper



Figs 3.2 and 3.3: The Dhuwa petition (left) presented by Jock Nelson on 14 August 1963; the Yirritja petition (right) presented by Arthur Calwell on 28 August 1963

petitions are signed by the same 12 people in the same order and all the signatures appear to be original, authentic. This suggests that the 12 people signed their names five times over at the one sitting and that each petition was passed from one person to the next in strict order. If this is how it happened, then Ann Wells typed at least seven copies.⁷⁵ It may well be that others participated in the typing or that Mrs Wells used different machines, because the two petitions on display in Parliament House are written in different typefaces.⁷⁶ Only two bark frames were presented to parliament: the Dhuwa petition introduced by Nelson on 14 August and the Yirritja one presented by Calwell on 28 August (Figs 3.2 and 3.3). Curiously, the displayed petitions carry facsimiles of the original text. Bark, it seems, is more durable than paper. The framed petitions are given the names Dhuwa and Yirritja on account of the background designs usually associated with those moieties. It may be that the designs, both figurative and geometric, on the petitions belong ‘to the two clans whose lands were most threatened by mining activities,’⁷⁷ but this does not mean that they were painted by members of these clans. In fact, since an interview Howard Morphy conducted with Doug Tuffin in 2000, it has been known that Narritjin Maymuru, a Manggalili man,

66 *Ibid*, p. 12.
67 *Ibid*, p. 22.
68 *Ibid*, p. 11.
69 *Ibid*, p. 22.
70 NTRS 52, Box 11.
71 *Ibid*, p. 22.
72 Attwood (2003, p. 231) reproduces Davey’s petition, which is still in the possession of his family, and the one sent to Bryant has recently been deposited with the National Museum of Australia. Two others are on permanent display in the federal parliament. Given Beazley’s close involvement, it would be surprising if he were not a recipient. Menzies and Calwell are mentioned by Attwood (2003, p.230), though he gives no source for this information. Newspapers reported Nelson as saying bark petitions were presented to Menzies, Calwell ‘and other party leaders’ (*SMH*, 15/8/1963, p.4).
73 CPD (HR), 14/8/1963, p. 81.
74 Interview, Parliament House, 14/5/2004. According to the Office of the Clerk of the House (29/1/2009), the bark petitions were seen as special and so filed in the Tables Office. Further, everything, including all petitions, tabled in the House of Representatives is noted in V & P on the day of tabling, and then filed away in the vast V & P archives in the basement of Parliament House.

75 The five in Parliament House, plus at least the two that went to Bryant and Davey.
76 Of course, the different typefaces may simply be evidence that two separate batches of petitions were dispatched to Canberra.
77 Morphy 1983, p. 115; Morphy 1991, p. 18; Yunupingu 1997, p. 65.

was the painter of at least the two bark petitions on display in Parliament House.⁷⁸ If, on the one hand, the designs do belong to the Gumatj and Rirratjingu, then Narritjin would minimally have needed permission to paint the clans’ designs. If, on the other hand, the designs are regarded as ordinary or as *wakinngu*, then the petitions can be read primarily as political statements. In their CD compilation of Narritjin’s work, Howard Morphy and Pip Deveson include a set of 18 paintings in the category of *wakinngu*, which, curiously, includes the two petitions presented to parliament. The identity of the painter is, in any case, of little consequence, because the petitions were representative of all the clans then resident on the Gove Peninsula. In other words, the petitions were undertaken in a ‘parliamentary mode’, rather than as the effort of some individual.⁷⁹ A great deal has been said and written about the meaning and the symbolism of the bark petitions in the intervening years. For example, the Yirritja and Dhuwa frames are said to be petitions in their own right and to be title deeds to the country under threat.⁸⁰ Similarly, Galarrwuy Yunupingu wrote in 1997 that ‘the bark petition we presented to parliament was not just a series of pictures, but represented the title to our country under our law’.⁸¹ One of the signatories, Wulanybuma, told me that the petitions were the Yolngu way of ‘trying to tell the government about the richness of the land ... and about the idea that ... we hold our culture, our own traditional values [and] we have our own systems’.⁸² Galarrwuy has also likened the petitions to ‘the Magna Carta of Balanda law because it was the first time Yolngu had ever set our law down for others to see’.⁸³ While these may well be the messages Yolngu intended for Canberra, I prefer to concentrate on the more prosaic and political meanings of the petitions, since these are the only meanings that would have been understood by white politicians. The politicians may have been impressed by the beauty of the petitions, but they could only comprehend the complaints and demands carried in the English version of the text, to which I now turn, beginning with the preamble.

TO THE HONOURABLE THE SPEAKER AND MEMBERS OF THE HOUSE OF REPRESENTATIVES IN PARLIAMENT ASSEMBLED:

The Humble Petition of the Undersigned Aboriginal people of Yirrkala, being members of the Balamumu, Narrkala, Gapiny, and Miliwurrwurr people and Djapu, Mangalili, Madarrpa, Magarrwanalinirri, Djamparrpuynu, Gamaitj, Marakulu, Galpu, Dhaluangu, Wangurri, Warramirri, Naymil, Rirritjingu, tribes, respectfully sheweth —

Yolngu *matha* is rich in its naming practices, and names are carefully chosen in every situation, as Nancy Williams points out, to maximise inclusiveness, ‘to enhance sentiments of solidarity’ and to indicate the precise relations ‘to each other and to a defined area of land’.⁸⁴ Here Yolngu describe themselves as being of four peoples; they do not refer to themselves as Yolngu, but rather by the names of Balamumu,

78 Morphy 2008, p. 66. The Bryant and Davey petitions, in reproduction at least, appear rougher than the two in Parliament, and they may have been painted by another, perhaps Wandjuk, since both feature Dhuwa cross-hatching.

79 Hartley and McKee 2000, p. 2.

80 Schwarz 1999, p. 55.

81 Yunupingu 1997, p. 65.

82 Interview with Wulanybuma Wunungmurra, Yirrkala, 10/6/2004.

83 Yunupingu 1998.

84 Williams 1986, pp. 58 & 73.

Narrkala, Gapiny, and Miliwurrwurr.⁸⁵ These are not names of separate people, but are rather, as Williams suggests, *bäpurru* names: names that are used metaphorically and symbolically to denote ‘a group of people in terms of some shared entity of greater value and deeper meaning than that endowed by the shared affairs of daily life’. According to Williams, ‘[v]irtually all *bäpurru* names have, at some level, a referent that symbolises anger, hostility, intransigence, bravery, and fierceness’; and perhaps here the names have been chosen to indicate resolve and determination.⁸⁶ Perhaps in this case, the names are invoked to suggest a common cause and a unity that transcends affiliations to both clan and moiety. Perhaps the *bäpurru* names invoke community. Thirteen clans — ‘tribe’ is seldom used now — are named in the petition: six of the Dhuwa moiety and seven of the Yirritja moiety. The clan named Magarrwanalinirri in the petition is more usually known as Munyuku, one of the Yirritja clans.⁸⁷ Nine of these clans participated in the painting of the church panels that inspired the bark petitions.⁸⁸ Note that these people from Yirrkala feel themselves to be citizens who can rightfully and confidently make supplications to parliament, even though they are described in official communications as ‘wards’.

The rest of the petition reads in full:

1. That nearly 500 people of the above tribes are residents of the land excised from the Aboriginal Reserve in Arnhem Land.
2. That the procedures of the excision of this land and the fate of the people on it were never explained to them beforehand, and were kept secret from them.
3. That when Welfare Officers and Government officials came to inform them of decisions taken without them and against them, they did not undertake to convey to the Government in Canberra the views and feelings of the Yirrkala Aboriginal people.
4. That the land in question has been hunting and food gathering land for the Yirrkala tribes from time immemorial; we were all born here.
5. That places sacred to the Yirrkala people, as well as vital to their livelihood are in the excised land, especially Melville Bay.
6. That the people of this area fear that their needs and interests will be completely ignored as they have been ignored in the past, and they fear that the fate which has overtaken the Larrakeah tribe will overtake them.
7. And they humbly pray that the Honourable the House of Representatives will appoint a Committee, accompanied by competent interpreters, to hear the views of the Yirrkala people before permitting the excision of this land.
8. They humbly pray that no arrangements be entered into with any company which will destroy the livelihood and independence of the Yirrkala people. And your petitioners as in duty bound will ever pray God to help you and us.

85 According to Morphy (1991, p. 42), the term ‘Yolngu’ was not available to English audiences before 1966; ‘Yolngu’ meaning ‘people’ or the people who speak the group of languages known as *Yolngu matha*.

86 Williams 1986, Chapter 4. She discusses *Miliwurrwurr bäpurru* on p.66, and *Balamumu bäpurru* on p.68, though she makes no mention of either *Narrkala* or *Gapiny* here, but confirmed their status in conversation with me.

87 Information re the alternative name was provided by Frances and Howard Morphy (email, 5/9/2007).

88 The four clans that did not participate in the painting of the panels were the Madarrpa, Munyuku, Wangurri and Warramirri.

The first of the petition's clauses makes it clear that the excision of 140 square miles is the trigger for their grievances. Note that they identify themselves as residents, not owners, of the Arnhem Land reserve and not Yirrkala. Perhaps they use the reserve as their home address to make it known that their petition is addressed to the appropriate organisation: it is the Commonwealth, and not the Methodist Church, that is ultimately responsible for their grievance, the excision. Perhaps, too, this home address is used as a way of putting distance between the petitioners and the church. It is most certainly not the case, however, that this home address acknowledges the Commonwealth as landlord, the titleholder of this 'crown land'.

The second and third clauses make it clear that the main Yolngu grievance is the absence of consultation. From the remaining clauses it becomes apparent that they were deeply offended that at no stage had anyone involved them in discussions about the intended fate of their land. To remedy the situation, they demand, in the seventh clause, that the House of Representatives establish a committee to inquire into their grievances. In this chapter I have already shown how Yolngu were excluded from the early discussions about their country and will continue that story in Chapter 4. Here I merely want to amplify the importance of consultation to Yolngu. In sending the petitions, Yolngu wanted to let the world beyond Yirrkala know of the distress strangers had caused by coming onto their country uninvited and, without their permission, had set about churning up that country. From a Yolngu point of view the intrusion of miners was a serious and flagrant breach of Yolngu protocol and law, law that had been given by *wangarr*. The country too had been given to them by *wangarr*. In the petition, they assert that the land is theirs: they reside on this land; they were all born on this land; they have hunted on and gathered from this land since time immemorial. This land holds their sacred sites; and without this land, they would suffer the same fate as the dispossessed Larrakia (now the standard spelling) people of the region around Darwin. Julie Fenwick is astonished to find that the petitions mention neither ownership of the land nor Aboriginal rights to land. She goes on to suggest the reason for this is that the notion of land rights 'had not yet emerged among non-Aboriginal campaigners'.⁸⁹ She does, however, miss the point that a few Europeans — for example, Beazley and Ellemor — were already speaking out on the need for Aboriginal tenure over Aboriginal reserves. Given Beazley's involvement with the petitions, I suspect that he did use terms like ownership in his original draft of the petition and that Yolngu eventually rejected such terms. I think this suggestion is borne out by considering the Yolngu letter of 23 July again. There they wrote: 'We believe our age old occupancy of this land gives us rights which should not be brushed aside.' Terms like 'occupancy' and 'rights' have disappeared by the time of the finalised petition. In the letter, too, they use the term 'age old occupancy', which they have discarded in the final petition, settling instead for 'from time immemorial', a venerable legalistic formula, which may well have been used by Beazley in his original draft and which, by the way, emerged in English legal history at roughly the same time as petitions.⁹⁰

89 Fenwick 2001, pp. 12-13.

90 The first Statute of Westminster (1275) fixed the date of time immemorial — the date before legal memory — at 1189, the beginning of the reign of Richard the Lionheart, i.e. two generations ahead of the reigning king, Edward I.

Given the absence of terms like land rights or ownership, I would argue that the bark petitions are essentially a Yolngu protest framed in Yolngu terms. In my opinion Beazley outlined a possible course of action, which, because it seemed the most promising, Yolngu decided to adopt, and in the process adapted Beazley's phrasing to suit their understanding and their purpose. As further evidence of this, consider the *bäpurrü* terms they introduce in the preamble. Consider too the final prayer: 'And your petitioners as in duty bound will ever pray God to help you and us'. Compare it with the more standard prayer offered in, say, the FCAA petition for constitutional reform — 'And your Petitioners, as in duty bound, will ever pray' — and it is found to be a singularly Yolngu flourish. Terms like ownership, rights or title deeds were simply not part of the Yolngu lexicon in 1963, because such terms did not correctly convey their relationship with their country. After all English, as Galarrwuy Yunupingu has commented, is simply 'incapable of describing our relationship to the land of our Ancestors'.⁹¹ The country had been bestowed on the various Yolngu clans by *wangarr*, and as such it was to be cherished and protected by those clans. That it was their country was self-evident to them; it would have been inconceivable that the country belonged to anyone else. Such knowledge was not recorded on paper, but rather in songs, dances, designs and *rangga* (sacred objects), all of which had also been given by *wangarr*. Evidence, if any were needed, that it was Yolngu country was manifested not only in such cultural expressions, but in the country itself — in its features, names and sacred sites. Country did not have to be proved by paper.

Fenwick expects to find the terms associated with European notions of property rights in the bark petitions because she, like Attwood, wants the bark petitions to mark the start of the era of land rights and the emergence of land-rights discourse. Further, both authors argue that when land rights did become an issue, it was precisely because of the involvement of non-Indigenous activists.⁹² Unlike these authors, Goodall characterises the bark petitions as a moment of 'land-focused politics' from which land-rights discourse later re-emerges.⁹³ While agreeing with Goodall, I would add that the bark petitions do mark the start of a rather different discourse — that of sacred sites — a discourse that would later become conflated with, and eventually subsumed by, land-rights discourse. I will defer discussion of these intertwined discourses until Chapter 5. For the moment, let me simply say that one real and lasting significance of the bark petitions is their pronouncement of sacred sites, and the significance is all the greater because it was introduced by Yolngu. Extraordinary as it may seem, the mention of sacred sites in the petitions marks the moment that this difficult notion erupts into public discourse. Until the petitions, despite all they had written to connect the 'idea of the sacred' to Aboriginal society, anthropologists had barely turned their attention to this crucial concept, as Maddock has noted.⁹⁴

91 Yunupingu 1997, p. 65.

92 Fenwick 2001, p. 14; Attwood 2003, p. 216.

93 Goodall 1996, p. 261. Her central argument in this book, which focuses on Indigenous political movements in south-eastern Australia, is that demand for land always underpinned other demands.

94 Maddock 1991, p. 214. Maddock (1989, p. 26) also notes that the first printed references were made in 1947 by both Strehlow and Elkin. Stanner could also be added to the list (see Chapter 1 here), except his investigation of Warramunga sacred 'spots' was not published until 1981.

IV

According to the Standing Orders (SO) for the House of Representatives extant at the time the first bark petition was presented,⁹⁵ petitions ‘must be fairly written, typewritten, printed, or reproduced by mechanical process, without interlineation or erasure’ (SO 115); they ‘shall be in the English language, or be accompanied by a translation, certified to be correct by the Member who presents it’ (SO 117); they must be ‘respectful, decorous and temperate in [their] language’ (SO 125); and they must ‘contain a prayer at the end thereof’ (SO 116). Petitions must be signed by at least one person (SO 118), and ‘every signature shall be written upon the petition or upon sheets containing the prayer of the petition’ (SO 120). Petitioners must sign their own signature, ‘by their own hand, and by no one else, except in case of incapacity or sickness’. ‘Persons unable to write shall affix their marks in the presence of a witness, who shall as such affix his signature’ (SO 119). At the time there was no requirement to include the petitioner’s address, though there now is. Then there was no standing order to say that a petition to the House of Representatives should confine itself to a matter within the Commonwealth’s competence, as there now is; the only requirement at the time was that petitions should make no reference ‘to any debate in Parliament’ (SO 124). The bark petitions fulfilled all stated criteria admirably.

Then, unlike now, there was no provision for the relevant minister to comment upon the petition. Thus, it was a matter of some controversy that the minister responsible for the people at Yirrkala and for making the excision, Paul Hasluck, saw fit to make comments on the first bark petition a week after it had been presented and chose to do so in response to a question-without-notice — a ‘Dorothy Dixer’ — from a fellow government member, Richard Cleaver (Swan, WA). Hasluck insisted that he was not ‘questioning in any way the propriety of the presentation of this petition nor the right of the people who signed it to do so’. But, he said, he had made certain ‘inquiries’ about the 12 signatories and discovered that they were drawn from just six of the 13 clans named at the start of the petition. Furthermore, ‘only one of the signatories occupies any sort of position which might entitle him to speak on behalf of one of the tribal groups’ and none of the signatories ‘was over the age of 30 years’. Facts such as these, he claimed, upset the usual chain of authority of Aboriginal society: ‘the older men and the older women are the ones who exercise influence and the young men are regarded very much as juniors until they attain a position of leadership’. Hasluck added that two of the signatories were 18 years of age and ‘three of them were young women in their early twenties’.⁹⁶

When he took to his feet to answer this question, Hasluck had been in possession of these facts for a little more than two hours: the information had dutifully arrived by telex from Darwin around noon in response to an order from Hasluck’s office the previous day. The information on the identities of the 12 signatories had been supplied by Gordon Symons, who, as we have seen, had been the missionary at Yirrkala until

95 Standing Orders for the House of Representatives were substantially overhauled in 1963, and the revised Orders came into effect on 13 August 1963.

96 CPD (HR), 20/8/1963, pp. 276-277.

appointed chairman of MOM’s northern district; the points about the lack of authority and the imbalance in clan representation came from Giese, the Director of Welfare.⁹⁷ There is nothing in the Standing Orders, then or now, that requires petitioners to be of a particular age or a particular gender. There is no requirement that petitioners be representatives of a larger collectivity; the petition could have been signed by just one person to satisfy the formal criteria. It is hardly surprising that the signatories were young: they at least had the benefit, if we can call it that, of a perfunctory European education. A document of the time estimates that of 227 adults at Yirrkala, only 20 were considered ‘literate’.⁹⁸ The minister, however, may have had a point in saying that it is the elders who carry authority, though that authority may be manifest in ways other than a signature.⁹⁹ It is inconceivable that there would have been a petition without the approval of the elders. Here, for the record, are the names and other particulars of the 12 signatories, in the order of their signing.¹⁰⁰

Name	Approx. year of birth (age in 1963)	Gender	Clan
Milirrpum	1927 (36)	M	Rirratjingu
Djalalingba	1936 (27)	M	Gumatj
Djayila	1934 (29)	M	Djapu
Daymbalipu	1934 (29)	M	Djapu
Dundywuy	1936 (27)	M	Marrakulu
Dhunggala	1940 (23)	M	Djapu
Raiyini	1939 (24)	M	Gumatj
Manunu	1942 (21)	F	Dhalwangu
Larrakan	1939 (24)	F	Gumatj
Wulanybuma	1945 (18)	M	Dhalwangu
Wawungmarra	1945 (18)	M	Manggalili
Nyabilingu	1937 (26)	F	Manggalili

Hasluck’s intervention was generally interpreted in Yirrkala and elsewhere as an outright rejection of the petition, but, as I have just shown, the petition was in order — it complied with the Standing Orders — and thus could not be rejected. Hasluck was simply acting outside his authority.¹⁰¹ The episode was no mere ‘red herring’, as Fenwick claims: rather, it was an abuse of Hasluck’s ministerial power and privilege.¹⁰² The outburst was, I think, an expression of Hasluck’s anger at what he perceived to be Yolngu insubordination.

Gordon Bryant was outraged by Hasluck’s denunciation of the petition. In a stinging statement made outside the House later in the day, Bryant called Hasluck’s rebuff

97 NAA A452 NT 1963/6064.
98 Bryant papers, NLA, MS8256, Series 11, Box 185.
99 The urgent telex of 20/8/1963 nominated Mawalan, Narritjin, Gawirrin and Wandjuk as elders who were capable of signing their names (NAA A452 NT 1963/1270).
100 The information comes from NAA A452 NT 1963/6064; it is corroborated by the ‘Yolngu census’ compiled by Joyce Ross (a teacher and interpreter at Yirrkala at the time), a copy of which is held by Nancy Williams.
101 Edgar Wells says both that Hasluck ‘introduced a motion to reject the Bark Petition’ and that he made a ‘Statement by Leave’, but neither is correct (see Wells 1982, p. 83).
102 Fenwick 2001, p. 8.

‘unprecedented’: Hasluck had ‘used all the weight of his ministerial position and his priority in Question Time to attempt to silence any further protests from aboriginal people’. Further, ‘[n]o previous petitioners of the Parliament have ever been so peremptorily rebuked nor have been more deserving of sympathetic encouragement’. The small group of Yolngu petitioners, he continued, had been ‘deserted by the very person to whom they [were] entitled to look for protection’; that same person preferred to render assistance to ‘one of the world’s most powerful industrial corporations’, their adversary. If, as Hasluck seemed to insist, his was the last word on anything to do with Yirrkala, then it was ‘the most arrogant assumption of the “white man’s burden” in recent history’ that Bryant had come across.¹⁰³

On learning of the supposed rejection, senior Yolngu, according to Wells, decided to send a second petition to Canberra, this time incorporating their thumbprints. As Wells noted, they ‘trooped [in] one after another ... “to send the word to Canberra”’ to make their mark on pages prepared by Wandjuk.¹⁰⁴ In his supplementary account, Wells recalled that he, Tuffin and ‘almost the entire community’ gathered around the Yirrkala store until ‘the early hours’ to watch the procession put their thumbprints and marks on paper, using an upturned tea chest as a table.¹⁰⁵ In the later account, Wells claimed that he and Tuffin were on hand to witness the marks made, since ‘all the thumbprints had to be witnessed by a European to make them legally valid’,¹⁰⁶ though Standing Order 119 extant at the time made no mention of race. Wells may have watched as the people made their mark, but his signature appears nowhere on the three sheets of thumbprints. Tuffin’s signature appears seven times and the rest of the witnesses’ signatures are Yolngu.¹⁰⁷ In addition to 31 thumbprints there are four actual signatures — those of Wandjuk, Djalalingba and Daymbalipu. Among the thumbprints are those of senior men like Mungurrawuy, Mawalan, Birrikitji, Narritjin and his brother Nanyin. Giese commented a short while later: ‘Irrespective therefore of the means used in obtaining the signatures some weight must be given now to the fact that the leaders and prominent men of six of the groups are represented on the thumb-print petition’.¹⁰⁸ The event described by Wells probably occurred on the night of 20 or 21 August, because a telex of 23 August informed Canberra that news of the second petition from Symons had reached the assistant Director of Welfare (Milliken) at ‘4pm yesterday’.¹⁰⁹ According to Giese, who was in Canberra when the second petition arrived, a further two petitions, three sheets of thumbprints and a letter were sent

103 Statement by Gordon Bryant, 20/8/1963 (Mitchell Library, FCAATSI Papers, MSSS 2999, Box Y600).
104 Wells 1982, p. 85.
105 Wells 1996, pp. 13-14.
106 *Ibid*, p. 14.
107 Djalalingba witnessed six thumbprints; Larrakan’s signature appears four times; Wandjuk, Dadaynga and Nyablilngu witnessed three each; Daymbalipu and Djalila appear twice; and Raiyini one.
108 Giese, undated memorandum (c. 28/8/1963), ‘The second petition’ (NAA A452 NT 1963/6064).
109 NTA to Territories Canberra, 23/8/1963 (NAA A452 NT 1963/6064); see also *NT News*, 24/8/1963, p. 3.

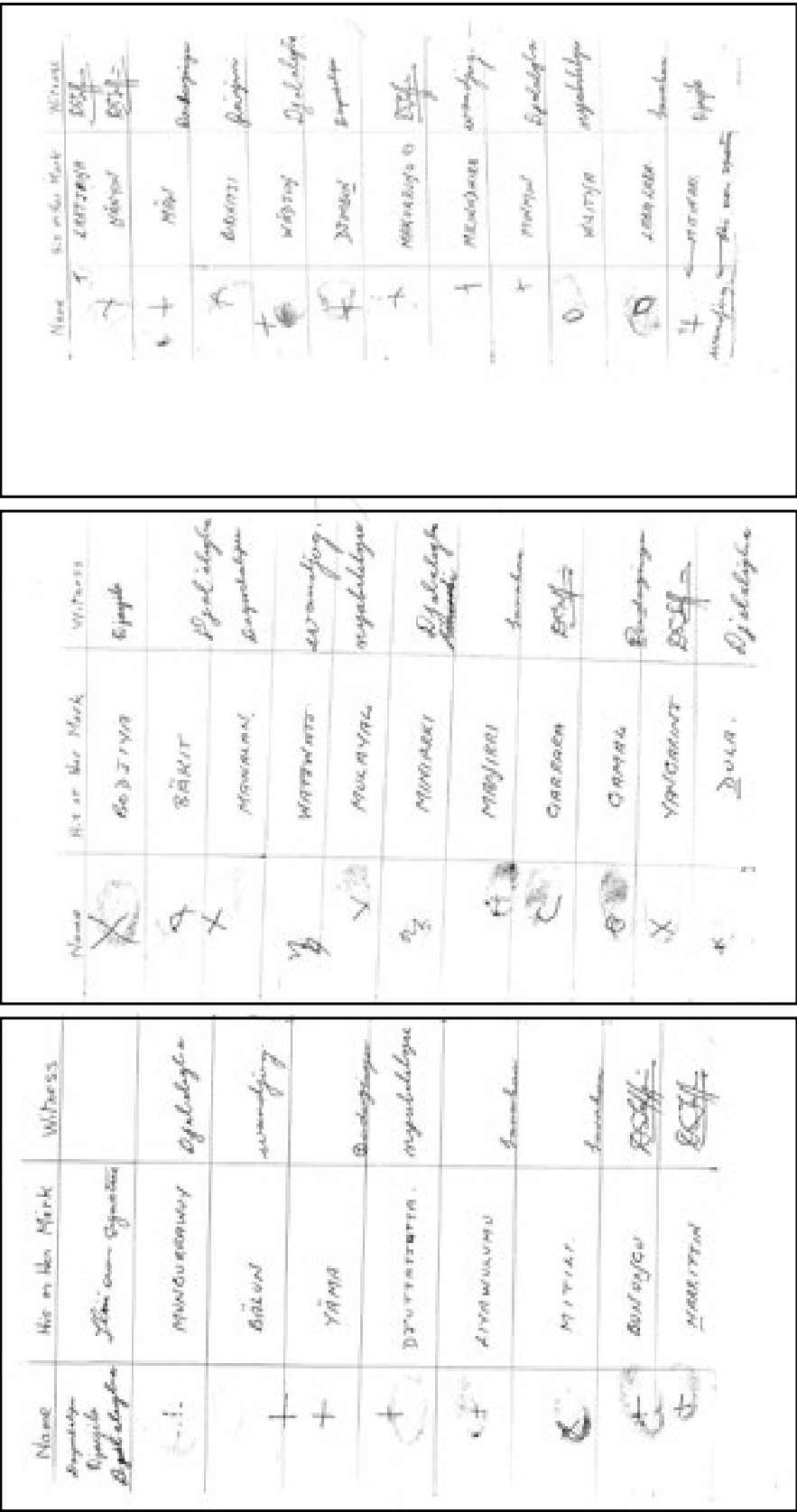


Fig. 3.4: The three sheets of thumbprints

directly to Calwell’s office.¹¹⁰ The second completed petition was presented to the House of Representatives on 28 August by Arthur Calwell, the Opposition Leader, while Kim Beazley presented a plain-paper petition.¹¹¹ Parliament’s vaults house the three A3 sheets bearing thumbprints. These sheets were never presented to the House of Representatives, because they do not carry the mandatory prayer of the petition, as stipulated by Standing Order 120. No one, it seems, bothered to tell Wandjuk about this requirement, although he did seem to know about Standing Order 119, because, on those sheets he is said to have prepared, one of the three columns is headed ‘Witness’. The other columns are headed ‘Name’ and ‘His or Her Mark’, though the thumbprints and names are transposed incorrectly into these columns.

V

On 20 August Calwell launched another motion of want of confidence: he proposed that ‘the House condemns the Government for its failure to make adequate provision for defence, education, housing, health, social services and northern development’ in the budget. The following day Prime Minister Menzies retaliated by ‘inform[ing] the House that until the Want of Confidence Amendment moved by the Leader of the Opposition in connexion with the Budget was disposed of the Government did not propose to answer questions’, opting instead to debate the Appropriation Bill non-stop for three days.¹¹² Calwell’s motion was finally put to the vote on 29 August and defeated by the narrowest of margins — 59 to 57.¹¹³

Thus it was that Hasluck’s comments on the first Yolngu petitions on 20 August marked the last answer until Question Time resumed on 10 September, by which time the House had been debating the budget for around 35 hours. Even so, it would take another 45 hours, spread over 17 further days, before the Appropriation Bill was finally passed by the House of Representatives on 23 October — and thereafter only three sitting days remained until the election. In the absence of normal business, the Opposition was denied an opportunity to rebuke Hasluck formally for his immoderate remarks on the petitioners’ status.

Immediately after presenting his petition on 28 August, Beazley foreshadowed a motion to establish a Select Committee to inquire into the grievances of the people of Yirrkala. The first opportunity to speak to that motion came on 12 September. Then Beazley mused about the status of Aboriginal people: were they members of ‘the community of the Australian Commonwealth’ or were they ‘a conquered people’? If they were Australians, he asserted, they could not ‘be dispossessed of land that they occupy without consultation’ and were entitled to seek remedy from the appropriate Australian parliament. If conquered peoples, then they should look to the United Nations for redress. In petitioning parliament, the Yolngu people had adopted ‘a course that any Australian citizen would take if he felt that his interests were infringed’. Again

110 Giese, ‘The second petition’ (NAA A452 NT 1963/6064).
111 CPD (HR), 28/8/1963, p. 561.
112 V & P, 21/8/1963.
113 CPD (HR), 29/8/1963, p. 715.

he raised the issue of Aboriginal title to reserve lands: until this question was settled, he said, ‘Australia will have constant crises developing for the aboriginal Australians immediately some business, mining, agricultural or pastoral interest desires the land that they occupy’. In the meantime, he insisted that Yolngu grievances ‘must be heard’ and that the Yolngu petitions put not only the parliament but also the nation ‘on trial’. Beazley assured the House that, in calling for an inquiry, the Opposition was wishing neither to prejudge nor to take a partisan position on the matter. Rather, he said, the parliament ‘ought to be motivated by respect, by the desire to do justice and by the recognition that there are obligations to make restitution for much of the past of our nation’.¹¹⁴

In response, Hasluck was at pains to adopt the same spirit of bipartisanship by ‘readily accept[ing]’ Beazley’s motion and by agreeing that the people of Yirrkala were Australian citizens, who were entitled to have their ‘petition regarded with respect and investigated by this House’, even though he himself had so recently extended no such courtesy. Had the government had a sufficient majority, the minister no doubt would have rejected Beazley’s motion out of hand: after all, the government, on Hasluck’s account, had acted faultlessly towards the people of Yirrkala in granting the mining leases and had no case to answer. Hasluck went on to detail his own version of the government’s policy and its dealings with the miners and the Methodist Church, and, on this account, the government had been utterly responsible and reasonable — meticulous even — in its consideration of the impact of mining on Yolngu. As for the excision, Hasluck pointed out that only 60 per cent of the excised area had been designated for a specific purpose; he seemed to imply that Yolngu had unfettered access to the remainder; the mining, it seemed, would not interfere with Yolngu lifestyle.¹¹⁵

In taking his turn in the debate, Bryant too had intended to speak in the same spirit of bipartisanship, but, having listened to Hasluck’s account, he felt obliged to point out that the excision was ‘a departure in principle from the policy’ just enunciated by Hasluck. Having begun negatively, Bryant continued in a similar vein by chiding Hasluck for his remarks about the Yolngu signatories on 20 August. Now all he said was that Hasluck had taken ‘the opportunity then to prejudice their case by making them appear very poor spokesmen’.¹¹⁶ This outburst almost cost Bryant a place on the committee of inquiry.

When the Speaker, Sir John McLeay, announced the committee’s composition a week later, Hasluck wasted no time in raising a point of order about the interpretation of Standing Order No. 326: ‘No member may sit on a committee if he is personally interested in the inquiry before such committee’.¹¹⁷ Hasluck asked for the Speaker’s ruling on whether Bryant should be excluded from the committee ‘first, because he is a litigant before a court in a case that is pending regarding issues to be inquired into, and, secondly, because he has publicly claimed to be the agent acting on behalf of the people whose grievances are to be investigated’.¹¹⁸ Here Hasluck was referring to

114 CPD (HR), 12/9/1963, pp. 927-929.
115 *Ibid*, pp. 930-933.
116 *Ibid*, pp. 933-937.
117 CPD (HR), 19/9/1963, p. 1176.
118 *Ibid*, p. 1178.

objections Bryant had lodged, on behalf of both FCAA and Yolngu, with the Mining Warden’s Court of the Northern Territory to additional special-purpose leases sought by Gominco over Point Dundas, the eastern headland at the entrance of Melville Bay.¹¹⁹ The Speaker felt unable to make the requested ruling, beyond stating that ‘[a] member must be guided by his own feelings in the matter and by the dictates of respect due to the House and to himself’.¹²⁰ Having reassured parliament that his role in the court action was that of the everyman and that he had no pecuniary interest in the case, Bryant was permitted to take his place alongside his Labor colleagues Kim Beazley and Jock Nelson on the committee. The government members were Roger Dean (Robertson, NSW), Don Chipp (Higinbotham, Vic), Charles Kelly (Wakefield, SA) and Charles Barnes (Country Party, McPherson, Qld). The newly-appointed committee held its first meeting later that day, nominating Dean as chairman and drawing up an agenda and itinerary for their inquiry. The inquiry is the subject of the next chapter.

VI

These days the bark petitions — together with a third Yolngu petition from 1968 (see Chapter 5) — are forced to share their cabinet with a shiny plaque commemorating the 30th anniversary of the 1967 referendum, the eventual upshot of FCAATSI’s petition for constitutional change. No doubt, curators have forced the petitions to cohabit with the plaque because these artefacts are taken to symbolise the ways Indigenous people have been increasingly drawn into the web of the Australian nation. While, as I have already suggested, the bark petitions are regarded by many as purely emblematic, they were a powerful and memorable statement of Yolngu grievances to the parliament and they have proved to be catalysts for further action. Another reason for celebrating the bark petitions is that they were the first petitions presented to the federal parliament to culminate in a Select Committee inquiry.¹²¹

The 1967 referendum deserves to be remembered for a very different reason: as a rare occasion in Australian history, when non-Indigenous Australians overwhelmingly expressed their sympathy for Indigenous Australians — 91 per cent of voters cast their ballot in favour of the two propositions put forward by FCAATSI. The one concrete outcome of the referendum — the creation of both the Council for Aboriginal Affairs and the Office for Aboriginal Affairs — would profoundly influence subsequent events at Yirrkala, and so the role of the council, in particular, is considered in some detail in Chapter 6.

119 Bryant had seen notices for these leases *NT News* of 20/6/1963 and in Darwin, on his way back from Yirrkala, he lodged objections on behalf of FCAA. After an initial hearing the Mining Warden adjourned the matter, and it seems to have lapsed thereafter. One possible reason for the action not proceeding is that Bryant lodged his objections on 22/7, two days after the advertised closing date for submissions (Bryant Papers, NLA, MS 8265, Box 185).

120 CPD (HR), 19/9/1963, p. 1178.

121 HR Parliamentary Practice 2005 (5th edition, online version), p. 618.

Chapter 4: Grievances aired

While the main focus of this chapter is the conduct of the Select Committee’s inquiry into the grievances of the Yolngu people at Yirrkala, the chapter begins with a brief excursion into the changing nature of Australia’s research priorities and research institutions in the early 1960s. The detour helps to provide the background for the committee’s inquiry and concerns.

I

When Hasluck was appointed Minister for Territories in 1951, Professor Elkin had every reason to believe that here was the minister he ‘had been waiting for’.¹ Since McEwen, Elkin had not enjoyed the ear of any minister,² and consequently Elkin was, as McGregor observes, ‘marginalised as a shaper of Aboriginal policy’.³ Hasluck’s embrace of assimilation should have been sufficient reason for Elkin to suppose he might once again influence policy making, and yet, as Wise reports, within three months of Hasluck’s appointment, Elkin was disillusioned. At first he was uncomfortable with Hasluck’s ‘vivid rhetoric’ about Aboriginal people,⁴ but his disappointment grew in 1953 with the passing of the Welfare Ordinance, which, Elkin told Hasluck, ‘underestimate[d] the *importance of being Aboriginal*’ and which sought to implement an ‘impossible’ version of assimilation based on ‘the complete change of the Aborigines in all but skin colour’.⁵ The style of assimilation Elkin promoted envisaged bringing Aboriginal people into the mainstream of Australian society and economy without requiring them to abandon their culture. As McGregor says of Elkin’s view, ‘the continuity of indigenous tradition was an integral — not merely superficial — aspect of Aboriginal advancement into civilisation’,⁶ while Hasluck favoured a brand of assimilation that eschewed difference of any kind, including that of cultural background or tradition, as noted in Chapter 2. The rift between Hasluck and Elkin continued to grow over the decade, but, nonetheless, Elkin continued to advocate his version of assimilation, writing numerous tracts on the subject during the 1950s in the hope of regaining ‘control of the assimilationist agenda’.⁷

Around the same time Elkin’s influence within Australian anthropology was on the wane. Whereas once he had been the sole commander of the anthropological empire within Australia, Elkin was from 1949 obliged to share the territory with the Australian National University (ANU) and later other universities. Gray suggests a gentlemanly agreement existed between Elkin and Raymond Firth, who had been charged with establishing the Research School of Pacific Studies at the ANU: the ANU would focus its research efforts on the south-west Pacific and Papua New Guinea (PNG), while Sydney would concentrate on Aboriginal studies.⁸ The division was not, however, as neat as this, with the universities straying freely across boundaries. For example, for the years

1 Wise 1985, p. 228.
2 After McEwen came Senator H. Foll (1939-41), Senator J. Collings (1941-45), H. Johnson (1945-49), P.McBride (1949-50) and E. Harrison (1950-51).
3 McGregor 1996, p. 124.
4 Wise 1985, p. 228.
5 Elkin to Hasluck, 2/2/1953 (emphasis in original, see McGregor 1999, p. 244).
6 McGregor 1999, p. 246.
7 McGregor 1996, p. 124.
8 Gray 2007, p. 199.

1954 to 1957, of 31 projects listed as ‘Anthropology’ 13 came from Sydney, five of which dealt with PNG, one with the Pacific and four were Aboriginal investigations; and of the 13 ANU projects, six concerned PNG and three dealt with Aboriginal issues.⁹

The establishment of the ANU affected Elkin’s fortunes in another way as well. Soon after being lured back to Australia in 1950 to take up the chair of the Research School of Physical Sciences, (later Sir) Mark Oliphant — at the urging of Fellows of the British Royal Society residing in Australia— actively lobbied the Menzies government to set up an Australian Academy of Science along the lines of that venerable British institution. The academy would take over the functions of the Australian National Research Council (ANRC), which, it was agreed even by ANRC members, was no longer representative of the scientific community. The matter was discussed in detail at a two-day meeting at the ANU in July 1952, at which Elkin (who chaired the ANRC at the time) accepted that in time ‘there will be nothing for the ANRC to do’.¹⁰ A short time before this meeting, Elkin had informed the ANRC’s honorary secretary that his anthropological committee had nothing to report for the previous 12 months because it had had no money to initiate research.¹¹ Cabinet approval was duly given, and the Academy of Science came into formal existence in 1953, and after this no further Commonwealth subsidy was given to the ANRC, which continued to exist in name only until 1955.¹² Elkin sought to have anthropology affiliated with the Academy of Science, but the request was denied, since in the opinion of both Prime Minister Menzies and Oliphant the academy ‘must not include the social sciences’.¹³ Instead, anthropology was taken in by the fledgling Social Sciences Research Council (SSRC), also formally established in 1953.¹⁴ By the time Elkin retired from the University of Sydney in 1956, anthropological research had fallen on hard times and would not begin to recover until the early 1960s.¹⁵

No matter how much Elkin, Hasluck or anyone else talked up assimilation, the topic generated little enthusiasm among academic researchers. That this was the case can be seen from the *Bibliography of Research in the Social Sciences in Australia, 1954-1957*, published by the SSRC. The titles of only two projects contain the term ‘assimilation’, and both originated at the University of Sydney: J. H. Bell’s study of ‘mixed-blood aborigines’ at La Perouse and M.J.C. Calley’s investigation of ‘mixed-blood communities’ in north-eastern New South Wales. In the next volume of the bibliography, for the years

9 SSRC Bibliography, 1954-1957. Another four projects were listed for the University of Western Australia, where anthropology began in 1956 under the direction of Ronald Berndt, and a further one for the University of Adelaide (Strehlow).

10 Minutes of the seminar held 29-30/7/1952, p. 20 (NLA MS 482/26/407). As other files in this manuscript make clear, attempts had been made almost since its inception to reform the ANRC.

11 Elkin to Robertson, 7/7/1952 (NLA MS 482/62/872).

12 NLA MS 482/26/406. Commonwealth grants had been the ANRC’s main source of income after the Rockefeller Foundation withdrew its support after 1938. (It made three grants: 1926-31, £30,000; 1931-35 £15,000; 1936-38 £7,500.) The ANRC received a one-off grant from the Carnegie Foundation in 1940 of £3,000 (NLA MS 482/8/44).

13 Quoted in Macintyre 2010, p. 80; and also see p. 150.

14 Davenport 1988, p. 83; Wise 1985, pp. 210-211. The SSRC existed informally from 1942 as the SSR Committee of the ANRC; in 1952 the SSR Council became independent of the ANRC, and it can be argued that its withdrawal further weakened the ANRC (cf Turtle 1988, p. 240). The SSRC became the Australian Academy of Social Sciences in 1971.

15 Mulvaney 1988, p. 213; Macintyre 2010, p. 66.

1957-1960, again only two projects carry the term in the title: one is Bell’s from the previous volume; the other is Jeremy Beckett’s study of a ‘mixed-blood community in the pastoral west of New South Wales’, undertaken at the ANU.

While assimilation failed to stimulate much academic interest, the deficiencies in this line of research had become apparent to the various state and federal ministers for Aboriginal Affairs by 1961. They hoped that practical studies might somehow assist their program of assimilation. At the Native Welfare Conference of that year, the ministers called for further research in the areas of health, housing, education, vocational training and ‘social organisation and system of values’, meaning the factors inhibiting social change amongst Aboriginal groups and the factors preventing white Australians accepting Aboriginal Australians into national society.¹⁶ To oversee the project the SSRC appointed an advisory committee that included Ronald Berndt and Bill Stanner; henceforth AIAS would be responsible for research into traditional culture and the SSRC would sponsor research into contemporary Aboriginal issues.¹⁷

By the time of the next SSRC bibliography (1960-1963) appeared, seven projects on assimilation were underway and all of them focused on people or communities of ‘mixed blood’.¹⁸ As yet, no one was considering the impact of the policy on remote and intact communities like Yirrkala. Curiously, six of the projects from the most recent SSRC bibliography were listed under ‘Sociology’ and only one appeared in ‘Anthropology’. Various reasons might be advanced for this peculiar categorisation: perhaps the distinction between the two disciplines was not as clearcut as it would later become; perhaps anthropology was increasingly seen as the preserve of traditional or ‘primitive’ cultures, while sociology was regarded as the study of modern, industrial societies or moves in that direction. It might simply be that sociology was in its ascendancy at the time. I suspect these factors were interrelated and part of the larger reconfiguration and expansion of universities and their disciplines, to which I have already alluded by way of the ANU and Oliphant. Rather than discussing these developments further — they lie well outside the bounds of this project — I shall focus on certain other developments in the literature and in institutions in order to flesh out the intellectual landscape of the early 1960s. One significant development was the founding of the Australian Institute of Aboriginal Studies (AIAS), which was instrumental in revitalising Australian anthropology.

In some quarters in the late 1950s the triumph of assimilation as a policy seemed assured, but to this expectation was immediately added another thought: the need to preserve or to salvage the vestiges of traditional Aboriginal culture before they were obliterated by assimilation. Of course, this idea was not new to anthropologists like the Berndts or Elkin, but it was one that came to occupy the mind of W. C. Wentworth, who had held the federal seat of Mackellar for the Liberal Party since December 1949.

16 The conference was held at Parliament House, Canberra on 26-27/1/1961. (Proceedings of Native Welfare Conference, 1961, pp. 35-36).

17 Macintyre 2010, p. 160. The committee was chaired by anthropologist Ian Hogbin of Sydney University. A similar request was made to the SSRC from the 1965 Native Affairs Conference (NAA A452 1965/5387).

18 Oxer’s study of Allawah Grove, Perth, appears in the Anthropology section. Sociology contains research by Barwick, Reay, Bell, Strehlow and two studies by Gale (SSRC Bibliography, 1960-1963).

Wentworth succeeded in convincing Prime Minister Menzies and his cabinet of the need for a national institution given over to the salvage operation, and in 1959 approval was given to set up the AIAS in Canberra. Before long, a working group was formed to draw up plans for the new body; this steering committee was weighted towards the ANU and included anthropologists J.A. Barnes and W.E.H. Stanner, a long-time friend to Wentworth, as well as the now-retired Elkin.¹⁹ By 1960 the working party had recommended to Menzies that the final design of the institute be deferred until after a national conference had reviewed the current state of Aboriginal studies.

That conference, sponsored by the SSRC and organised by Stanner,²⁰ was held in May 1961 and attracted 55 scholars then engaged in some facet of Aboriginal studies, but most were from ‘the broad fields of anthropology, human biology, linguistics and pre-history’,²¹ though none touched upon welfare issues or politics since such topics were considered to be contemporary and therefore beyond the purview of the symposium and the embryonic institution. Hasluck played no part in the proceedings. Overwhelmingly, the delegates were ‘as much concerned with what we do not know as with what we know’, as Stanner noted in his introduction to the published proceedings.²² Of all the papers, I find the offering from Barnes — who probably had the slightest acquaintance with the Australian scene — the most perceptive, albeit mildly critical, of the antipodean practice of the discipline. As he saw it, anthropology had focused too much on kinship and social structure without attending to the way the structure worked in reality. Further, he said, it had paid too little attention to either the political or the economic life of Aboriginal groups, and he wondered whether ‘true kinship elements ... [could] be separated from the political and other social elements’.²³ He told the symposium that anthropology should avoid creating the impression that Aboriginal people lived in ‘stable permanent groups’ and that the discipline should not ‘remain indefinitely a white monopoly’.²⁴ Significantly, he pointed out that Australian anthropology had neglected to study Aboriginal territorial organisation.²⁵ Barnes felt it was necessary to probe deeper into the current situation, where ‘the timelessness of the Dreaming exists alongside the erratic unpredictable change of the present’.²⁶

Having advocated to the conference the need to study both contemporary and traditional aspects in tandem, Barnes, as acting director of AIAS, a year later refused to have anything to do with the SSRC survey on assimilation, since the institute could ‘not consider any research involving current aboriginal welfare or administration’ and

19 Barnes, an Englishman, was originally appointed to Sydney University as Elkin’s successor, but soon took over the vacant chair of Anthropology at the ANU (Gray 2007, p. 225). Wentworth and Stanner had known each other since 1933, when both were on the staff of the NSW Premier, Bertram Stevens (Barwick & Beckett 1985, pp. 6, 35-36). Stanner had been appointed Reader in Comparative Institutions at ANU in 1951 (Gray 2007, p. 187).

20 Stanner became the executive officer and deputy chairman, when an interim AIAS council was appointed later in 1961.

21 Barwick & Beckett 1985, p. 36.

22 Stanner 1963, p. xvi.

23 Barnes 1963, pp. 198, 204-5, 209.

24 *Ibid.*, pp. 209, 206.

25 Edited discussion on social organisation in H. Sheils (ed) 1963, p. 227.

26 Barnes 1963, p. 207.

was ‘concerned only with the study of aborigines as a people and their culture’.²⁷ The institute had thus embarked on the course charted for it by Wentworth—the recording of traditional culture before it disappeared permanently.

Despite its orientation towards traditional Aboriginal cultures, AIAS did briefly flirt with contemporary issues in 1963. At its meeting of 20-21 February 1963, the interim council determined that Menzies’ announcement of the additional mineral leases to Gominco a few days earlier represented a significant new threat to Yolngu culture and so mapped out an ‘urgent project’ for Arnhem Land. Elkin was put in charge of the project, in spite of the fact that he was largely supportive of the mining venture, which he saw as a means for Yolngu advancement into the mainstream economy.²⁸ Various council members tried to impress upon MOM the need to preserve ‘as much as possible of the culture of the people be recorded before it is too late’.²⁹ The AIAS minutes of the time set out quite an elaborate research program, but only four projects affiliated with it ever came to anything like fruition and only one of them had any direct bearing on the events at Yirrkala considered in this thesis.³⁰ This project, proposed by Ronald Berndt, is discussed in detail in the next chapter, but, by the time of Berndt’s eventual visit to Yirrkala, AIAS’s brief foray into initiating its own research was over, and the ‘Gove project’ was defunct. A letter from the head of the Prime Minister’s Department advised on 28 June 1963 that the institute should desist from its own research; it should confine itself instead to ‘the coordination and sponsorship of work by existing authorities in the aborigines studies field’, and those focusing on traditional culture.³¹

Soon two significant projects on contemporary issues affecting Aboriginal peoples were underway. The first of these was Colin Tatz’s investigation of the administration of the assimilation policy. As a young PhD student at the ANU freshly arrived from South Africa, Tatz visited Darwin in May 1961 to make arrangements for his intensive fieldwork later that year. His aims were to explore the relationship between policy and administration and to propose a suitable structure for the administration of assimilation policy.³² He would spend a year in the Northern Territory, devoting time equally to combing through NTA records and visiting missions and government settlements. Not surprisingly, Tatz found ‘a very definite gap between policy as enunciated from time to time and actual administrative practices’. He found that only five Canberra officers had any direct experience of conditions in the Northern Territory and he therefore held Canberra’s general inexperience to be a key factor in comprehending this gap.³³ He also found a vast difference between Canberra and Darwin in terms of perception and outlook. To those in Canberra, officials in

27 Minute to Hasluck from Moy on discussion with Barnes on 31/8/1962 (NAA A452 1961/1984).

28 Wise 1985, p. 232.

29 Symons to Wells, 5/3/1963 (NTRS 43, Box 9). Here he mentions being visited by Wentworth, Beazley and Barnes and having a letter from Elkin.

30 At the February meeting it was also suggested that the archaeologists Mulvaney and Golson do a preliminary survey of the Gove Peninsula. Another suggestion was that the curator Karel Kupka, who had previously visited Arnhem Land, make a new collection of bark paintings and other artefacts for AIAS. AIAS also considered underwriting the costs of films by Cecil Holmes for MOM (NAA A463 1963/746).

31 Bunting to Trendall (AIAS chairman), 28/6/1963 (NAA A463 1963/2851).

32 Tatz 1964, p. ix.

33 *Ibid.*, p. 273.

Darwin were incapable of seeing ‘the problem as a whole’ and so it was the business of Canberra to vet everything from Darwin for possible ‘impetuousness and/or ignorance’. To those in Canberra assimilation was ‘a paper framework, a set of words printed and reprinted in official publications’. If proposals from Darwin deviated from the official formula, they were dismissed with ‘impatience’. Tatz noted Canberra’s inclination ‘to lay down procedures, ideas and sub-aims which *ought* to work, with little recognition that when they fail there may be valid reasons other than sheer “incompetence” of Territory officers’.³⁴ Tatz came to the moderate conclusion that ‘some administrative re-arrangement’ was necessary to overcome the lack of fit between Canberra and Darwin on ‘ideas, policy, administrative practice and knowledge of what [was] possible and not possible’.³⁵

Tatz’s conclusions were undoubtedly understated for the sake of the Department of Territories, which approved and oversaw his research, but even so the department recommended against his dissertation being formally examined, since its contents were now said to be secret. From the outset, Tatz had been given almost unrestricted access to staff and files, in both Darwin and Canberra, with the proviso that only ‘material quoted from these records’ needed to be scrutinised by the department.³⁶ Hasluck personally intervened and the thesis was examined, though never published. From his year-long field work and subsequent stints of work in the territory, Tatz sometimes found himself cast in the role of Hasluck’s informant. Until Tatz, Hasluck had no real way of knowing what was going on in the Northern Territory or even in his department.³⁷ With Tatz, Hasluck was at last getting the information he craved.

The second project was a three-year investigation into contemporary Aboriginal difficulties inaugurated by the SSRC in 1963 with generous funding from the Myer Foundation. Charles Rowley, who at the time was the director of the Australian School of Pacific Administration, was appointed to head the project in 1964. Rowley was essentially a historian whose focus had been on Papua New Guinea, but in 1962 he applied this knowledge to suggest ways of solving Aboriginal problems in an article, ‘Aborigines and other Australians’, published in *Oceania*.³⁸ There he advocated for the formation and incorporation of Aboriginal organisations which might apply for grants-in-aid to purchase land and ‘other forms of property and the relevant managerial skills’.³⁹ His proposal was a radical departure from the ‘hand-out’ mentality of government, whereby money was wasted ‘on what Aborigines have not asked for, because someone else thinks it is good for them’.⁴⁰ No doubt such views helped to secure him the position as the project’s director. Rowley wasted no time in contacting other researchers with greater experience or involvement in a broad range of issues; some of them willingly collaborated on the SSRC project, while others were commissioned to undertake particular studies. The project ran over time and over budget, but resulted in Rowley’s ground-breaking trilogy published by ANU Press in 1970: the first volume provides

34 *Ibid.*, emphasis in original.

35 *Ibid.*

36 *Ibid.*, p.vi.

37 Tatz, pers. comm., 15/4/2010.

38 Rowley 1962 (*Oceania*, Vol. 32, No. 4, pp. 247-266).

39 Rowley 1962, p. 265.

40 *Ibid.*

a historical overview of the Aboriginal plight, while the second volume considers contemporary problems in ‘settled’ Australia and the third volume considers those pertaining to remote Australia.⁴¹

The SSRC had ‘wanted the focus to be on the plight of Aborigines in the “settled areas”’⁴², but Rowley the historian felt compelled as the project’s director ‘to provide a historical and rational framework’ for the disparate studies he would commission. It took Rowley some six months to decide that the project was really about ‘Aboriginal policy and practice’; it was only later that he came to realise that the ‘core of Aboriginal affairs for which I was searching was obviously, in retrospect, *political*’.⁴³ When questioned about the breadth of the project as he envisaged it, Rowley told the annual meeting of the SSRC that “‘if an invader completely dispossesses the indigenes”... then every activity of “the conquerors” was directly or by implication also “a native affair”’.⁴⁴ He felt vindicated in adopting and persisting with his broad approach:

But every step suggested that I was right in looking at the problem as a whole. The situation with fringe dwellers in the south was certainly very different from that of Aborigines in the far north and centre ... But the difference was one between different stages in a continuum of social change, with the same socio-economic factors continuing to operate, and being accelerated by the mineral finds in the north.⁴⁵

Rowley felt that the times called for ‘a national plan to promote equality and that it had to be expressed and applied in a flexible but uncompromising set of local tactics, sensitive to Aboriginal demands and activated as far as possible on Aboriginal initiatives’. Such a plan ‘must threaten what for the majority has been a comfortable status quo’ and had to be as much a plan for a ‘campaign’ as a report for government consideration. He understood that it was a bold enterprise, but someone had to make a start by asking ‘what must Aborigines do to decide what they want and to have some chance of getting it?’⁴⁶ In 1964, as Rowley later observed, ‘it was mainly non-Aboriginal leaders who were active in the articulation of Aboriginal interests’, but through organisations like FCAATSI Aboriginal leaders and new organisations would emerge. Within new corporate organisations, Aboriginal people would be able to ‘decide their own objectives and patterns of authority’. The role of government, as Rowley saw it, was to assist ‘the development of leadership and authority within Aboriginal society’; it was the task of the Commonwealth to bring Aboriginal peoples into the national polity, which in turn required ‘deep Commonwealth interference in the politics of municipal and state governments’.⁴⁷

41 The volumes, first published by the ANU in 1970, are *The Destruction of Aboriginal Society* (a); *Outcasts in White Australia* (b); and *The Remote Aborigines* (c). Rowley had taken up an appointment with the University of PNG in 4/1968 and so the final editing of the works was left to others—Stanner edited 1970 (b) and (c) (Macintyre 2010, pp. 156-164.)

42 Rowley 1973, p. 194.

43 *Ibid.* (emphasis in original).

44 Macintyre 2010, p. 157.

45 Rowley 1973, p. 195.

46 *Ibid.*, pp. 188-189.

47 *Ibid.*, p. 193.

II

Some of the developments just described were in train as the Select Committee prepared for its inquiry in Darwin and Yirrkala, though most of the research lay in the future and so was unavailable to it. Colin Tatz did give informal briefings to the Labor members of the committee,⁴⁸ and no doubt Beazley and Bryant also briefed the committee on their trip to Yirrkala the previous July. On the same day as Roger Dean became its chair — 19 September — the committee drew up a list of 24 points on which its members felt they required further information. That list was forwarded to the department the next day, but, since this was a Friday, the department delayed sending the request through to Darwin until Monday. The committee had called for the briefing material to be on hand by Friday, 27 September, but the department wanted it a day or so earlier, perhaps to compile or to vet the material and to make sufficient copies for committee members and support staff.⁴⁹ The committee held two further preliminary meetings in Canberra before travelling to Darwin to begin its inquiry on Monday, 30 September. At the second of these meetings, members quizzed departmental secretary Cecil Lambert about Arnhem Land, though no record of this discussion survives.⁵⁰ The Northern Territory Administration (NTA), and more specifically its Welfare Branch, had only two or three days to fulfil the committee's request for information, and, at first glance, it did so admirably. The task was not particularly onerous, since most of the information the committee sought required only brief or finite responses on a limited range of subjects. Almost all of the committee's list concerned aspects of either the proclamation of the Arnhem Land Aboriginal Reserve or the lease for the Yirrkala mission or the demographics of the mission.⁵¹ It was the sort of data that staff of the various branches of the NTA would have carried in their heads or had at their fingertips; it was the sort of information that is repeated so routinely in files as to become naturalised as taken-for-granted truths.

At their first meeting, Select Committee members also drew up an agenda and itinerary for their inquiry: they would take evidence in Darwin for two days, before moving on to Yirrkala for three days and then returning for a final day's hearing in Darwin. Between that first meeting and the first day of hearings there were just six working days in which to organise everything. There was much to be done and the committee's secretary, A.R. Browning, swung into immediate action, organising accommodation, transportation, interpreters. MOM's most proficient linguist, Beulah Lowe, and Arthur Ellemor were recommended and recruited;⁵² additional Yolngu interpreters were sought, with Djalalingba, Daymbalipu and Dadaynga (Roy Marika) obliging.⁵³ As well as organising briefing material from the NTA, a bibliography providing international comparisons was requested from the Parliamentary Library.⁵⁴ Precautionary anti-malarial medication was ordered, although the committee was not notified of an outbreak

48 Tatz, pers. comm., 15/4/2010.

49 NAA A452 1963/6390 and A12813.

50 The meetings were held on 24 and 26 September, Select Committee Report (henceforth SCR), p. 15.

51 The full list can be found at SCR, p. 14.

52 Suggested by Symons (NAA A12813).

53 Suggested by Wells (NAA A12813).

54 Browning to Parliamentary Librarian, 20/9/1963 (NAA A12813).

of hepatitis at Yirrkala until after its return to Canberra.⁵⁵ Advice as diverse as a dress code for committee members and standardised spellings for *Hansard* stenographers was dispatched. The Darwin hearings were held in the Legislative Council, while the church was the venue at Yirrkala.

Had the committee had greater collective familiarity with the field of Aboriginal Affairs and had it had more time for its inquiry, it might have posed more penetrating questions, but, as things stood, the 24 points were all that the inexperienced committee could muster. Of the seven committee members only Beazley, Nelson and Barnes had served on a similar inquiry — the Select Committee on Voting Rights of Aborigines in 1961 — and only Beazley and Bryant had any first-hand knowledge of the actual situation at Yirrkala. The committee did not seek information on either Yolngu social organisation or their relationship with the land, matters which one would have thought were fundamental to comprehending the complaints at the heart of the inquiry and the petition. Only two points on its list came close to calling for this sort of information: one asked for a 'brief history' of the 'Yirrkala people' over the past 30 years (perhaps since the establishment of the mission), while the other sought information on Yolngu religious beliefs and habits and on sacred sites. The information provided for these two topics was, as I will show, vague and even misleading, but it would have seemed authoritative, if rather confusing, to the majority of the committee members.

What the committee lacked in experience or knowledge was made up for by hard work and goodwill. In five short days, the Select Committee collected testimony from 24 witnesses, including ten Yolngu at Yirrkala, six NTA officials, three missionaries and one representative from Gominco.⁵⁶ Just three weeks after the hearings — on 24 October — chairman Roger Dean presented a draft report to the rest of the committee; amendments were then thrashed out; and Dean managed to deliver the committee's final report to parliament on 29 October, the penultimate sitting day for the 24th parliament. Its report was sound but made only 'modest' recommendations, which, according to Beazley, were 'all that the [coalition] members would accept'.⁵⁷ That the committee achieved so much in so little time was, according to Dean, largely due to the persistence of Beazley and Bryant.⁵⁸ From inception to conclusion, the committee's working life spanned a little less than six weeks.

Given their lack of knowledge and experience, it is perhaps not surprising that for most of the inquiry, committee members were mild in their questioning and thus often failed to tease out additional information or to clarify evidence by asking supplementary questions. This was especially the case with Yolngu witnesses, whose appearances were brief and mediated by interpreters. (Even the three Yolngu interpreters preferred to give their testimony in Yolngu *matha*.) It is likely that awkwardness, shyness,

55 Browning to inquiry team, 8/10/1963 (NAA A12813); Symons to Gribble, 19/9/1963 (MOM 464).

56 The committee also took evidence in Darwin from two elected members of the Northern Territory Legislative Council, from Davis Daniels, the Secretary of the Northern Territory Council for Aboriginal Rights; and in Canberra from a senior officer of the Department of Social Services, bringing the total number of hearings to six.

57 Beazley interviewed by John Ferrell for NLA Parliament Oral History Project, Tape 11, Side 1 (8/2/1984) (NLA Oral TRC 4900/24).

58 In an oral history recorded for the Northern Territory Archives Service, Roger Dean said Bryant and Beazley were the ones 'making the running' in the inquiry (NTAS TS 766).

politeness and even outright incomprehension on both sides contributed to this circumstance. After all, this was the first time that Yolngu witnesses had appeared in a formal, quasi-judicial setting, though the committee ‘was impressed by the quality’ of their evidence.⁵⁹ The fact that they felt themselves to be ‘Australian citizens free to speak their minds’ was attributed to the approachability, courtesy and encouragement of the inquiry’s secretary, A.R. Browning.⁶⁰ For their part, Yolngu witnesses ‘welcomed the coming of the Committee’ and felt the inquiry ‘helped them considerably’.⁶¹ As Rowley was to comment, the committee provided a direct link between Yolngu and parliament, and its ‘inquiry was conducted with dignity and impartiality’; it was, he said, ‘an impressive attempt at justice’.⁶²

Only occasionally did members become exasperated with evasive responses, and this was particularly so with Edgar Wells and Harry Giese, both of whom had to be recalled several times to clarify previous answers, especially where they contradicted other witnesses or, in the case of Giese, committee members. By the time of the inquiry, the careers of both men were under something of a cloud, and this factor may help to explain both their disposition and the quality of their testimony before the inquiry. Giese’s leadership of the Welfare Branch had been under examination since early 1962, when the Administrator (Roger Nott) had first urged a review of the branch, which, in his opinion, was in danger of becoming a ‘self-contained minor empire’, and the functions of which had greatly expanded to reflect Giese’s ‘wide interests’.⁶³ Giese therefore was keen to persuade the committee that his branch had handled every facet of the mining deal diligently, though, when faults or oversights were mentioned, he was quick to point out that any such shortcoming was the act of some subordinate during one of his absences. It is apparent from reading the transcript that Wells was out of sorts, nervous even, and there were a number of reasons for his discomfort. Wells feared he might be blamed by the Board of Missions and others for instigating both the inquiry and the petitions, but, while these reasons turned out to be baseless, he did, as we shall see, have cause to fear a backlash. Reporting on Wells’ performance at the inquiry, Symons told Gribble he had been impressed by the way Wells spoke up for Yolngu at the inquiry, but did not approve of his tendency to ‘gross exaggeration’.⁶⁴

An example of each man’s prevarication is in order here. At several points during the inquiry, Giese had feigned ignorance of the origins of the bark petitions. When finally challenged to affirm that Beazley had informed him of the petitions on 20 July, Giese could say that he remembered the meeting, but could ‘not recall a specific reference to the fact of the petition, but in the course of the general discussion we had it is quite probable that this point was made’.⁶⁵ Surely, he was disingenuous in this. Surely, he would have taken notice of such news, since petitions were not everyday occurrences in Darwin. And if he did take due note of it, why did he not pass the information on

59 SCR, ¶47, p. 10.

60 *Ibid.*, ¶ 85, p. 13.

61 Ellemor’s evidence, Select Committee Transcript (henceforth SCT), §1075, p. 74.

62 Rowley 1970 (c), p. 148.

63 Memo from Nott to Lambert, 14/2/1962 (NAA A452 1962/4360). Discussions about reorganising not only the branch but the entire NTA were ongoing until at least November 1963, but seem to have lapsed after the federal elections later that month.

64 Symons’ report, 18/10/1963, pp. 2-3 (SLNSW Mitchell MOM Papers Box 465).

65 Beazley visited Giese’s office on the way back from Yirrkala (SCT §§ 1282-1283, p. 92).

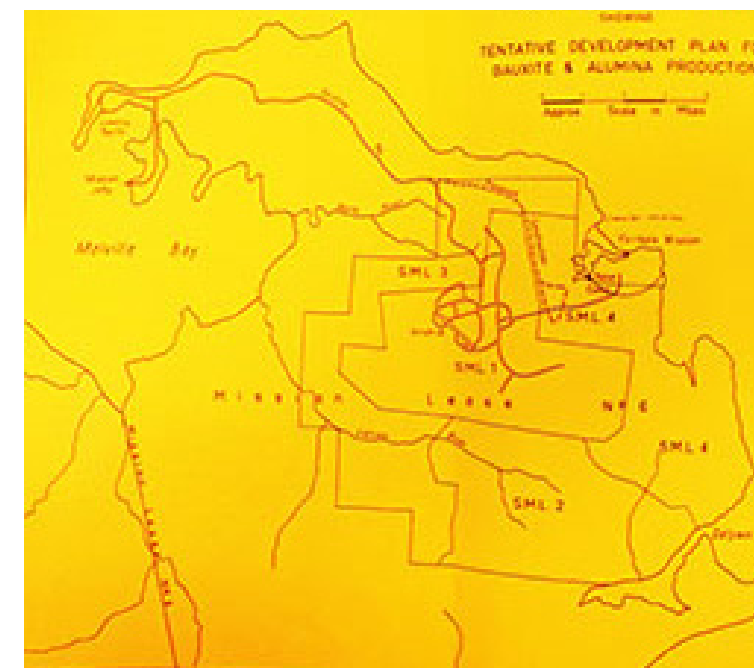


Fig 4.1: The map sent by Calwell to Wells

to Canberra? And if he did pass it on, why did the bark petitions take Hasluck by such surprise? To these questions there are no ready answers.

As for Wells, he consistently denied having a map of the mining leases, but he did finally admit to the inquiry that he had received a copy of the map as early as March, 1963 from ‘an unofficial source’, whom he eventually revealed to be Arthur Calwell, the Opposition Leader in the House of Representatives.⁶⁶ He did not refer to the map in correspondence with either Welfare Branch or MOM, because he said he might have to explain how he had come by it and it would have proved ‘dangerous for me to say I had received it from such a source’.⁶⁷ The two men dissembled, but for different reasons. Neither Giese nor Wells was mentioned in the committee’s report; the committee seemed to prefer the evidence of Ted Evans and Arthur Ellemor.

According to Rowley, the Select Committee on the Grievances of Yirrkala Aborigines marked a turning point in Aboriginal Affairs because its inquiry made for ‘an impressive and telling indictment of government policies’,⁶⁸ by which he meant that it represented the beginning of the end to the notorious policy of assimilation. Today this claim by Rowley may seem over-vaunted, but still the Select Committee’s transcript and report can be read as an exposé of the inner workings and attitudes of government in formulating and implementing the decision to mine bauxite on the Gove Peninsula. In the next sections, I undertake such a reading, one that deals almost entirely with the Yolngu grievances on the lack of consultation and issues to do with land. In discussing these issues, I offer an almost forensic reconstruction, working between testimony to the inquiry and archival material. Some readers may find the details of who said what to whom and when tedious, but I feel that attention to such detail is necessary, because

66 Wells sent a tracing of the map to Tatz in March 1963 (AIATSIS, Tatz Papers, MS 1933, Box 3, Item 81); SCT § 628, p. 44.

67 SCT § 628, p. 44.

68 Rowley 1970 (c), p. 148.

it sets the record straight about just what Yolngu knew of the mining operation and because it reveals the federal government’s various acts of omission and commission.

III

In his opening statement to the Select Committee Wells insisted that the earliest efforts of surveying and testing for bauxite on SML1 had been a largely ‘peaceful exercise’, but since the granting of the peripheral leases (SMLs 2-4), the work had become much more ‘pressurized’. Gominco had wasted no time in clearing land to within two miles of the actual mission to establish its prospecting camp; now its noisy generators ‘operated around the clock’ and it had ‘installed [a] septic system upstream from our mission pumps’ to the great alarm of Yolngu.⁶⁹ As mentioned in Chapter 3, the final straw for Yolngu had come the previous Christmas, when surveyors had drawn ‘a line across the mission property cutting off our peanut paddocks’, and ‘the resentment’ to that act had been ‘quick and disturbing’. Wells was, he reminded the committee, the one who had pressed his superiors to advise the government that ‘this mining deal should only be brought about by negotiation using the utmost delicacy’, and, while lip-service had been paid to consultation, no one in a position of authority had insisted upon it before the deal was done.

Wells, as previously noted, keenly felt the persistent Yolngu demands for information about the mining, but was sworn to secrecy on those developments. While he told them nothing, Yolngu were feeding him information ‘bit by bit’ as they came across mining incursions on the peninsula.⁷⁰ Even though Yolngu were able to garner snippets of information, they did not know why the miners had come, as Milirrpum told the inquiry. At first, Milirrpum said, they did ‘not get whisper nowhere’ and only later did they ‘get a little bit of word’.⁷¹ The first information Yolngu were given by anyone in a position of authority came from S.B. Dickinson, Gominco’s technical advisor, at a meeting on 4 May. Little is known of this meeting, beyond that Wells forced Dickinson into it; that it was characterised as ‘informal’; and that because Yolngu were, as Wells put it, ‘over impressed with [Dickinson’s] desire to be friendly’, they responded in kind by asking polite questions, questions which ‘did not do justice to the deep unrest [they] felt’.⁷²

Since politeness prevailed, the issue of the excision was not raised at the meeting, though Wells may have learned of it earlier in the day from Dickinson. As a postscript to his letter to Symons outlining events of the day, Wells scrawled: ‘You mean that the whole area is now Crown Land including our site’.⁷³ While Wells’ meaning is ambiguous, Symons’ response makes it perfectly clear that it was the excision that troubled Wells: ‘It is quite true that the whole area around Yirrkala has been removed from the Reserve ...’.⁷⁴ In his reply, Symons also mentioned that the Chief Welfare Officer, Ted Evans, would visit Yirrkala in mid-May, and this may well have been the first time

69 SCT § 551, pp. 37-38.
70 *Ibid.*, p. 37.
71 *Ibid.*, § 380, p. 29.
72 Wells to Symons, 4/5/1963 (NTRS 43 Box 9).
73 *Ibid.*
74 Symons to Wells, 7/5/1963 (NTRS 43 Box 9).

Wells had details of the visit. So, between the Dickinson meeting and Evans’ arrival, Wells felt he must break his silence and ‘confront the people with the situation’ — that is, news of the excision — by calling his own meeting on 8 May.⁷⁵ Wells had postponed divulging any news about the mining operations, because he felt it was the duty of a ‘government man’ to break the news. Wells had not wanted to tell Yolngu himself lest they think he was somehow implicated in making the deal.⁷⁶ For the inquiry’s benefit, Wells recounted how, with the aid of a blackboard and the map sent by Calwell, he showed the large gathering of senior Yolngu people the land ‘they were going to lose’. When they understood that the government had acted unilaterally to give away their land, the Yolngu were, according to Wells, greatly distressed. Until this point, they had believed that ‘they could be party to a talk about it’.⁷⁷ Instead they were presented with a *fait accompli*.

Seven weeks had elapsed between Giese’s promise of sending Evans and his actual arrival on 15 May. One reason advanced for Evans’ delay was that ‘some tangible form of compensation’ needed to be settled ahead of his visit, though this matter had in fact been finalised by the end of March. The Administrator, Roger Nott, had recommended six new cottages as ‘compensation’; he suggested that the government advance an estimated £12,000 for their construction, but recoup the amount from any eventual mining royalties.⁷⁸ It was essentially the package that Evans presented to the meeting at Yirrkala on the evening of 15 May, and so it seems that the issue of compensation was not the real reason for the inordinate delay. ‘Compensation’ in any case is a misnomer, but it was the term used throughout the inquiry whenever the issue of houses or other improvements arose.

Evans took the view that Wells’ action in calling his meeting of 8 May had ‘only resulted in an increased tension among the aboriginal population concerning their future in the area’, though he was convinced that his own meeting at Yirrkala on 15 May achieved ‘a different atmosphere among the native population’, an atmosphere that ‘could remain and develop if the people are not disturbed by further uninformed comment and reports and are not agitated to make further unreasonable demands out of all proportion to their losses’.⁷⁹ According to Evans, Wells was convinced that the mining company would take over the entire mission and would have done so already had it not been for an ‘Australia-wide outcry’ that Wells himself had helped to foment.⁸⁰ Were Yolngu agitated by or amenable to the news of the mining deal? The perception depends largely on the information presented and the manner in which it was presented. That this was the case is already clear from Wells’ version of Dickinson’s meeting. Very little detail beyond that already mentioned is available for Wells’ own meeting, though if this were the first time Yolngu had heard of the excision, it would have been sufficient cause for excitability on their part. It is entirely likely too that Wells presented the news in less than a neutral tone, and this may well have exacerbated Yolngu fears.

75 SCT § 627, p. 44.
76 *Ibid.*; Wells 1982, p. 58.
77 SCT §§ 627-628, pp. 43-44.
78 Nott to Lambert, 25/3/1963 (NAA A452 1963/1747).
79 Report of Evans’ visit to Yirrkala, 15-16/5/1963, pp. 2 & 7 (NAA A432 1968/649 Attachment 20).
80 *Ibid.*, p. 2.

For Evans’ meeting, both his report and his testimony are available: from his written account, it seems Evans presented his information calmly and was confident that his arguments and reassurances got across to his Yolngu audience. For all this assuredness, however, Evans did admit to the inquiry that he ‘was not entirely satisfied that I cleared the minds of the people before I left’ Yirrkala the following afternoon.⁸¹ Even though the main purpose of the three-hour meeting Evans convened on 15 May was to explain the terms of the new mining leases and to correct any misconceptions about the government’s actions, it seems from Evans’ testimony to the Select Committee that the issues of housing and compensation came to dominate the meeting.⁸² According to Evans, the plan for compensation was well received, though some Yolngu felt that more should be offered. Mungurrawuy, for instance, wanted to know why the Yolngu land owners should not share profits equally with the mining company; Daymbalipu suggested 60, not six, houses were needed; Raiyini wanted a bakehouse, a baker’s oven and a proper store included in any compensation package.⁸³ Evans found it ‘unfortunate but perhaps to be expected’ that the Yolngu ‘look only to the physical and monetary gains from the mining company and do not look upon themselves as benefiting through their labour’.⁸⁴ Evans tried to persuade his audience that ‘there were many other benefits which the native population could obtain if they adopt a sensible attitude and are prepared to co-operate with the mission, the government and the mining company in the mining activities on Gove Peninsula’.⁸⁵ He said all these things through an interpreter, who, on this occasion, was Dadaynga Marika. The following day Dadaynga’s interpreting services were again in demand, this time for Harry Giese, who had come to Yirrkala on the mail plane in the early afternoon ‘to show the flag’, as Evans put it.⁸⁶ Giese explained to ‘a full meeting’ ‘what the Government was proposing to do and the general arrangements for the leases’,⁸⁷ although, according to Dadaynga, he did not explain that the deal had been finalised.⁸⁸ He also sought to explain ‘accelerated government expenditure’ — that is, the so-called compensation package — and promised ‘regular consultation with them’. It was, he added for the benefit of the Select Committee, ‘only by the consultation of the mission and ourselves and themselves that they could be kept fully informed as to what was happening and would get an understanding of what was being done’.⁸⁹ He promised that Evans would pay another visit in a month’s time, although three months would elapse before Evans’ return. Giese’s main impression from the meeting was, like that of Evans, that the Yolngu were ‘satisfied with the general arrangements that had been made for the [mineral] leases and the sort of financial assistance the Government proposed to give in relation to Yirrkala’.⁹⁰ And yet Giese was forced to admit to the inquiry that his address at Yirrkala on 16 May lasted only 30 or 40 minutes, though in Evans’ estimation Giese spoke for only 20

81 SCT § 805, p. 56.
82 Evans’ report, p. 1; SCT § 644, p. 45.
83 Evans’ report, p. 6 (NAA A432 1968/649 Attachment 20).
84 *Ibid.*, p.7.
85 *Ibid.*, p.4.
86 SCT § 805, p. 56.
87 *Ibid.*, § 65, p. 9.
88 *Ibid.*, § 762, p. 53.
89 *Ibid.*, § 65 (p. 9) and § 1219 (p. 86).
90 *Ibid.*, § 104, p. 12.

minutes, and at least half of the time was taken up by translation.⁹¹ Although Giese had by this stage been the Director of Welfare for nine years, this was, according to Evans, ‘one of the first experiences Mr Giese has had of having to speak through an interpreter’, and perhaps, as Evans surmised, he talked too long, so that Dadaynga might have missed some of what he said. Evans praised Dadaynga’s skills of interpretation, but commented that ‘while Dadaynga has a very good command of English by aboriginal standards, by our standards his command of the language is somewhat limited’.⁹² For his part, Giese discerned that ‘concepts that would be readily understandable in our language to people with a much wider education than is available to the people at Yirrkala’ could potentially be misunderstood.⁹³ In communicating with ‘relatively unsophisticated native groups’, Giese observed an odd phenomenon: someone might gain ‘the impression that they want him to get’, but, since they are ‘accommodating people’, that person ‘may get a totally different impression two or three weeks later’.⁹⁴ Giese seemed to be saying that one could never be certain of a final opinion or decision in dealings with Yolngu, though, unlike Evans, he did not acknowledge that an outcome depended on the way one initially presented information or posed questions.⁹⁵ In their dealings with Giese, the Yolngu may have been circumspect, because, as Wells noted, he embodied the government for them and, in any case, they were ‘very, very loath to pick a fight with the white man’.⁹⁶ For his own part, Dadaynga did not mention any particular problems in interpreting for either Giese or Evans, beyond that he did the interpretation ‘in short bits and also in long bits’. He also said, through an interpreter, that ‘if Mr Giese had stayed for a long time, [they] would have asked him all those other things, as they asked Mr Evans’, but, since both Mr Giese and Mr Evans were due to catch the mail plane back to Darwin later that afternoon, this had been impossible. After Giese’s departure, the main topic of conversation among the Yolngu was, according to Dadaynga, the compensation package.⁹⁷ Wandjuk recalled that there was ‘a lot he did not understand’ in Giese’s address and ‘a lot of things he realized after Mr Giese had gone’.⁹⁸ Djalalingba, too, only grasped Giese’s message after he had left and said that the main point for discussion after Giese’s departure was: ‘Why did Mr Giese stay for such a short time when there were so many things we wanted to ask him, and we did not have a chance’.⁹⁹ On 20 May Wandjuk, on behalf of Mawalan and Mungurrawuy, addressed a letter to both Giese and Hasluck, setting out their demands: they now wanted 40 houses, a shop, a bakery, two flushing toilets and an unspecified number of trucks in exchange for that ‘good thing out of the ground’. Such compensation would ‘make us level between you and we natives’; it was the way things had worked between the airforce and Yolngu during the war.¹⁰⁰ The letter appears to be a concise statement of Yolngu

91 *Ibid.*, § 1219 (p. 86), SCT § 894 (p. 62).
92 *Ibid.*, § 894, p. 62.
93 *Ibid.*, § 1275, p. 91.
94 *Ibid.*, § 150, p. 16.
95 *Ibid.*, § 825, p. 58.
96 *Ibid.*, §§ 624 (p. 43) & 643 (p. 45).
97 *Ibid.* §§ 751-760, p. 52.
98 *Ibid.*, § 707, p. 49.
99 *Ibid.*, §§ 725-726, p.50.
100 The letter is reproduced in Wells 1982, p. 72.

demands, but, according to Evans, it bore an uncanny resemblance to a list of improvements Wells had sent to Symons several weeks earlier, though Wells denied having a hand in it. Evans had in fact seen a draft of this Yolngu letter on 15 May before the meeting and had urged Wandjuk to forward the final version to him so he could attach it to his report.¹⁰¹ If its intended recipients read the Yolngu letter, they would have done so as an adjunct to Evans’ report and hence would have felt no compunction to reply to Mawalan and Mungurrawuy. When Evans did finally return to Yirrkala at the end of August, the topic of compensation was again raised. As well as the £12, 000 promised for houses, Evans now promised there would be an additional £14, 000 for ‘vehicles, plant and poultry’, and the men were, according to Evans, delighted. All they wanted at this stage was ‘a written promise from the Government’ that these things would be delivered to Yirrkala ‘over a period of years’. True to his word, Evans sent a letter detailing the allocations a week after returning to Darwin.¹⁰²

Giese told the committee that he did detect some unease about ‘the lease boundaries and the general safeguards that had been written into the agreement’ at his meeting of 16 May, but he did not discern any particular anxiety about the excision — that is, if the topic was in fact raised — and, on the whole, he ‘left with the feeling that possibly there could be now a period of quiet in the area’.¹⁰³ So far as Giese was concerned, the Yolngu had been informed, if not consulted, about the mining developments on their land well in advance of his flying visit to Yirrkala in mid-May. He assumed that Symons’ letter of January to Milliken was an early indication that the developments had been discussed with the Yolngu residents of Yirrkala.¹⁰⁴ But, as shown in the previous chapter, those first approaches from Milliken to Symons were not geared towards the dissemination of information, but were ambiguous attempts at garnering information about the future requirements of the mission at Yirrkala and at gauging the reaction of both Symons and Wells to mining within a mile of Yirrkala’s boundaries. Moreover, such information as was divulged to Symons and Wells was imparted on a confidential basis.

At first Giese maintained it was a ‘reasonable assumption’ that information about the mining had trickled down to Yolngu through mission channels,¹⁰⁵ but later, on the last day of hearings, he had to concede that a decision had been taken — though he did not say by whom or when — that ‘no further information could be made public until the lease instruments had finally been signed’.¹⁰⁶ The explanation seemed to Beazley ‘to go in a circle’:

You cannot see the Aborigines because the decision has not been made and they cannot be heard before the decision has been made, even though the missionaries are asking for it and you are saying that what the missionaries are asking for is what the Aborigines want.¹⁰⁷

101 Report of Evans’ visit to Yirrkala, 15-16/5/1963, p. 6 (NAA A432 1968/649 Attachment 20).
102 Wells 1982, pp. 88-89. While Wells sets out that letter in full in his memoir, he makes no other reference to Evans’ visit, though he does take the credit for supplying the new estimates.
103 SCT § 102 (p. 12), § 104 (p. 12), § 158 (p. 17).
104 *Ibid.*, § 1285, p. 92.
105 *Ibid.*, §§ 66-67 (p. 9); § 201 (p. 21).
106 *Ibid.*, § 1168, p. 82.
107 *Ibid.*, § 1290, p. 92.

Giese was also forced to admit he had told the biennial Missions-Administration conference, held the previous June, that ‘there should have been earlier consultation with the people’ and that he had accepted full responsibility for that omission. It was not a disclosure he willingly made; rather it had come to the committee’s attention via Gordon Bryant, who had been leaked a copy of a ‘confidential conference’ document. To Giese the admission had been made as a ‘remark in family’, and not for public consumption.¹⁰⁸ Just prior to this exchange, Bryant had challenged Giese to admit that Hasluck had misled parliament in announcing the excision on 9 April, but Giese would have none of it. Hasluck had assured the House of Representatives that ‘we have relied on the Director of Welfare and his officers in the Northern Territory, who are in close touch with the aboriginal people themselves, to advise us on what conditions should be imposed to serve the interests of the Aborigines’. In the next sentence, Hasluck confidently asserted that ‘there is not a single condition that the Director of Welfare thought necessary that has not been obtained and written into the lease agreements’.¹⁰⁹ Bryant put it to Giese that ‘the Minister has implied that you and your officers were in close touch with the aboriginal people during negotiations that took place over this matter. I take it that, in fact that was not so.’ ‘I do not think that is implied’ was Giese’s lame response, before launching into an explanation of the constraints under which his branch laboured.¹¹⁰

It will come as no surprise that the Select Committee concluded that ‘no discussion took place between Administration representatives and the Yirrkala people before the excision’; the only discussion had been, initially, between the NTA and MOM authorities and, latterly, between the MOM Board and the Department of Territories. The committee was of the opinion that ‘it was not an obligation on the Yirrkala Mission authorities to inform the Yirrkala people of Government policy’, though there seemed to be some ‘confusion’ on this point within the NTA. With regard to the meeting Evans and Giese held at Yirrkala on 15 and 16 May, the committee attributed its ‘failure in clear communication’ to Welfare Branch’s ‘lack of proficient linguists’.¹¹¹ The committee did, however, reject the Yolngu claim that their views had not been conveyed to Canberra — the petition’s second clause — though qualified the finding by adding ‘in so far as these officers understood’ those views.¹¹² On this point, it accepted the evidence of Evans and Giese, even though the only documents they had forwarded were Evans’ report on his first visit to Yirrkala and the telexed report Milliken had sent in January.¹¹³ When Administrator Nott had the opportunity to respond to the committee’s final report, he was quite blunt about its findings on consultation. Acknowledging that no discussion had taken place before the excision, he wrote that in January the NTA had made ‘strong suggestions’ and even preliminary arrangements for a visit to Yirrkala, but a departmental message of 31 January had ‘instructed that direct discussions with the Mission authorities were not to take place’. That being the case, Nott wrote, it would have been impossible for any officer to talk directly

108 *Ibid.*, § 1190, pp. 83-84.
109 CPD (HR), 9/4/1963, p. 482.
110 SCT §§ 1171-1172, p. 82.
111 SCR ¶¶ 43, 44, 46, p. 10.
112 *Ibid.*, ¶ 48, p. 10.
113 SCT §§ 68-69 (p. 9), § 833 (p. 59), § 1168 (p. 81).

to Yolngu. That instruction, he added, had not been divulged to the inquiry. In Nott’s opinion, it was not unreasonable to expect mission staff to inform Yolngu about the Gominco agreement. Nott found the committee’s comment on his officers’ limited comprehension was not ‘warranted’.¹¹⁴

IV

In its request for background information, the Select Committee neglected to ask about the nature of land tenure or title in the Northern Territory; its request went only to ‘the legal effects’ of the proclamation of Arnhem Land as an Aboriginal reserve in 1931. At the start of the inquiry, however, it quickly learned from the resident Crown Law Officer, R.J. Withnall, that all land in the Northern Territory — like the Australian Capital Territory — was regarded as Crown land and the only possible tenure was leasehold. Therefore, ‘nobody,’ according to Withnall, ‘had any title’, excepting the Crown.¹¹⁵ Since the Crown was the only title holder, Withnall said in response to a question from Bryant, there could be no question of adverse possession — that is, occupation of land without legitimate title such as by squatters in 19th-century Australia — and hence no question of common law title arose (because this form of title is usually obtained through adverse possession).¹¹⁶

In keeping with the briefing document, Withnall outlined the various leases available on the Arnhem Land reserve: mission leases, Special Mineral Leases and Special Purpose Leases. He added one more lease, unmentioned by the briefing note: under s.112 of the Crown Lands Ordinance, Aborigines were permitted to a lease of up to 160 acres, though to his knowledge no such lease had ever been granted.¹¹⁷ In his opinion, the words ‘for use and benefit of Aborigines’ could not be construed as amounting to a customary right in land, as Beazley’s question had suggested.¹¹⁸ Withnall repeated the legal truism that at the time of English settlement, ‘the Aborigines of Australia were considered ... not to have title to the land’.¹¹⁹ Here I pause to note the terms in which Bryant and Beazley framed their questions — adverse possession, common title, customary right all of which suggest a turn towards property law in the private research of these two men. It is clear their reading extended far beyond the official briefing notes, but their exchanges with Withnall were rare occasions during the course of the inquiry in which their knowledge was on display.

At his meeting of 15 May, Evans had explained that the Commonwealth had created the Arnhem Land Aboriginal reserve because it realised ‘it had a responsibility to the aboriginal population to ensure that they retained some or all of the country which they traditionally resided upon’. This did not mean, however, that ‘the land concerned could be vested by title in the native peoples’. He told his Yolngu audience that it had never been ‘the intention of the Commonwealth Government to allow the reserves to remain idle and unproductive’, and that the government would develop

114 Nott to Lambert, 27/11/1963 (NAA A452 1963/6390).

115 SCT § 2, p. 5. Note that Withnall was attached to the Attorney-General’s Department, rather than the NTA and later became an elected Member of the NT Legislative Council.

116 *Ibid.*, §§ 45-46, pp. 7-8.

117 *Ibid.*, § 2, p. 5.

118 *Ibid.*, § 37, p. 7 & § 53, p. 8.

119 *Ibid.*, § 49, p. 8.

the land, where possible, ‘in the best interests of the people’. At this juncture it might be expected that Evans would have given an explanation of the excision and even a description of what the mining of bauxite entailed, but, from the report, it seems Evans did not volunteer such information. In response to a question from Mungurrawuy, Evans did however say that, in the absence of an accurate survey of the mineral leases, ‘it was necessary for the purposes of easy description to excise the bulk of the former mission lease area from the reserve’.¹²⁰ These statements from Evans, together with whatever Wells had told them about the excision, formed the only explanations about the Commonwealth’s ideas on landholding in Arnhem Land Yolngu had received before the inquiry.

In his testimony, Gordon Symons, the chairman of MOM’s northern district, acknowledged Arnhem Land as Crown land to which Yolngu had no legal right, but insisted that they had ‘strong moral and hereditary rights to compensation for the country in which they live ... and to which they have a fairly close attachment’.¹²¹ To his mind, ‘the question of land rights [was] the vital issue at stake’ in the struggle between Yolngu, Gominco and the government, though it was not a line of questioning the committee pursued with him.¹²² Similarly, Arthur Ellemor told the inquiry that, while they might have ‘no title or document’ to land, Yolngu had ‘security’ in the land, ‘economically, aesthetically and spiritually’, and their rights to the land needed to be recognised — rights, which he claimed had never been disputed.¹²³ Ellemor added that recognition of those rights included appropriate compensation and consultation if any of their land were to be alienated. Once again, no committee member pursued the topic with further questioning. With a typical flourish, Wells asserted Yolngu were ‘the original holders of primary title in Arnhem Land’ and would hold their land ‘at all costs and against all comers’. It should not be ‘beyond the wit of Parliament’, he said, to devise some form of tenure for Yolngu, who had ‘asked to become responsible citizens and to vote’, but who could not ‘agree to their land being transferred to anyone at all without due and very formal, legal sanctions being secured’. To support some of his claims, Wells invoked a concept he dubbed ‘territorology’, which he asserted had ‘become a very important, well cultivated branch of science associated with physical anthropology’,¹²⁴ though, as this thesis argues, virtually no one had by this time done any serious research into the relationship between Aboriginal people and their land. Wells, however, was not asked to elaborate on his views.

Like Wells, Giese claimed his views on the relationship between Yolngu and their country were based on anthropology: ‘as I read anthropologists, there was no strong delineation of the area, and it was possible for other groups — by permission — to go over the area’. Giese insisted that some of these anonymous anthropologists were apparently ‘quite well known’ and their work on Aboriginal territory dated to the turn of the 20th century; he suggested that ‘the Committee could study their views’. Any rights to land Yolngu might have were, he said, of a collective nature and were confined to

120 Report of Evans’ visit to Yirrkala, 15-16/5/1963, p. 5 (NAA A432 1968/649 Attachment 20).

121 SCT § 472, p. 33.

122 *Ibid.*, § 461, p. 32.

123 *Ibid.*, § 1075, p. 75.

124 *Ibid.*, § 551, pp. 37-38.

usage — that is, going ‘to a particular area ... to get the fruits or game in that area’.¹²⁵ Unlike Wells or the other missionary witnesses, Giese did not volunteer information — he divulged it only under questioning from Beazley.

I turn now to the Yolngu evidence. Almost every witness made some reference to the country belonging to their ancestors, most usually their fathers and grandfathers. Garmali stated that all the country ‘near Drimmie Head belonged to all his ancestors’ and he did not ‘want to lose contact with that place’.¹²⁶ At only a few points in the evidence did Yolngu witnesses insist, like Garmali, that a particular person owned a particular parcel of land. Occasionally they, or their interpreters, did associate a certain portion of land with a clan, but, for the most part the concepts of clan and of clan-affiliated territory seemed lost on committee members. Only one committee member, Gordon Bryant, asked one direct question about the ownership of the land surrounding the mission: the question was put to Djalalingba, who responded without hesitation that it was country belonging to both Rirratjingu and Gumatj.¹²⁷

As with land tenure, the committee did not specifically ask to be briefed on Yolngu social organisation or on clan territories, and since they had not asked the appropriate questions, they were not given such details. All they had been told prior to the inquiry was that the mission’s population had stabilised during the 1950s, with those traditionally associated with the Gove Peninsula camping to ‘the north’ of Yirrkala creek, while those originating from the south and south-west of Yirrkala camped to ‘the south’ of the creek. Perhaps for reasons of credibility or authenticity, the briefing document did name a few clans. It maintained, for example, that the Rirratjingu clan was connected with the Woolen River and Port Bradshaw — that is, Yalangbara. For this latter place, it claimed, Rirratjingu had until recently been co-guardians with the Galpu clan. Friction over this guardianship had led Rirratjingu to withdraw to Melville Bay and had consequently exposed Galpu to their ‘hereditary enemies’, the Djapu, and this in turn had caused the Galpu to retreat to the English Company Islands.¹²⁸ According to the briefing paper, Cape Arnhem had ‘recently changed hands’: whereas it had once been the territory of the ‘Balamumu’, it was now a Gumatj area.¹²⁹ These mentions of clan-land associations were the only references to concepts of land-holding in the briefing material. The reference to Balamumu is odd: the term can sometimes be used as a *bäpurru* name, as in its use in the bark petitions, while, according to the Berndts, Balamumu simply meant ‘those of the sea’.¹³⁰ Sometimes too it is an alternative name for the Djapu clan. The mention of Balamumu and Djapu in such close proximity in the brief leads me to suspect that to the Welfare Branch Balamumu and Djapu were distinct clans. The information about Cape Arnhem is wrong: as later chapters show, Cape Arnhem was originally Lamamirri country, but upon the death of the last male member of that clan, the Gumatj clan became trustees for this country. Narritjin — a Mangalili man with close ties to the Djapu clan — told the inquiry there

125 *Ibid.*, § 157, p. 17.

126 *Ibid.*

127 *Ibid.*, § 727, p. 50.

128 The information is taken directly from Chaseling 1957, p. 77 with due acknowledgment. As will be seen from Chapter 7, the information was discredited during the court case.

129 ‘Recent history of Yirrkala’, pp. 342-44 (NAA A452 1963/6390 *digital*).

130 H. Morphy, pers. comm, 29/4/2010; R. and C. Berndt 1954, p. 7.

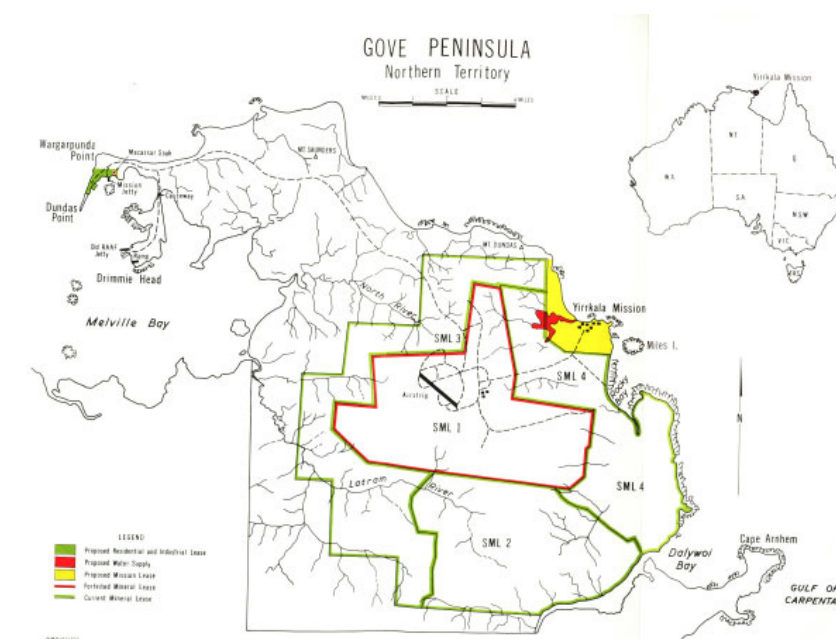


Fig 4.2 (& 2.1): Map used during the Select Committee’s inquiry

should be no mining on Cape Arnhem, while Mungurrawuy, the senior trustee for the promontory, said it was ‘all right for them’, the miners, to be there.¹³¹ In its report, the Select Committee validated Welfare Branch’s view by stating that ‘the Cape Arnhem area has recently changed hands as *some authorities* state this to be formerly Balamumu, whereas now it is claimed to be Gumatj’.¹³²

To understand other of the Yolngu evidence, it is necessary to introduce, or rather re-introduce, the map that was used during the proceedings, since much of the ensuing discussion centres on it and can only be deciphered with reference to it. It is worth noting that this is the map that was used by Evans for his meeting. The straight lines in the south-western corner of the map represent the limits of the excision; all the country to the north and east of the lines — all 225 square kilometres of it — constitutes the excision. The original mission lease boundaries had once extended to beyond the limits of this map, but that lease had expired on 30 June 1957 and was not renewed ‘because of a change of policy under which there is no longer provision under the law for the grant of mission leases’, although ‘special purpose leases or other appropriate land leases may be granted over areas actually required for specific purposes’.¹³³ By mid-1963 the mission’s area had diminished to just the portion shaded in yellow on the map. For this portion the mission had no lease, and, even though Hasluck intended granting a Special Purpose Lease of 2.6 square miles (4.16 km²), it was never granted and by 1969 the mission was deemed to hold only a permissive occupancy over the area.¹³⁴ As the map shows, the mission was sandwiched between the mining leases and the Arafura Sea, and this feeling of ‘being pushed into a corner’ was, besides the lack of prior consultation, the main reason for unrest among Yolngu, according to Symons.¹³⁵

131 SCT § 776, p. 54 (Narritjin); § 782, p. 54 (Mungurrawuy).

132 SCR ¶ 20, p. 8 (my emphasis).

133 Menzies to Calwell, 8/4/1963 (NAA A452 NT1963/1270).

134 Briefing note re SML 4, 4/12/1969 (NAA A2354/65 1968/398 Part 2).

135 SCT § 476, p. 33.

The area shown in red abutting the mission area is the Yirrkala lagoon, the mission’s water supply. According to briefing material supplied to the committee by the NTA, the lagoon had a carrying capacity of two million gallons a day.¹³⁶ The mining camp lay close to the southern arm of the lagoon. The areas bounded by green are the mining leases, while the area shaded in green on Dundas Point is the portion Gominco was seeking as a Special Purposes Lease through the Mining Warden’s Court, and it was one of the locations the company was considering for most of its facilities. From the mission’s point of view, it was fortuitous that a deep-water anchorage was available only at Melville Bay. Had the port been sited at Rocky Bay — Gominco’s preferred option — the mission would undoubtedly have been relocated, as specified by the Gominco agreement.¹³⁷ Most Yolngu also testified that they ‘worried’ for country.¹³⁸ They were worried that mining would encroach upon their country to such an extent that there would be insufficient space for future Yolngu generations or for hunting. They worried that if insufficient country were available to them, they would be moved to country that was not theirs.¹³⁹ Notably, none of the Yolgnu witnesses rejected mining in this country outright, but they expected that mining would only proceed on Yolngu terms. Milirrpum made it clear Yolngu did ‘not want white people to come and dig a lot of holes in the country and take away country which represents wealth to them’.¹⁴⁰ Yinitjuwa told the inquiry Yolngu ‘want mining people to come here only for work ... where the green lines are’, indicating the boundaries of the SMLs, and ‘if they want to live at Melville Bay’, the miners should ‘stay just little way down’, which may be taken to mean that their settlement should be confined to Point Dundas.¹⁴¹ So far as Mawalan was concerned, Europeans could occupy Point Dundas, but their activity should be confined to ‘the far side of the mission wharf as far around as Wagarpunda’, because Yolngu needed access to Crocodile Creek (or Lumboi, as it is known locally) to harvest shellfish and to Galuru for its *rakai* or waterlily root.¹⁴² Garmali too wondered whether the part ‘enclosed in green’ was to be the town for white people, and if so his father Mungurrawuy wanted ‘money for it, because it is his country’.¹⁴³ Like Garmali, Dadaynga wanted to know whether the town planned for Point Dundas would be as large as Darwin.¹⁴⁴ Dadaynga, again like Garmali, wanted to understand the significance of ‘all this marking out’ on the map.¹⁴⁵ In the course of Yolngu testimony, other places were discussed, but their locations were only described by fingers pointing to the map and so must go unmentioned here. As Ellemor observed, the exercise with the map demonstrated how ‘these people are able to take and read plans’. He hoped that Yolngu witnesses had also shown the committee that ‘when they are given the full information, [are able] to understand what is planned and to move with you in the process’.¹⁴⁶

136 NAA A452 1963/6390 *digital*, p. 367.

137 Clause 2 (k); see Appendix 4, SCR, p. 23.

138 For example, Milirrpum (SCT § 380, p. 29), Dadaynga (SCT § 742, p. 51) and Narritjin (SCT § 771, p. 53).

139 Nyabilingu, SCT § 788, p. 55.

140 *Ibid.*, § 451, p. 31.

141 *Ibid.*, § 788, p. 55.

142 *Ibid.*, § 794, p. 55.

143 *Ibid.*, § 1065, p. 73.

144 *Ibid.*, § 743, p. 52.

145 *Ibid.*, §§ 743 (p. 52), 1065 (p. 73).

146 *Ibid.*, § 1075, p. 75.

The reader will by now have noticed that, in comparison to the issue of consultation and its lack, the Select Committee appeared far less interested in the issue of land tenure. The most likely reason for this is that, since the committee was constrained in its terms of reference to the grievances raised in bark petitions and since the petitions emphasised consultation, the issue of land received little attention. In its report, the committee barely mentioned the issue of land ownership. At one place, towards the end of the report, it noted that ‘upon investigations, it is clear that there was claim to an area of land which was felt by the Yirrkala people to constitute ownership’, and for ‘loss of traditional occupation’ of this undefined and unnamed area, the committee recommended monetary compensation, even while acknowledging that such rights ‘are not legally expressed under the laws of the Northern Territory’.¹⁴⁷ For the most part, the committee in its report preferred to discuss the land in terms of its natural resources, which, it found, were ‘capable of sustaining a considerable aboriginal population’.¹⁴⁸ Even though hunting was ‘becoming more a recreational exercise’, the committee felt that, for the sake of their ‘dignity and self-respect’, Yolngu should be encouraged to maintain ‘their old traditional skills in hunting and food gathering’,¹⁴⁹ and sufficient land needed to be available for those purposes. In this respect, the committee commented that ‘[i]f the area were to be reduced by allowing portions to be withdrawn from time to time for developmental purposes, the object of the reservation would be defeated’.¹⁵⁰

Even though the committee barely commented on the issue of land tenure, it did recommend that compensation ‘for loss of traditional occupancy be made’, and it considered three forms of compensation to be appropriate: land grant, capital grant and monetary compensation, the last of which has already been mentioned. By a land grant, the committee meant the granting of leases to Yolngu under s.112 of the Crown Law Ordinance for agricultural purposes (for which they would receive training) and by capital grant it envisaged the funding of Yolngu economic projects, such as the establishment of a fishing cooperative.¹⁵¹

On the issue of sacred sites the Select Committee seemed less circumspect, though this issue, like that of landholding, did not receive the same attention as the issue of consultation. For sacred sites, the committee seems to have taken the word of the NTA at face value: it accepted without question NTA’s statements that ‘the mission is aware of areas which the aborigines regard as sacred’ and ‘none of these areas is contained by the existing mining leases or that proposed for port facilities’.¹⁵² Presumably, the NTA was referring to three places identified on the map Wells and Symons had provided Milliken the previous January, to which I will come shortly.

When, for example, Wandjuk spoke about two specific places — the spot on Mt Dundas from which ochre for painting was obtained and another place ‘down the Latram River’ — committee chairman Roger Dean wanted only to know if these places

147 SCR ¶ 69, p. 12.

148 *Ibid.*, ¶ 49, p. 10.

149 *Ibid.*, ¶ 53, p. 11.

150 *Ibid.*, ¶ 28, p. 9.

151 *Ibid.*, ¶¶ 69 & 72, p. 12.

152 See response to Question 24 (on religion), p. 370, (NAA A452 1963/6390 *digital*).

were ‘inside or outside the [mining] area’.¹⁵³ And yet Dean had to confess that while the mining deal seemed ‘a logical decision in Canberra’, it made far less sense ‘when you are here and become aware of the mystical attachment of the people to the land’.¹⁵⁴ As Mawalan had told the inquiry, sacred sites were where their ancestors ‘held all their sacred rites and associations and the making of the ceremonial objects for their life’.¹⁵⁵ Yolngu witnesses pointed to a number of special places on the map, though these, for the most part, either went unnamed or were inadequately described by one or other interpreter. The billabong at Wirrawa was one place mentioned by both Narritjin and Nyabilingu as being of special significance.

Yolngu, according to Wells, had become much more concerned about sacred sites after he had shown them the map of the mining leases at the meeting of 8 May. The previous January, they had given Wells the location of just three sites, all of which lay within the excision, but outside the actual mining leases. Wells had ‘worked feverishly’ to accurately record the location and the boundaries for the three sites that ‘were of tremendous significance in the people’s minds’ on a map.¹⁵⁶ The names of these places had been recorded by Ronald Berndt on the 1946 map as: Djalubaurinya (site no. 9, Djam-bawal’s dreaming; Wells’ no. 3); Riridjuwi (no. 124, paperbark swamp; Wells’ no. 5) and Wirrawa billabong (no. 37; Wells no. 6).¹⁵⁷ After inspecting the map that showed the mining leases, they wanted to nominate other sacred sites to protect them from mining.¹⁵⁸ They named sites close to Melville Bay and discussed their significance, which might explain why the bay is specifically mentioned in the bark petitions. Wells declined to provide names or other details for these additional sites, but insisted it ‘would be really inaccurate’ to say that all the sacred sites fell outside the mining leases.¹⁵⁹ To date, according to Wells, there had been no discussion between Yolngu and Gominco about the location of sacred sites, but, according to both Evans and Dickinson, plans were afoot between Gominco and the NTA to undertake a survey.¹⁶⁰

If the committee did not fully appreciate Yolngu feelings for country, it became far more attuned to another Yolngu grievance that emerged in the course of their testimony, a grievance they had not raised in the bark petitions. The issue was the likely impact of mining on Yirrkala’s water supply, and Beazley summarised the Yolngu testimony by saying that ‘they did not mind sharing the water, but they were worried lest the entire supply disappear’.¹⁶¹ Yolngu had also expressed concerns about water pollution. Even though initially he had been most sceptical about this facet of Yolngu evidence, Beazley came to appreciate that the concerns of a vanishing water supply and water pollution to be ‘more intelligent’ concerns than ‘the question of any contract

between the company and the Government’.¹⁶² Beazley had, he said, changed his mind while listening to Dickinson’s evidence, which ‘revived my alarm and seems to confirm their [i.e., Yolngu] judgment’.¹⁶³ As if to reassure Beazley, Dickinson insisted that Gominco’s workforce was so small that it would not overload the septic system and therefore would not pollute the mission’s water. He added that since most of Gominco’s facilities were to be located at Melville Bay and since other sources of water were available, the mission’s supply would remain undiminished. Dickinson went on to say that the water reserves were ‘just as important as the bauxite reserves’ and would require ‘a study of equal intensity’ to the one they had already undertaken on bauxite.¹⁶⁴ When all was said and done, as Dickinson noted, it was the Commonwealth that bore ‘full responsibility for water supplies’ and would allocate them appropriately between the mission and Gominco.¹⁶⁵ By this stage, however, no survey of the water available had been completed by any government agency. Since the Gominco project was still in its exploratory phase, the company had permission to draw water only ‘for domestic purposes’, but, as the project came to fruition, it would need to negotiate a separate water agreement with the government.¹⁶⁶ The committee found that the mining agreement adequately safeguarded water supplies,¹⁶⁷ but did recommend that a thorough survey of water resources be conducted.¹⁶⁸

In its report, the Select Committee suggested that it was for the sake of ensuring ‘an adequate supply of animal and vegetable food’ that Yolngu observed ceremonies and rituals. It noted too that Yolngu songs and stories celebrated the coming of *wangarr* to the mainland with their *rangga*, and ‘special sites’ throughout the area had become associated with these *wangarr*. Such sites, it noted, ‘have very real spiritual significance to the Aborigines’ and ‘may be symbolized by such things as rocks, hills and trees’. It nominated ‘the lagoon’ — presumably Wirrawa — as having ‘special ceremonial significance’, and suggested that other sites were considered ‘sacred’ because ‘the bones of departed relatives are buried there’.¹⁶⁹ The committee recorded the desire of Yolngu to be consulted before mining commenced ‘in each area’ to ensure ‘the area has no sacred features’; it further noted that as yet ‘no conference’ to pinpoint sacred sites had been held between Yolngu and Gominco.¹⁷⁰ Having made such observations, the committee declared itself satisfied that ‘none of their sacred places are within the boundaries of the [mining] leases but some border on them’. The report qualified this finding by adding that Yolngu regarded all land as having ‘special significance’ and that ‘there are many sacred places within the whole of the excised area’.¹⁷¹ The committee recommended that Yolngu be consulted ‘as early as possible’ on the location of sacred sites and that such sites be ‘set aside’, perhaps under the Historical Objects Ordinance, for

153 The exchange was more complicated than indicated here, due to the interpreter’s confusion in reading the map (see SCT §§ 710-714, p. 49).
154 SCT § 988, pp. 68-69.
155 Mawalan, SCT § 793, p. 55.
156 SCT § 627, p. 44.
157 See Appendix A. For convenience I have modified the spelling from Berndt’s Wirawar to Wirrawa.
158 SCT §§ 551 (p. 38) & 636 (p. 45).
159 *Ibid.*, §§ 637 (p. 45) & 685 (p. 48).
160 *Ibid.*, §§ 677 (p. 47), 829 (p. 58), 948 (p. 66).
161 *Ibid.*, § 1196 (p. 84).

162 *Ibid.*, § 1026 (p. 70) & § 1196 (p. 84).
163 *Ibid.*, § 1026, p. 70.
164 *Ibid.*, § 998, p. 69.
165 *Ibid.*, § 941, p. 65.
166 *Ibid.*, § 837, p. 59.
167 SCR ¶ 55, p. 11.
168 *Ibid.*, recommendation (b), ¶ 76, p. 12.
169 *Ibid.*, ¶¶ 56-58, p. 11.
170 *Ibid.*, ¶¶ 59-60, p. 11.
171 *Ibid.*, ¶ 61, p. 11.

the ‘exclusive use’ of Yolngu.¹⁷² One such place was ‘the hill from which the artists obtain their pigments’, that is Mt Dundas.

In responding to the committee’s report and recommendations, Administrator Nott gave assurances that Mt Dundas fell outside the mining leases and that it lay in that portion of the excision that would soon ‘be redeclared as a reserve’. This at least is what he meant to say: a typographical error rendered ‘Mt Dundas’ as ‘Pt Dundas’, which, of course formed the very core of Gominco’s operations.¹⁷³ Nott also rejected the statement that there had been no conference on sacred sites as ‘not correct’. Even though there had been ‘no direct discussions’ between Yolngu and ‘officers of this Administration’, Wells had consulted Yolngu about these places, and from these discussions and ‘from his intensive knowledge of the ceremonial life of the people’, Wells had ‘indicated those areas which he considered were sacred areas’ on his map of January. However, when Wells made his map, his focus, as already noted, was on the future needs of the mission, and any sites of Yolngu significance he happened to record were only incidental to that exercise. It should be noted too that on Evans’ second visit to Yirrkala at the beginning of September, one of his purposes was to make a preliminary inquiry about other sites special to Yolngu. The story of how Evans developed his survey of sacred sites is taken up in the next chapter.

V

What a tumultuous year 1963 proved to be for the people of Yirrkala: they had come to national attention via their bark petitions and the inquiry of the Select Committee, and these actions put land rights on the map as an emerging issue. The year, too, had been a fraught one for the Menzies government — perhaps the worst for Menzies in his long tenure as Prime Minister. Because of its working majority of one, the government was forced to compromise in order to survive; and it was through the gaps created by such political expedience that Yolngu claims and grievances were able to surface. In any other year, they may not have succeeded. And yet, much of the frenetic activity of 1963 proved to be in vain, because the mining deal with Gominco came to nought.

Barely a week after BAC forfeited SML 1 in May 1963, two Gominco representatives sought a meeting with Hasluck in Perth to gauge the impact of the forfeiture on their company. Hasluck formed the impression from this meeting that, while Pechiney’s head office in Paris was keen for Gominco to add SML 1 to its other holdings, its Australian subsidiary was resistant to the idea for technical and political reasons. If the application were rejected, Gominco was afraid it might harm its long-term prospects for Gove; but it also feared that if SML 1 were leased to another company, that company may prove to be ‘a neighbour with whom they could not live’. In their audience with Hasluck, the Gominco representatives were adamant that the Gove Peninsula had sufficient bauxite reserves for one alumina plant and that without a cheap source of power an aluminium smelter was out of the question.¹⁷⁴ At other meetings with Senator Spooner held around the same time, Gominco’s representatives talked about the paltry amount of bauxite to be found on SMLs 2-4: instead of an anticipated 100 million tons,

¹⁷² *Ibid.*, recommendations (c) and (d), ¶ 76, p. 12.

¹⁷³ Nott to Lambert, 27/11/1963 (NAA A452 1963/6390 *digital*, p. 157).

¹⁷⁴ Record of Interview, Hasluck to Spooner, 30/5/1963 (NAA A452 1963/1747).

they feared as little as 30-50 million tons were available. All in all, Spooner felt ‘uneasy about their demeanour’ and doubted ‘whether an organisation of this size would make such an error of judgement as to pay such a large sum for a mineral deposit and then find the deposit much smaller than it was reputed to be’. He felt Gominco was ‘playing a bit fast and loose with the Commonwealth’: ‘not wanting to give up Gove; wanting to see the best they can get out of the Commonwealth; then see the best they can get out of Comalco, then subsequently make up their minds’.¹⁷⁵

Gominco never did regain its enthusiasm for the Gove project. Whereas at the start of 1963 it had been the brightest star in the government’s firmament, just four months later it had lost some of its lustre. Sensing that Gominco was getting cold feet, the government demanded the forfeit of SMLs 2-4 by 11 March 1965 if Gominco delayed in lodging firm proposals for developing those leases. By May 1966 the mining company had lost any remaining glimmer with the surrender of SMLs 2-4. From the first rounds of negotiations the government came to appreciate the importance of the Gove deposits: they were the only known free reserves of bauxite in the world, even if by world standards they were small.¹⁷⁶ Apart from this insight, the only actual accomplishment from the earliest rounds of negotiations was the excision of 140 square miles, though even this, in Giese’s later view, had been largely unnecessary. In September 1963 — that is, before the inquiry — he recommended to Hasluck that only the actual area of the SMLs (57.3 miles²) and the proposed lease on Point Dundas (110 acres or 0.17 mile²) should be included in the excision, and that the remainder (82.5 miles² or about 60 per cent of the original excision) should revert to the Arnhem Land Aboriginal Reserve.¹⁷⁷

On the same day as Dean tabled the Select Committee’s report in the House of Representatives, Hasluck wrote to Lambert, requesting his department’s detailed comments on the report. ‘At first sight’ the report seemed to Hasluck ‘to be completely unfair to the Government in its presentation of both the Government’s point of view and policy and the measures taken by the Government in an attempt to protect the welfare of the Aborigines’.¹⁷⁸ In stating this, Hasluck was again setting the terms for the department’s response, which, when it came eight days later, mirrored his sentiments in its preamble. The department responded separately to many of the committee’s findings and observations; some it countered simply with ‘it is not true’ without providing reasons. Other of the committee’s propositions it simply contradicted; for example, it insisted Yolngu had been consulted about sacred sites, though, unlike Nott, it did not mention Wells.¹⁷⁹

As to the Yolngu desire to be consulted on potential sacred sites ‘in each area’ before mining commenced, the department made the risible comment that, since the Administrator must be consulted before any mining operation began, ‘this would provide an opportunity for the Aborigines themselves to be consulted by the Administration’.¹⁸⁰

On the possibility of granting leases to Yolngu, the department said the suggestion could be considered when Yolngu ‘had developed to the stage at which they would be

¹⁷⁵ Spooner, 24/6/1963 (NAA A452 1963/1747).

¹⁷⁶ Notes on Cabinet Submission No. 221, 28/5/1964 (NAA A4940/1 C2323 Pt 1).

¹⁷⁷ ‘The present situation at Yirrkala’, briefing note of 11/9/1963 by Giese for Hasluck (NAA A452 NT 1963/6064).

¹⁷⁸ Hasluck to Lambert, 29/10/1963 (NAA A452 1963/6390 *digital*, p. 185).

¹⁷⁹ Comment on para. 59 (NAA A452 1963/6390 *digital*, p. 174).

¹⁸⁰ Comment on para. 60 (*Ibid.*, p. 174).

able to work such leases’.¹⁸¹ The department used similar assimilationist dogma in response to other of the committee’s proposals. It felt that direct monetary compensation to Yolngu was inappropriate ‘not only because no legal ownership of land exists but also because of the difficulties which would arise in making a fair distribution among the Aborigines themselves’.¹⁸²

Following the federal election of 30 November, neither the committee nor any other business pertaining to Yirrkala would continue to be of official concern to Hasluck. In the new Menzies government, he was briefly appointed Minister of Defence and, from April 1964, Minister for External Affairs, a position he would continue to hold until his elevation to Governor-General in 1969. Charles Barnes, who had been a member of the Select Committee, replaced Hasluck as Minister for Territories. It may be supposed that he might have been keen to implement the committee’s recommendations, but the new government, with a healthy majority of 22 seats, had no appetite for doing anything of the kind. That the committee’s report and recommendations were largely forgotten supports my hypothesis that the committee came about through political compromise and pragmatism. From time to time, there would be calls from the opposition (usually from Beazley, Bryant or Whitlam) to institute a Standing Committee on Aboriginal Affairs — the very last of the Select Committee’s recommendations — but this would take ten years to achieve.¹⁸³ In passing it is worth recording that Roger Dean, who had chaired the Select Committee, came to hold the office of Northern Territory Administrator from 1 October 1964.

VI

Soon after the Select Committee returned to Canberra, its secretary received a letter from Edgar Wells, dated 5 October, which began by offering ‘our very special thanks for the special consideration’ shown the committee, and continued:

The only serious blot on the fair escutcheon was a letter I received from my chief, Rev. C.F. Gribble, on Saturday the 28th September just prior to your visit. This letter, which carried the threat of my removal from office because of my association with the subject of the inquiry by the Select Committee was a very heavy burden to carry throughout the inquiry. Mr Gribble had made reference to three causes of complaint in his communication and two of them were actively associated with the business and purpose of the Select Committee. All of them I strongly repudiated. Should the Committee have reason to seek cause for any diffidence or hesitancy in my manner I thought it only fair to mention this to someone in very close authority with the inquiry. During the proceedings of the Select Committee I was under very great emotional strain, and the letter referred to could be described as acting on me in the form of intimidation. It was impossible for me, in front of the local people and the missionary staff to inform the Committee of this matter. The local people would have been greatly distressed.¹⁸⁴

As a sign of his sincerity, credibility or even his mental state, Wells offered to forward a copy of Gribble’s letter of 25 September. That letter made a number of allegations,

181 Comment on para. 69 (*Ibid.*, p. 174).

182 Comment on para 70 (*Ibid.*, p. 175).

183 See, for instance, the debate on Beazley’s motion, CPD HR , 18/11/1965, p. 2877 ff.

184 Wells to Browning, 5/10/1963 (NAA A12813).

the first being that the Board of Missions had been ‘greatly disturbed recently about the general supervision of the work at Yirrkala’. Another complaint concerned a series of telegrams Wells had sent without prior authorisation; and another related to what Gribble took to be the misrepresentation of one of his own statements. While the first accusation is difficult to address, the other two are reasonably straightforward and so I shall attend to them first, beginning with the apparent slur on Gribble’s reputation. Sunday, 23 June 1963 was, as Edgar Wells recalled it, ‘a marvellous tropical day with a brilliant blue sky lighting up the green of the shrubs, and the tall palms caught the sunlight as they lazily turned in a soft breeze’: a most fitting day for the consecration of the new church.¹⁸⁵ Wells had specifically — though at short notice — invited Gribble to open the church, and in due course Wells would regret the invitation as ‘the most costly decision of my total ministry’.¹⁸⁶ The following morning, a number of Yolngu men requested a meeting with Mr Gribble in the hope that he might convince Doug Tuffin to remain at Yirrkala.¹⁸⁷ Gribble eventually succeeded in bringing the topic around to mining: he apparently asked them whether they feared the mining and whether they would be happy to supply the mining company with vegetables, fruit and fish. Gribble duly left Yirrkala, satisfied in the knowledge that Yolngu seemed unperturbed by the mining developments. This version of the meeting Gribble repeated in a letter to Sydney newspapers and to Hasluck two days after the first bark petition was presented to parliament. In that letter he said that until the petition he knew of ‘no protests from the people’.¹⁸⁸ A short time later, Gordon Bryant referred to Gribble’s meeting with Yolngu of 24 June as being ‘of a perfunctory nature’,¹⁸⁹ and Gribble took grave offence at this description. While not directly attributing this characterisation to Wells, Gribble — in his letters to Wells and to Bryant — seemed intent on learning the source of this supposed smear.¹⁹⁰

Likewise, the matter of the telegrams likewise seems trifling. Without initially specifying which telegrams, Gribble did note that ‘most of them’ were not only ‘long’, costly and ‘not carefully considered’, but were also ‘sent out on questions of policy and missionary work generally without the knowledge of the Chairman of the District and without his consent’.¹⁹¹ Only later did Gribble specify three telegrams: those sent by Wells on 19 and 24 February (60 and 73 words respectively) and on 23 August (85 words).¹⁹² The two from February 1963 have already been mentioned in Chapter 3:

185 Wells 1982, p. 74.

186 Wells only invited Gribble to the opening on 12/6/1963 (SLNSW MOM 461); Wells 1982, p. 74.

187 Wells 1982, p. 75, though it was known as far back as February 1963 that Tuffin intended leaving (Symons to Gribble, 13/2/1963, SLNSW MOM 464).

188 Gribble, letter to editor, published 16/8/1963, *SMH* and *Daily Telegraph*. He sent the same letter to Hasluck on 15/8 (NAA A452 NT 1963/6064).

189 Bryant mentioned this in his statement outside parliament, in which he condemned Hasluck’s denunciation of the first bark petition.

190 Gribble to Wells, 25/9/1963 (Wells 1982, p. 112); Gribble to Bryant, 4/9/1963 (SLNSW MOM 465). Bryant in response said a number of people had spoken to him about the meeting, and his impression of ‘perfunctory’ came from those conversations (Bryant to Gribble, 6/9/1963, SLNSW MOM 465).

191 Gribble to Wells, 25/9/1963 (Wells 1982, p.112). Gribble had checked with Symons about his consent in a letter of 19/9/1963, to which Symons responded that Wells ‘has never on any occasion consulted me before sending telegrams’ on 21/9/1963 (SLNSW MOM 465).

192 Gribble to Wells, 11/11/1963 (Wells 1982, p. 113).

the first began with ‘583 semi-nomads’; the second was the plea to Gribble and Trigge to delay the mining deal by a month. The third offending telegram was sent to both Gribble and the Welfare Bureau on 23 August — a day or so after Hasluck’s denunciation of the first bark petition — and was prompted by the news that Evans would soon return to Yirrkala. In the telegram Wells requested Evans’ visit be postponed by a week, because all spare accommodation was occupied by a group of psychology students and their supervisor from the University of Queensland.¹⁹³

That third telegram also reported that Yolngu elders were disappointed that Evans had not returned within the time frame promised by Giese; that these elders had decided there would be ‘no work with mines until [the] whole subject [was] reviewed’; and that they had asked Wells to ‘seek independent legal advice before they are further committed’ to the mining project. No doubt this news disturbed Gribble, and Wells attempted to reassure him that the telegram had been sent at the request of Yolngu and that ‘no legal developments [were] in progress’.¹⁹⁴ Other motives can be read into that telegram, one being a suspicion on Wells’ part that Evans was coming at this moment to conduct a witch hunt on the bark petitions. Evans confirmed this in another of his reports: he had repeatedly tried to reassure Wells that he had returned to establish ‘the geographical affiliations’ of the Yolngu clans and his visit had nothing whatsoever to do with the petitions.¹⁹⁵

By early November, Gribble — at the direction of the MOM Board — proposed transferring Wells back to Milingimbi, but Wells refused the offer.¹⁹⁶ Gribble’s only option then was to terminate Wells’ appointment as superintendent at Yirrkala from 31 December and direct his return to the Queensland circuit.¹⁹⁷ Gribble insisted that Wells had not been dismissed; rather it was Wells who had ‘initiated and made the decision himself to return to the work of the church at home’. As if to justify this action, Gribble produced a nine-page statement on behalf of the Board of Missions, which he sent to a number of influential people, including Hasluck, Beazley and the Minister for External Affairs, Sir Garfield Barwick.¹⁹⁸

It was only in January 1964 that newspapers learned of Wells’ departure and chose to report that Wells had been sacked.¹⁹⁹ Such news did briefly turn Wells into something of a national celebrity, and it did not take long until Stan Davey sought to enlist Wells again in a FCAA campaign about ‘Aboriginal reserve lands’,²⁰⁰ though the campaign came to nothing. Wells instead applied for an AIAS grant to sort his papers: the council rejected his initial application, but granted him an honorarium of £200. At its next meeting, with a revised proposal before it, the council agreed to pay the balance of

¹⁹³ Telegram, Wells to Gribble, 23/8/1963 (MOM 465) The psychology study ran between 21 August and 4 September (Symons to Gribble, 18/7/1983, SLNSW MOM 465).

¹⁹⁴ Telegram, Wells to Gribble, 28/8/1963 (SLNSW MOM 465).

¹⁹⁵ Evans’ report of 6/9/1963 (NAA A452 1963/6064).

¹⁹⁶ Gribble to Wells, 11/11/1963, reproduced in Wells (1982, p. 111) and Wells’ reaction appears at p. 112.

¹⁹⁷ Gribble to Wells, 3/12/1963, reproduced in Wells (1982, p. 114).

¹⁹⁸ The report was sent to Hasluck on 12/12/1963; to Beazley on 2/1/1964 and to Barnes, Barwick and Dean on 31/1/1964 (SLNSW MOM 465).

¹⁹⁹ Various press reports are reproduced in Wells 1982, Chapter 17.

²⁰⁰ Davey to Gribble, 28/1/1964 (SLNSW MOM 384).

Wells’ original request for £890/10/-.²⁰¹ Now Wells’ application included a month’s visit to Yirrkala later in the year. Although neither Gribble nor Symons was happy about it, they felt that to deny Wells’ return would only rekindle the controversy of earlier that year.²⁰²

This chapter began by considering the establishment of the Australian Institute for Aboriginal Affairs. The next chapter begins by considering Ronald Berndt’s contribution to the institute’s short-lived Gove project and then, following on from his contribution on the subject, traces the fate of sacred sites at Yirrkala.

²⁰¹ Minutes of AIAS meeting, 21-22/2/1964 (NAA A463 1964/1010). It was A.P. Elkin who recommended the rejection.

²⁰² Symons to Gribble, 5/10/1964 and Gribble to Symons, 26/10/1964 (SLNSW MOM 461).

Chapter 5: Changing course

I

When Ronald and Catherine Berndt arrived in Yirrkala in early 1964, they found ‘striking changes’ had occurred in the 18 years since their first fieldwork; yet, for all the change, Ronald Berndt noted that many older Yolngu were still ‘traditionally-oriented’ and that ‘much of traditional life still survives in the people’s memory’, if not as living experience.¹ Berndt reported that the ceremonies he and Catherine observed were shorter than in the past and that some ‘myths’ were less ‘coherent’ and more ‘abbreviated’ than previously. They found too that other ceremonies like the *makarrata* (for peace-making) were ‘no longer a living reality’, but other features of Yolngu social life, like polygyny and betrothals, remained almost unchanged. As for hunting and gathering, Berndt found Yolngu were now less self-reliant, and the mission store had become ‘the main hunting ground’.²

While it took them a couple of days to adjust, the Berndts came to feel ‘as if we had never left Yirrkala’ and they had ‘no difficulty in taking up “old” relationships’ with people, people who were ‘not markedly dissimilar to ... when we first knew them’. The Berndts did find many of their old friends to be ‘troubled about the question of their rights in the land’ and about ‘the likelihood that some of their sacred areas would be taken away from them’, but even so they were ‘not opposed to alien intrusion provided most of their land remained intact’.³

The Berndts had come to Yirrkala to fulfil Ronald’s obligation to the AIAS ‘Gove Project’, and, in acquitting that commitment, he wrote a seven-page report for the Interim Council.⁴ To my mind, this report is the most spontaneous and unguarded of all Ronald’s writing. His affection for Yolngu and Yirrkala should be evident from the extracts already quoted.⁵ The Berndts’ formal mission might have been to assess the impact Gominco’s operations on Yolngu, but their personal priorities for their week-long trip were ‘to renew our ties with the local people’; ‘to gossip and discuss “old times”’; ‘to check on our own knowledge of traditional life’; ‘to bring our census and genealogical information up to date’; and ‘to discuss with them what they felt about the changes which had already taken place and those which were likely to do so’.⁶ It was not until the second page of the report that Berndt disclosed another purpose for the visit: Welfare Branch had requested that he compile a detailed map ‘pinpoint[ing] important sites for preservation and protection’, in keeping with the Select Committee’s recommendation.⁷ He noted in the report to AIAS that he had conducted a similar exercise in 1946 and hoped ‘later to be able to compare’ the two sets of maps. As well, he reported that ‘important Macassan sites’ still existed in the vicinity of

1 Berndt’s AIAS report, 2/4/1964, pp. 2, 5 (NAA A463 1964/2098).
2 *Ibid.*, pp. 3-4.
3 *Ibid.*, pp. 2-3.
4 Berndt had been a member of the Interim Council since 4/1962 (see Mulvaney 2008).
5 Compare the attitudes here with those cited in letters to Elkin and quoted in Chapter 1.
6 Berndt’s AIAS report, p. 1. Their visit was from 30 January to 5 February (Berndt’s report, p. 2); this timeframe is rendered ‘January-February’ (see Berndt 1964, p. 258), suggesting a longer visit.
7 *Ibid.*, p. 2. As well as investigating Gominco’s impact, AIAS also wanted Berndt to investigate the possibility of collecting further examples of Yolngu material culture.

Yirrkala and recommended that these be urgently investigated by archaeologists. Apart from the Yolngu concern for sacred sites, noted above, Berndt had nothing further to say about the mapping project or sacred sites in this report, though these issues would come to dominate Berndt’s formal article on his Yirrkala sojourn, published later in the year.

That article — entitled ‘The Gove Dispute: The Question of Australian Aboriginal Land Rights and the Preservation of Sacred Sites’ — was the first academic attempt to discuss the conjunction between sacred sites and land rights. The importance of the article for fellow anthropologist Kenneth Maddock was that it presented sacred sites in the ‘double context of traditional Aboriginal culture and contemporary Australian politics’ and that in tackling the topic this way Berndt ‘combined scholarship with advocacy’.⁸ The paper was highly ambitious but, despite its innovations, it remains problematic. Not only was it Berndt’s intention to identify specific sites for protection, but he also wanted ‘to demonstrate the major importance of certain sites which are an integral part of the [Yolngu] religious system’ before addressing ‘the significant question of Aboriginal land rights’.⁹ He proposed tackling these issues in four sections: a brief history of events at Yirrkala; an outline of Aboriginal attachment to land; the results of his mapping exercise; and finally his case for land rights. I do not propose giving a detailed summary of the article, but in the account that follows I do draw attention to the contradictions inherent in his explanations of Yolngu attachment to country.

Berndt’s account of events at Yirrkala conforms broadly with the account I have offered in preceding chapters, though he included a few additional details of a personal kind. He, for instance, mentioned a letter he had written to both Gribble and Symons in early 1963: among other things, Berndt wanted to know whether the Methodist Overseas Mission (MOM) had sought assurances from the federal government about ‘safeguards and security of tenure in respect of Aboriginal reserves’ and whether MOM had broached the subjects of ‘compensation for the loss by Aborigines of their land’ and ‘the general question of land rights for Aborigines’.¹⁰ In his letter — though not in his article — Berndt added that if such points had been raised, he would not try ‘to hinder proceedings’ with some form of protest.¹¹ Berndt, it seems, contented himself with Gribble’s reassurances that ‘the Administration is keeping its hand very much on the rights of the aborigines and that we must negotiate for them as we go along’, and so desisted from any ‘protest’.¹²

In his article, Berndt occasionally misrepresents the work of others. For example, he claimed that one of the ‘major points’ emerging from the Select Committee’s report was ‘the recognition that these Aborigines have land rights, even if they are not legal in Western European terms’, though the committee made no such a claim.¹³ As another example, Berndt abbreviated Hasluck’s statement on Aboriginal reserves to make it seem that Hasluck supported land rights. Berndt quoted Hasluck as saying that reserves were ‘being held today, not as a refuge to which aborigines can retreat and live

8 Maddock 1991, p. 221.
9 Berndt 1964, p. 258.
10 *Ibid.*, p. 259.
11 Berndt to Gribble, 21/2/1963 (MOM 465).
12 Gribble to Berndt, 27/2/1963 (MOM 465).
13 Berndt 1964, p. 263.

in a tribal state, *but as reserves of land to meet the future needs of these people*'.¹⁴ The quote carefully omitted Hasluck's final clause — 'when they have advanced further towards civilization' — which, when reinserted, leaves no doubt that Hasluck was contemplating the completion of assimilation, and land rights were never part of that agenda.¹⁵ Berndt was on firmer ground when discussing Aboriginal attachment to land. So far as Yolngu were concerned, they 'never consciously thought of anyone else (the "Government" included) except themselves as being the owners of the land'.¹⁶ More generally, he said, every Aboriginal group regarded land as 'traditionally inalienable'; their lifestyles were utterly dependent upon the land, and their range of movement was 'limited to some extent, corresponding roughly, though not entirely, to recognized territorial boundaries'.¹⁷ Berndt provided a brief account of the central creative role of ancestral beings, before concluding that the 'whole territory of any given Aboriginal group was a network of tracks of mythical beings, pinpointed in sacred sites'.¹⁸ He further insisted that group's territory was defined not by size, but by 'the sites of mythical significance it contained'. In discussing Yolngu attachment to land, Berndt talked of how symbols, such as those associated with personal names, arising from their 'song-myth-ritual-sacred-site complex' were 'mutually reinforcing'. His point was so highly condensed as to be obscure, but he was, I think, attempting to bring the importance of Yolngu religion to the fore and to show how everything of importance in Yolngu culture was endowed by *wangarr*. Berndt rounded off his second section by observing:

Since the sites are linked, because of the way in which so many *wangarr* beings wandered through and across wide areas of country, it is not just a question of separate sites but also of intervening areas of land, or of whole stretches of such territory.¹⁹

Now Berndt appeared to be saying that all country had significance and, if this interpretation is correct, then it is difficult to understand how sacred sites were to be distinguished from the country embedding them.²⁰ It is not a problem that Berndt resolved in this article — he did tackle the issue again some years later with a little more success (see below) — though the problem would continue to dog him all the way to the court case and beyond.

II

Berndt introduced the third section on places and their names — which forms the bulk of the article — by saying that he had discussed their location and meaning with a number of senior Yolngu men —including Mawalan, Mathaman, Milirrpum, Mungurawuy and Narritjin — who had participated in the 1946 mapping exercise. 'Each place was discussed in relation to its importance mythologically, and areas were indicated which in the opinion of all the men present should be classified as "inviolable"'.²¹ As

14 Hasluck, 12/9/1963, CPD (HR), p. 933; Berndt 1964, p. 262 (emphasis in original).
15 For more on Hasluck's views on land rights, see Hasluck 1988, Chapter 8.
16 Berndt 1964, p. 263.
17 *Ibid.*, p. 264.
18 *Ibid.*, p. 265.
19 *Ibid.*, p. 269.
20 Maddock 1991, p. 221.
21 Berndt 1964, p. 270.

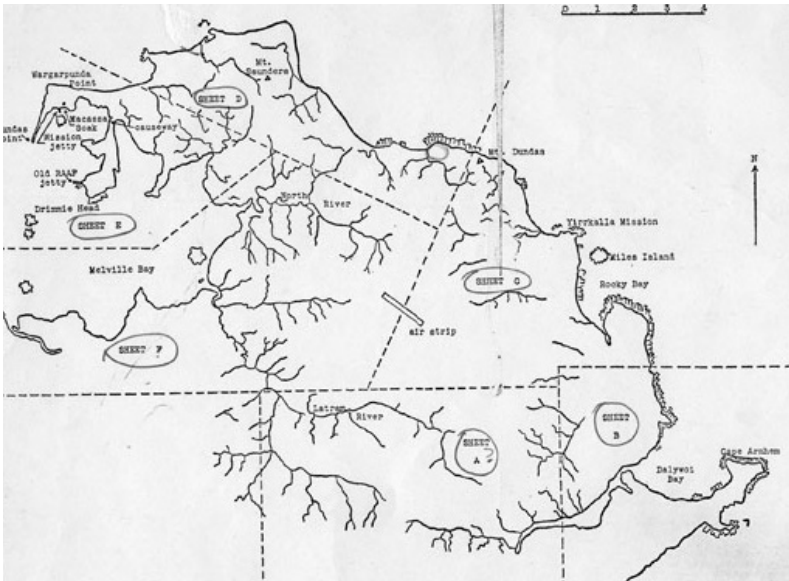


Fig. 5.1: Berndt's 1964 reference map

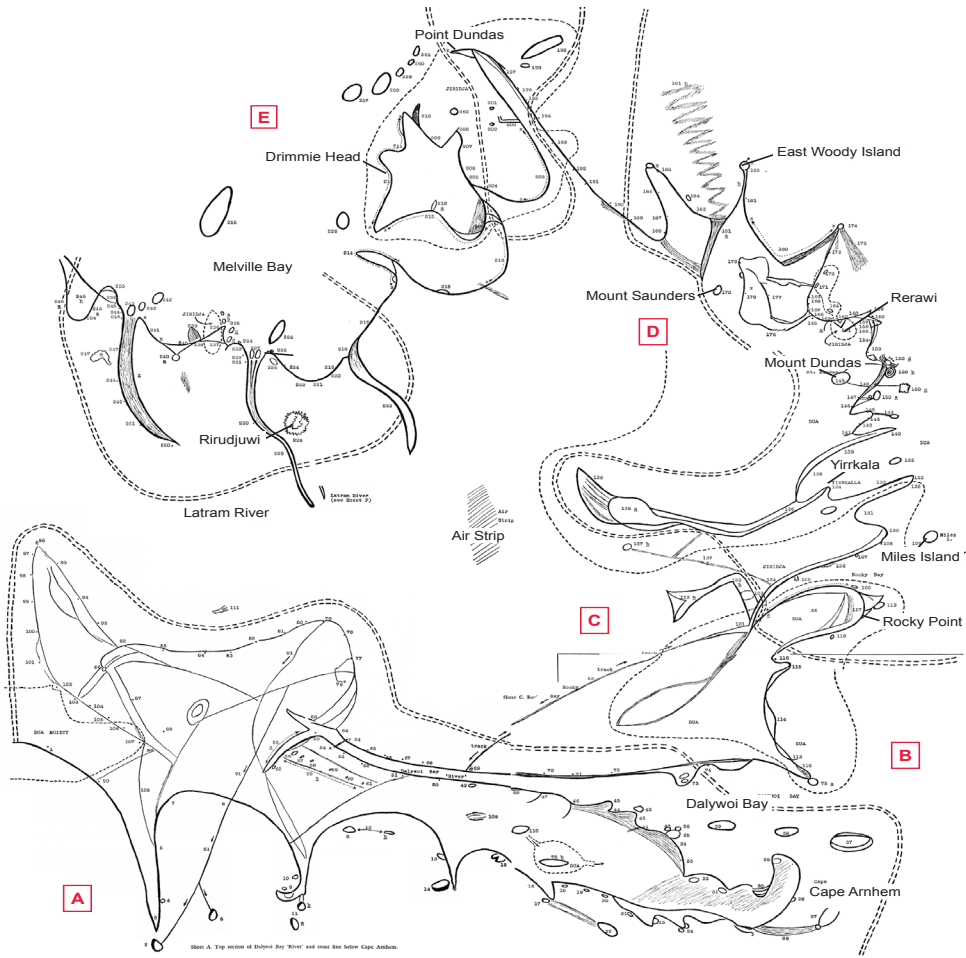


Fig 5.2: Wandjuk's maps reassembled

each site was mentioned, Berndt annotated a brown-paper map — drawn by Wandjuk — with numerals and recorded informants' main points in a notebook, as he had done in 1946. In order to publish Wandjuk's map, Berndt literally cut it into six sections, which for him then became a series of maps, but which I have reassembled here (Fig.5.2, see over) in accordance with Berndt's reference map (Fig.5.1).²² In his introductory comments for this third section, Berndt pointed out that in the ensuing discussion of sites he had included neither detailed translations of their names nor full accounts of the 'myth and ritual material' associated with the sites.²³ It is hard to fathom the rationale for his decision: the inclusion of such material would have helped readers assess the status of particular sites; instead all the reader is offered is an extensive listing of site names augmented by names of mainly obscure *wangarr* but that are otherwise devoid of explanation. It is as if the reader is meant to understand that every named place is in fact a sacred site. Before proceeding to the list, Berndt made passing reference his earlier mapping exercise, as he had done in his report to the AIAS. He described those maps as 'very detailed' and 'more elaborate' than Wandjuk's effort, incorporating 'sacred designs as well as representations of quasi-historical events' — that is, sites of Macassan activity. As an illustration of the maps he intended, Berndt referred readers to Plate 5 of *Arnhem Land: Its History and Its People* (1954), which is in fact the map of Melville Bay drawn by Mawalan, reproduced in Chapter 1 and categorised there as a crayon drawing (Fig. 1.7). As I noted there, Mawalan's map is primarily concerned with Macassan activity and does not appear to include 'sacred designs'.²⁴ Berndt added one last and enigmatic comment in reference to his earlier mapping exercise: 'I have preferred not to compare the two sets [of maps], since that would take me beyond the scope of the present paper; but comparison would, I am sure, reveal a number of changes'.²⁵ Berndt never did manage to carry out that comparison, but I will undertake that comparison below, because it has ramifications for Berndt's testimony in the eventual Gove case. Some of the changes Berndt discerned in Yolngu lifestyle and culture have been noted at the start of this chapter, and, while we can never know the changes he intended, I suspect he was alluding in the main to changes in clan land holdings on the Gove Peninsula. Before coming to that comparison, however, I want to draw attention to some of Berndt's findings from his 1964 mapping exercise, beginning with Figure 5.3. All the country that is shaded is said to be 'inviolable' to one degree or another. For the shaded area surrounding Point Dundas, Berndt noted that 'the local people are anxious [it] should be inviolable'.²⁶ The same men had, however, testified earlier to the Select Committee that they were quite willing for Gominco to centre its operations and town there. The shaded area along the bottom of the map (segment A) was, by contrast, said to be 'all sacred'.²⁷ These 'inviolable' or 'inviolable' areas reinforce the idea that Yolngu regarded all the land as special and wanted none of it exploited.

22 *Ibid.* In reassembling the map I had the assistance of Cartographic Services, RSSS, ANU.
 23 *Ibid.*
 24 Mawalan drew the map of Melville Bay on 14/6/1947. It will be seen from Appendix 1 that 15 of the 73 named places in the notes accompanying Mawalan's map are associated with *wangarr*, and some of these references are repeated in Berndt's 1964 article.
 25 Berndt 1964, p. 270.
 26 *Ibid.*, p. 284, note.
 27 *Ibid.*, p. 275, note.

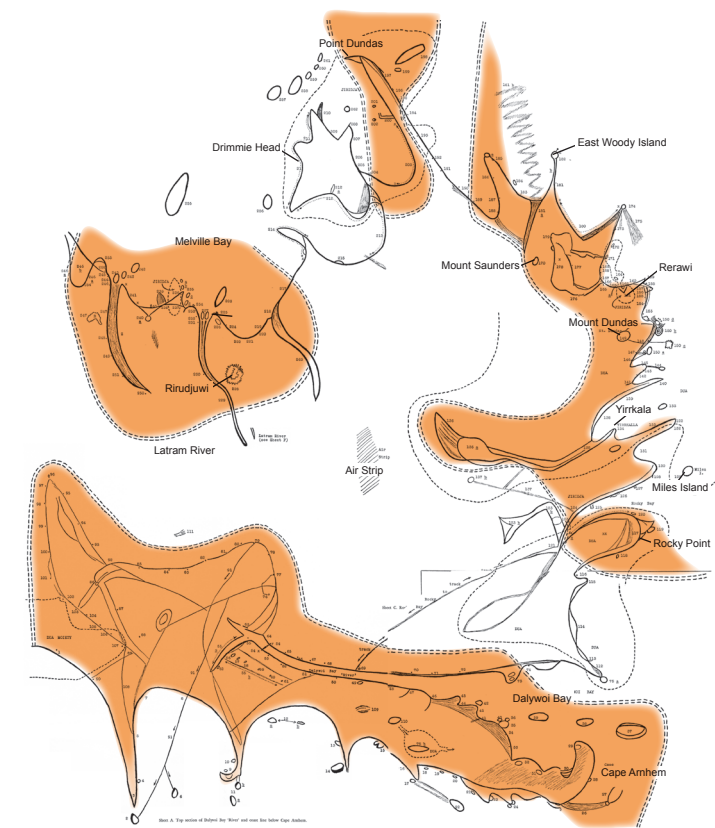


Fig. 5.3: Inviolable areas, 1964

Thus it is curious that Berndt did list 31 places as 'available for economic exploitation', if 'reasonable financial compensation' were offered.²⁸ It is quite astonishing to find a number of these places associated with the major *wangarr* of the area, Djambawal (e.g. Banaldji) and Wuyal (e.g. Lumboi, Warieaba and Birritjimi). Another two and quite extensive areas were said to be similarly open: a portion of the coastline between Dalywoi Bay and Rocky Point and the whole shoreline of Drimmie Head. Since the majority of these sites were formerly the hubs of Macassan activity, it is conceivable that these areas were regarded by Yolngu as akin to foreign concessions.²⁹ Figure 5.4 records the sites for potential exploitation. Furthermore, it needs to be realised that these areas were only potentially or putatively sites for exploitation: that is, they are indicative of the Yolngu desire to negotiate developments on their country. The appropriate moment has arrived to make the comparison between the two mapping exercises. While drawn 18 years apart, the two maps cover an almost identical area, thus allowing for ready comparison. It should be noted, however, that the 1946 map I introduced in Chapter 1 (Sheet H) does not include the area from Rocky Bay to Cape Arnhem, which is covered by the adjoining map in the series (Sheet G). To

28 *Ibid.*, p. 291.
 29 Cf the granting of such concessions to western powers in China after the Opium Wars.

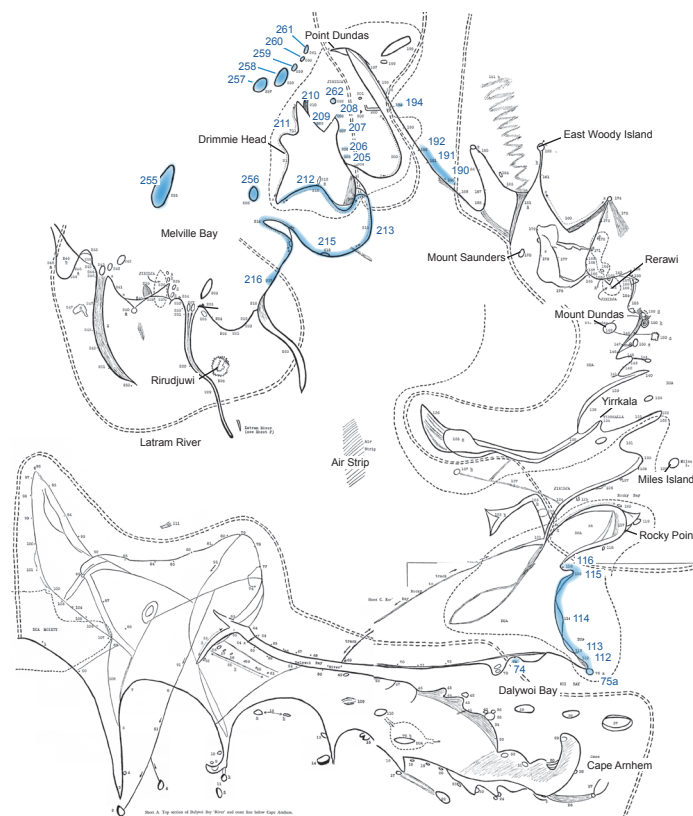


Fig. 5.4: Areas available for economic exploitation, 1964

facilitate comparison the two relevant sections have been combined (see Fig.5.5).³⁰

The single lines shown on the 1964 map roughly indicate the boundaries between Yirritja and Dhuwa territories; they occasionally demarcate clan territory as well. The major holdings for 1964 are shown on Figure 5.6. Of special note are three tiny enclaves or pockets of Yirritja country (in yellow) surrounded by Rirratjingu holdings (in blue). Two are close to Mt Dundas, one being Dhalwangu country, while the other is Gumatj; the third enclave abutts the southern shore of Melville Bay and is said to be shared by Gumatj, Wangurri and Warramiri.³¹ Figure 5.7 presents the corresponding data for 1946.

Berndt made scant references to clans in his 1946 maps, but he did assign most of the Gove Peninsula to either the Dhuwa or Yirritja moiety. The spread of moiety holdings appears to be almost identical to that for 1964, but changes can be detected in clan holdings. In 1946 Cape Arnhem was held by an Yirritja clan, the Lamamirri (shaded purple); Rocky Point was assigned to the Galpu clan (Dhuwa); and the southern shore of Melville Bay was said to be that of the Ngyamil clan, also Dhuwa. By 1964, as Berndt noted, there were only two surviving members of the Lamamirri clan, both women, and their country was now being ‘looked after’ by the Gumatj and Wangurri clans, also Yirritja.³² Rocky Point

³⁰ The map I call ‘the 1946 map’ is Sheet H in Berndt’s original series, and was drawn on 30/10/1946. Sheet G, which covers the area from Yirrkala to Yalangbara, was begun on 29/10/1946 and completed the following day. Sheet G in fact carries a rough outline of the area covered by Sheet H, and so it seems likely that Berndt called for a more detailed map for the area from Yirrkala to Melville Bay (i.e. the area shown on Sheet H). As with Wandjuk’s map, RSSS Cartographic Services assisted in combining Sheets G and H.

³¹ Williams (1986, pp. 78-80) notes that such pockets are usually gifted by the clan holding the surrounding country.

³² Berndt 1964, p. 275, note.



Fig 5.5: Composite map of Sheets G and H, 1946

in 1964 was said to be Rirratjingu and so continued to be Dhuwa territory.³³ The 1946 maps scarcely acknowledge clan enclaves: for Melville Bay, Berndt noted that, apart from the small Yirritja pocket, the country was Dhuwa, either Rirratjingu or Ngyamil.³⁴ Once these apparent differences have been explained, it should be clear that no substantial change in land holdings can be detected over the intervening 18 years. Thus, Berndt’s prediction of change in the 1964 article would appear to be, on the whole, wrong. Given the turn of events in the subsequent court case, it would not be surprising if Berndt came regret ever raising the comparison in the 1964 article, but it must also be said that the 1964 article is the only public trace of Berndt’s 1946 mapping exercise — even if his reference to the Melville Bay drawing is incorrect.

Turning now to the names of sites, many more were recorded for the 1964 exercise than for that of 1946: in 1964 there are 269 listed sites, compared to the 141 recorded for the 1946 map, but, despite this quantitative difference, there is a remarkable correspondence between place names for the two sets of maps, as Appendix 2 attests. As I suggested in Chapter 1, Berndt’s main interest in 1946 was in Macassan activity, rather than clan holdings or even sacred sites — his central preoccupations in 1964. The greatest difference between the two lists of site names lies, however, in the number of associated *wangarr*: whereas the 1946 list carries only six references to ancestral beings, the 1964 map lists 108.³⁵

Many of the *wangarr* noted in the 1964 survey were of lesser stature than, say, Djang’kawu or the Wagilag sisters, neither of whom are known to have traversed the country between Yirrkala and Melville Bay. For example, as well as named human-like *wangarr*, there are references to *wangarr* whales (5), dogs (18), doves (7), owls (5), water (4) and rain (4). The most prominent of the *wangarr* in the area are Djambawal the Thunder Man — who was associated with one definite place on the 1946 map — and Wuyal the Sugar Bag (or Wild Honey) Man, who rated no mention in 1946.

In 1964 Djambawal was linked with 16 named places, and Wuyal with 18. In 1964,

³³ *Ibid.*, p. 278, note.

³⁴ *Ibid.*, 1964, p. 288, note.

³⁵ The figures exclude Bremer Island sites. Here ‘the 1946 map’ refers only to Sheet H.

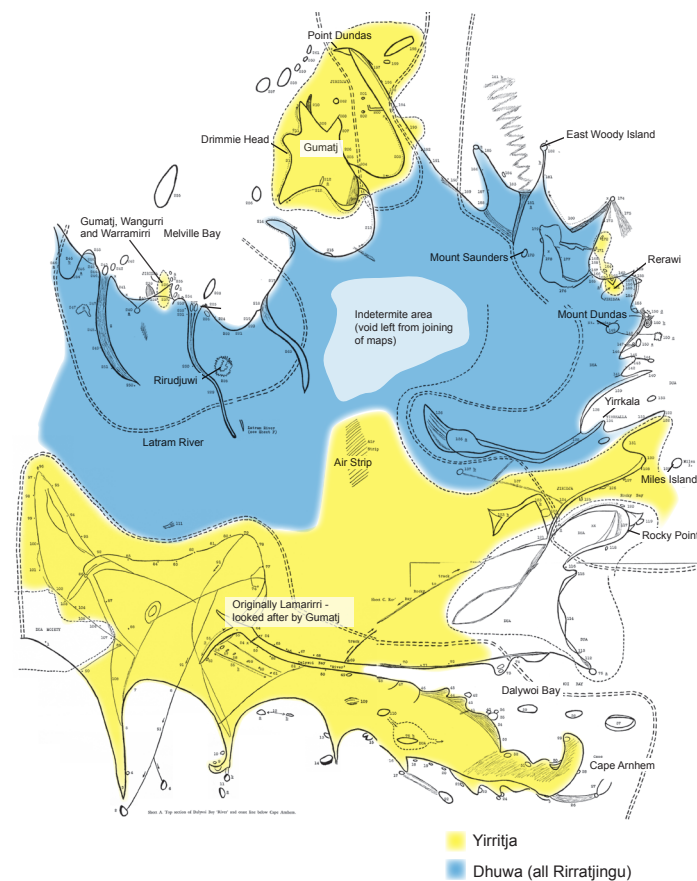


Fig 5.6: Moiety and clan holdings, 1964

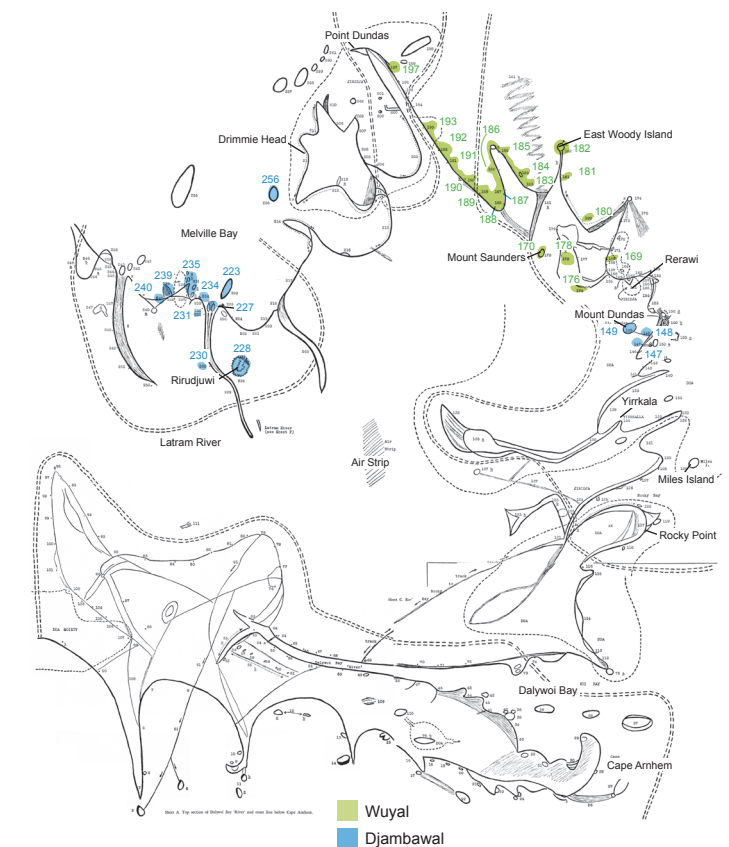


Fig 5.8: Sites associated with Djambawal and Wuyal, 1964

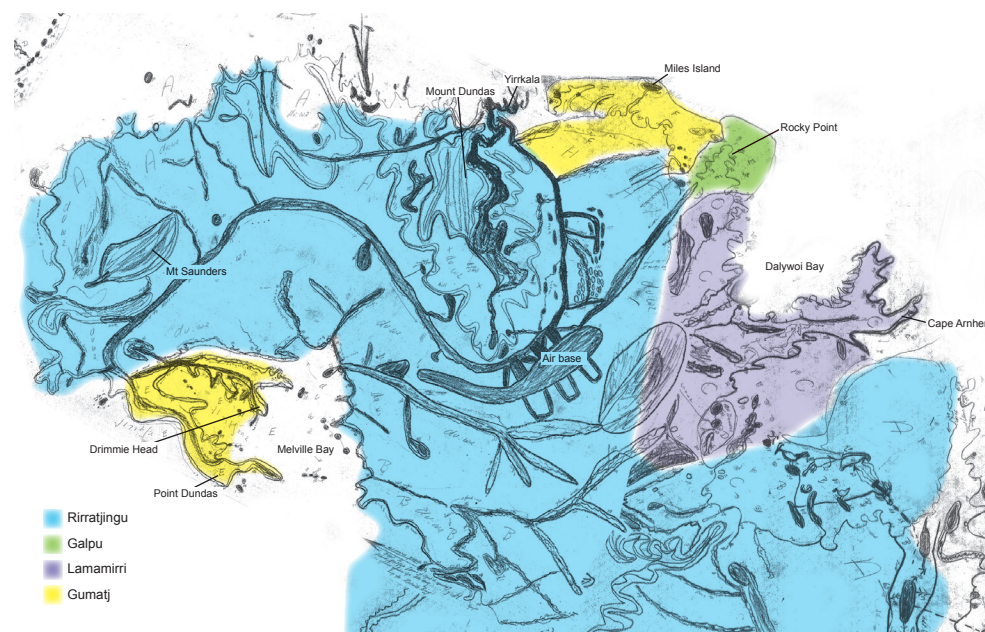


Fig 5.7: Moiety and clan holdings, 1946

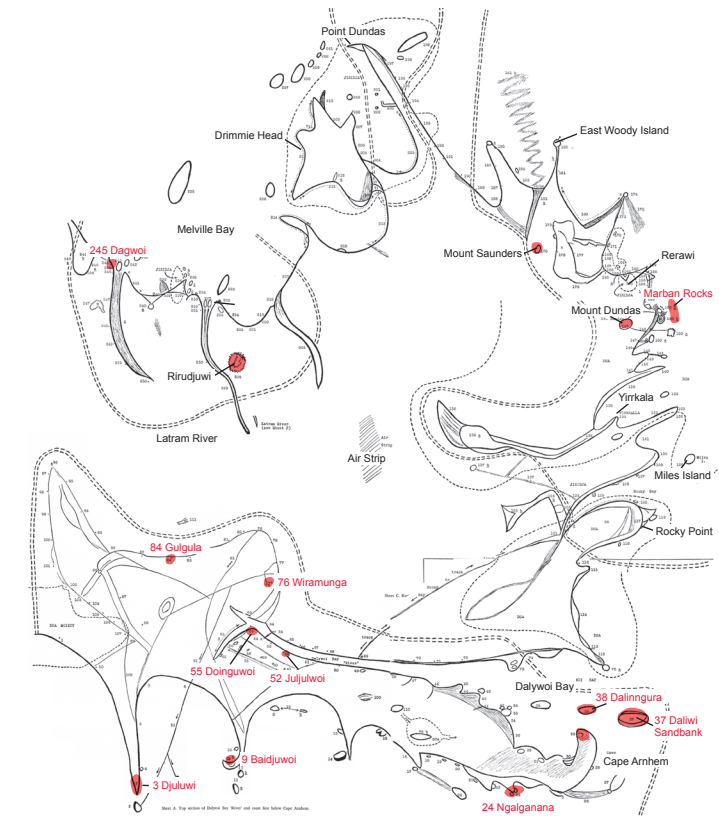
Djambawal's activities were centred on Yilgaba or Djawulpawuy (Mt Dundas), which Berndt reported to be a 'dangerous place', and Nhulunbuy (Mt Saunders) was recorded by Berndt as 'a sacred place' of Wuyal (Fig. 5.8).

From Berndt's 1964 list, we learn that Djambawal's major site is Yilgaba (Mt Dundas) and that rocks there represent both his eyes (*millig*) and yams, which in turn represent the thunderbolts he hurls. Of two sites close to Yilgaba (149), one is a rock in the sea, Rerawi, which symbolises Djambawal (147) and the other, Djawulpawuy (148), is said to be another of his 'important sacred sites'.³⁶ The other places associated with Djambawal, as listed by Berndt, all lie near the mouth of the Latram River in Melville Bay. Of particular note is Rirudjuwi (228), a rocky outcrop made by Djambawal's thunderbolts. This place is described by Berndt as 'a very important site; no one goes near it'. In this area four places are associated with Djambawal's rain (230, 231, 239, 240), and another two places are connected to him simply by association (227, 256). Wurumbrulngi Island is said to mean 'clouds gathering together' (223) — clouds made by Djambawal — while Bunbaidji (234) is a water spout 'made by the Thunder Man urinating' and from here he threw another four *millig* to create four rocks, collectively known as Bunundjiwi (235 a-d).

Wuyal emerges as a far more lively character than Djambawal, and his places form more of a network than those associated with Djambawal. Nhulunbuy (170) is his sacred place, and from here he went to Galaladani (169). To get to this place, he danced his way through Waidjumi (176) and there was encircled by small green birds (*wiriei*) at Wirieiwi (178) and at Djanarawi (179). From Galaladani (169) he went down to the

³⁶ These days the more usual Yolngu term for Mt Dundas is Djawulpawuy.

coast near Cape Wirawai and walked westwards along the Dalbami beach (180) until he came to Galuru (181) where he left some spears. The nearby island of Damadjinya (182) is said to be Wuyal's dilly bag. At Lumboi (183) Wuyal encountered bees, which he followed along to Banggananimiwoi (185). Along the way he hung his bag of honey on a tree, now a reef called Dimbugai (184). He continued walking along this beach all the way to another place called Lumboi (190). At Durumboi (187) he saw a night bird (*guminda*); at Djirangboi (188) he let a carbuncle out of his dilly bag; at Guluguwoi (189) he left part of his spirit or his reflection; and at Wareidjaba (191) he left spears, a woomera and a stone axe, all of which are now rocks. He walked as far as Gulngura (193) where he encountered an Yirritja *wangarr* dog and so turned back to Birritjimi (192). Figure 5.8 shows the places associated with both Djambawal and Wuyal.



III

In north-eastern Arnhem Land, for instance, not all sites associated with *wangarr* (creative era) beings are classified as *mareiin* (sacred) in the strict sense of the term. When used in this context, it refers primarily to the major creative and spirit beings, including certain natural species among other things.⁴³

37 Williams (1986, p. 38) actually says 'to forge additional links', but I want to avoid the connotation of fabrication that sometimes attaches to 'forge'.

41 Maddock 1991, p. 217.

but to a lesser degree than those labelled ‘secret-sacred’. He further held that some sites were regarded as ‘traditionally important or hallowed by historical association’, while other sites were plainly ‘non-sacred’. He noted that still other sites were in themselves not sacred but could be classified as sacred ‘through contagion’: for example, a water-hole might come to be regarded as sacred through the *rangga* stored within it, rather than through any inherent attribute of its own. In this later paper Berndt further muddled the waters by saying that ‘sacred sites were not only, or necessarily, those that were *set apart* and *forbidden*’, as Durkheim had proposed, but I am afraid that this is the only way to make sense of his category ‘secret-sacred’.⁴⁴ In this later work Berndt persisted in saying that the country in which sacred sites are embedded may also be seen as having ‘mytho-totemic significance’.⁴⁵

The result is, as Maddock comments, a ‘conceptual mess’ of Berndt’s ‘own making’, which Maddock speculates came about in the following way:

His concern for Aboriginal rights led him to defend what he chose to call sacred sites. He saw that sanctity had to be defined, but did so in terms that were impossibly wide, given his protectionist aims. Then, in order to make protection feasible, he qualified his conception by introducing kinds and degrees of sanctity.⁴⁶

For Maddock, ‘[i]t is all so muddled that one can only conclude that Berndt lost control of his project’, but, even so, Maddock credits Berndt, through his various explanations of sacred sites, with playing ‘a key part in propagating the term and helping it to spread into law’.⁴⁷ I suspect that Berndt lost his way through good intentions: in trying to make out a strong case for Yolngu ownership of the Gove Peninsula, he overstated the centrality of sacred sites and at the same time failed to give an adequate account of the relationship between the sites and the country in which they were embedded. In thinking over the matter some years later, Berndt did try to clarify his definition of sacred sites, but succeeded in making a case out for a hierarchy of sacred sites, even while digging himself deeper into the mire. The difficulty may simply be symptomatic of Berndt’s writing style, which, as Morphy has suggested, ‘at times obscured his core insights into Yolngu society’.⁴⁸

In comparison with sacred sites, Berndt had relatively little to say on the issue of land rights in his 1964 article, but this did not prevent him from later claiming this article to be ‘[p]erhaps the first direct anthropological statement relevant to land claims’.⁴⁹ As he saw it, the gazettal of the Arnhem Land Aboriginal Reserve in 1931 — in so far as it made any impression at all — reinforced for Yolngu the ideas that it was their country and that henceforth it would be protected from exploitation.⁵⁰ The residents of Yirrkala had had a ‘rude awakening’ to ‘the realization that they are, after all, a dependent

44 *Ibid.*, p. 9 (emphasis in original).
45 *Ibid.*, p. 8.
46 Maddock 1991, p. 221.
47 *Ibid.*, p. 221 & p. 219.
48 Morphy 2009, p. 75.
49 Berndt 1981, p. 10. Here (1981, p. 11) he also says that his 1970 monograph had its origins in a paper he gave at the AIAS conference in 1969, but in a postscript to the 1970 monograph he says it was written before he and Catherine visited Arnhem Land in April-May 1968 (1970, p. 55).
50 Berndt 1964, p. 289.

minority and not an independent people’,⁵¹ and perhaps in coming to grips with that realisation they decided to negotiate by being prepared to concede certain territory for exploitation. Berndt predicted that one result of ‘the changes now in progress’ might be that ‘in years to come people will no longer feel the same way about these sacred sites: that even if they continue to retain some significance, this will be in the nature of “folklore” or local history rather than of religion’.⁵²

The ‘Gove dispute’ had arisen precisely because Yirrkala was a ‘fairly compact community’ of people who had not been dispersed and who were ‘actively concerned with their own relationship to the land and alert to whatever went on there’. It was moreover a community, according to Berndt, which encouraged articulate spokesmen to state their case and which had the support of the Methodist mission.⁵³ Berndt noted too that the Gove ‘dispute’ had ‘revived the vital issue of Aboriginal land ownership’.⁵⁴ To Berndt it was feasible to put Aboriginal ‘rights of ownership’ onto a legal footing for groups who maintained an association with ‘their own traditionally-inherited land’, especially where that land had been reserved.⁵⁵ In acknowledgement of Yolngu land tenure, Berndt advocated that their ‘hereditary right’ be recognised; that they be consulted ‘in the event of any part of its being ceded to another authority’; that they be compensated for any alienation of their country; and that they retain ‘the right of access to all sacred sites on that land’.⁵⁶

He rounded off the discussion of land rights with a plea to consider the ‘touchy and delicate issue’ of Aboriginal groups whose traditional country had been subsumed by pastoral leases. He advocated that such groups ‘should legally own a stretch of country which could provide them with a security of tenure’ and urged that ‘the major sacred sites within the boundaries of such properties ... be mapped’ and preserved.⁵⁷ As we shall see, this last point would prove to be the most prescient from Berndt’s entire argument, for within two years the Gurindji dispute would erupt on Vestey’s leases at Wave Hill. This, then, is the nub of Berndt’s case for land rights, though in summary form it is somewhat more coherent than in the original, where Berndt repeatedly subverted his argument with tangential distractions.⁵⁸

When Berndt had finished the Gove article, he sent a copy to C.E. Barnes, the new Minister for Territories and erstwhile member of the Select Committee, suggesting that it might be used ‘as a basis general discussion on the question of Aboriginal land-ownership’ at a gathering of anthropologists and representatives of Australian governments.⁵⁹ In doing this Berndt perhaps hoped to rekindle anthropology’s influence in policy-making, perhaps hoping to show that he was either capable of filling Elkin’s shoes or following in his footsteps. At the very least, the action is evidence of how highly Berndt regarded the article: he considered it as ‘crucial in

51 *Ibid.*, p. 290.
52 *Ibid.*, p. 291.
53 *Ibid.*, p. 292.
54 *Ibid.*, p. 290.
55 *Ibid.*, p. 293.
56 *Ibid.*, p. 290.
57 *Ibid.*, p. 294.
58 It is unlikely that a copy editor intervened before the article appeared in print: after all, *Anthropological Forum* was Ronald Berndt’s own journal; he was its founding editor.
59 Berndt to Barnes, 2/12/1964 (NAA A452 NT1964/5952).

helping to get wider public support for the Yirrkala people’, as he wrote to Nancy Williams some years later.⁶⁰ Upon receiving Berndt’s article, Barnes did the usual thing of sending it out for comment. In due course, a response was forthcoming under the signature of the Northern Territory Administrator, now Roger Dean, the erstwhile chair of the Select Committee.⁶¹ Dean noted that it would be premature to call a meeting along the lines suggested by Berndt; initially the paper should be discussed at a meeting of NTA officers. Dean preferred to confine his remarks to the most obvious points, because to comment on every one of Berndt’s points would require an essay ‘as long as the original paper’. Dean’s strongest comment was that Berndt had ‘confuse[d] the notions of interest in land, of land ownership and of land use’, though Dean did not feel the need to define these terms or to elaborate upon them. Dean asserted that Aboriginal groups ‘do not own areas of land but [rather] care for sites’: Aboriginal people were ‘as likely to speak of themselves as belonging to a place as of a place belonging to them and both expressions are little more than interesting attempts to explain a relationship in terms familiar to us’. (As noted in the final chapter, this handy little formula, borrowed from Elkin without attribution, would be the most often quoted statement from Justice Blackburn’s lengthy decision in the Gove land-rights case.⁶²) While anthropologists might speak of the distinctions between land-owning and land-using groups, neither type of relationship, in Dean’s opinion, ‘amounts to ownership of land in our sense’, though this did not mean that ‘Aboriginals do not have an interest in land nor [sic] that they should necessarily not be recognised as having rights in land’. With regard to the long list of place names, Dean noted that Berndt’s presentation obscured ‘the relative importance of different places’: in his opinion, ‘the great majority of the sites listed [were] simply places with some totemic association’, while a number of other sites were devoid of such association, though he did not elaborate on the nature of that association. He found that only three sites could be strictly regarded as sacred sites — Dalingura, Rirudjuwi and Mt Dundas — and, happily for the NTA and the latest mining company on the scene, Nabalco (see below), none of these places was threatened by mining. Dean did not understand why Yolngu insisted that the greater part of the peninsula should be ‘inviolable’ (see Fig 5.3 above), especially Point Dundas, when a month earlier Mungurrawuy had confirmed that ‘the area was free to be used’ and ‘seemed puzzled that the question should be raised again’.⁶³ Dean said it was ‘not unreasonable’ that ‘the coastal strip from Rocky Bay westward’ be conserved as the main Yolngu living area; and he did not consider the area between ‘the billabong’ (presumably Wirrawa) and Mt Saunders to be under any threat from mining.

60 Williams 1986, p. 34, note 4.

61 Dean to G. Warwick Smith, Secretary, Dept of Territories, 18/3/1965 (NAA A452 NT1964/5952). The response was requested on 22/1/1965, and a completed draft, dated 18/2/1965, by Jeremy Long can be found in NAA A432 1968/649 Part 16. The reason for the delay appears to be that Giese, who returned to Darwin on 20/2/1965, had not signed it off (NAA A452 NT1964/5952).

62 Elkin 1964, pp. 79-80.

63 According to Dean, Gordon Symons and Jeremy Long had interviewed Mungurrawuy in 2/1965. Dean himself interviewed both Mungurrawuy and Daymbalipu on 17/3/1963 (Telex to Smith, 19/3/1965, NAA A452 NT1964/5952).

IV

Towards the end of 1965 Canberra issued a request to Dean the Administrator for welfare officers to do an ‘on-the-spot’ investigation of Berndt’s sites. Dean replied that since it was the rainy season, since senior officers were on leave and since the investigation would involve ‘sea travel around the total coastline of the Peninsula’ and a great deal of organisation, the inspection would have to be postponed.⁶⁴ This was not the first request for a survey of sites; one had been intended for the dry season of 1965, but a murder and resulting community tensions at Yirrkala forced a postponement for a full year.⁶⁵ I will briefly consider that murder, because it had repercussions for the eventual survey of sites.

Garmali, Mungurrawuy’s eldest son, was killed in April 1965. According to the resident welfare officer at the time, Bill Gray, a power struggle had developed between Rirratjingu and Gamatj clans on the one side and the Djapu clan on the other after the death of Wonggu (see Chapter 1).⁶⁶ Since Wonggu’s grandson, Daymbalipu, had become chair of the Yirrkala Village Council, the Djapu were finally regaining some of their old authority, but Daymbalipu’s position was ‘a thorn in the sides of both Mungurrawuy and Mawalan’.⁶⁷ Garmali had been playing cards with others — including Wirrilma, Daymbalipu’s brother — in defiance of Daymbalipu’s ban on gambling. A confrontation ensued, in which Daymbalipu and Wirrilma seemed to gain the upper hand, but later that night Garmali renewed the quarrel. The fracas turned violent; Garmali was stabbed; Daymbalipu and Wirrilma were arrested; Daymbalipu was acquitted; Wirrilma was charged with manslaughter and jailed for two years.⁶⁸ One result was the collapse of the village council. Another was that Mungurrawuy regained some of his former authority: in response to his son’s death he ‘closed all the country surrounding the Mission to all persons other than members of the Gumatj and Rirratjingu clans’. Gray also noted that the Gumatj and Rirratjingu clans were asserting that they alone ‘should be the ones to take advantage of the mining development being carried out in “their country”’.⁶⁹

From the wider world another development in 1965 would soon have a profound impact on Yirrkala: Cabinet had agreed to grant the original mineral lease, SML 1 (forfeited by BAC in 1963), to Nabalco — a consortium of the giant Swiss Aluminium company Alusuisse and Australian interests, led by CSR. The decision was only taken after Gominco had surrendered SMLs 2-4, which were to be held in reserve for some future development. The Nabalco deal hinged upon a two-year feasibility study, on

64 Dean, n.d., to Smith re his request of 31/12/1965 (NAA A452 NT1964/5952).

65 For all matters relating to the survey I am relying on Evans’ report (NAA A432 1968/649 Part 13).

66 Gray was installed at Yirrkala in 1/1966 ‘to keep faith with a promise made to the Aboriginal community, and to assist in cushioning the impact of mining operations’ by Nabalco (Evans’ report, p.2, note 2).

67 Gray’s patrol report, 28/2/1966 (NAA A432 1968/649 Attachment 20).

68 *Northern Territory News*, 12/5/1965, p. 3.

69 Gray’s patrol report, 28/2/1966 (NAA A432 1968/649 Attachment 20).

which the company embarked in October 1965.⁷⁰ If Edgar Wells had been alarmed by the way Gominco had gone about its survey, it was fortunate that he was not at Yirrkala to witness the zeal with which Nabalco swung into its preliminary survey. As visitors to Yirrkala at that time have vividly recalled for me, Nabalco used bulldozers, which churned through the country, gouging deep straight lines as they went, so that the entire countryside resembled gridlines on a gigantic map.⁷¹

Such was the scene on the Gove Peninsula in June 1966, when the chief welfare officer, Ted Evans, arrived to undertake his survey of sacred sites, first recommended by the Select Committee. Long before his arrival, Evans had formed definite ideas of what the survey should entail. After all, Evans had been the one to ask Berndt to pinpoint sites in 1964, and during the course of that conversation the pair had spoken at length about the nature of sacred sites. In the course of that discussion, Evans insisted that ‘Professor Berndt confirmed my view that whole areas did not have religious significance and that the sacred sites are usually waterholes, rock formations, caves, etc., and, insofar as the people of Yirrkala are concerned, are almost exclusively confined to the shoreline and the mouths of rivers’, though his Gove Disputes article later created an entirely different impression. Further, Evans was ‘confident’ that Berndt would corroborate Evans’ long-held view that ‘no sacred sites’ were to be found in the mining leases. At the time he also predicted that Berndt’s research would ‘reduce to a minimum the amount of work which will ultimately be necessary to fix the sacred sites’ for declaration under the ordinance.⁷²

The ordinance in question was the *Native and Historic Objects and Areas Preservation Ordinance* of 1960, which amended an earlier ordinance —the *Native and Historic Objects Preservation Ordinance* of 1955, the first legislation of its kind in Australia, that aimed to protect sites from vandals, tourists, souvenir hunters and from the encroachments of European ‘civilisation’, like roads and mining. From the early 1950s the Northern Territory Administration had adopted the peculiar view that Aboriginal people placed ‘more value on the stories, the ritual of ceremonies and the sacred emblems used in them’ than on ‘the place where the ceremony is performed’, but it did recognise that some places had ‘a ceremonial or historical significance’ for Aboriginal people, although very few places, in the NTA’s view, had ‘any durable physical features’. For a site to be considered worthy of preservation, it needed ‘some physical or artistic aspect’ beyond ‘ceremonial meaning’; caves and rock shelters with paintings or engravings were considered model sites.⁷³ The 1960 legislation broadened the scope to allow areas such as ‘a cave or other place in which ancient remains, human or otherwise, are situated’ or ‘a place which is or has been at anytime used by Australian aboriginal natives as a ceremonial, burial or initiation ground’ to be included. For the first 15 years of the legislation’s existence, nomination of artefacts and sites for preservation was solely on

70 Alusuisse had begun making inquiries about the lease in 8/1963. CSR stands for Colonial Sugar Refinery. An inter-departmental committee had recommended reserving the old SMLs 2-4, rather than granting one large lease for Nabalco, ‘to make up any shortfall in the specified reserves and grade of bauxite in SML No.1 ... and/or as a bargaining counter to persuade the eventual holder of SML No.1 to enter into aluminium smelting’. (IDC Report, 4/9/65, p.5; NAA A4940/1 C2323 Pt 2.)

71 E.g. Rev. Bernie Clarke, Yirrkala, 5/2004. See also Woodward 1985, p. 145 (59 ALJ).

72 Evans’ report of visit to Yirrkala, 21-22/2/1964 (NAA A452 1963/6390).

73 Wise to Lambert, 15/9/1952 (NAA A452 1952/410).

the say-so of Europeans, usually patrol officers, and most, if not all, of the sites listed on the register maintained by the Welfare Bureau conformed perfectly with the criterion for human embellishment.

If Evans was expecting Berndt to identify a few sites, he was to be disappointed. Nevertheless, Evans did manage to discern ‘a clear pattern of the important legendary figures’ from Berndt’s article, and in this he was no doubt swayed by Berndt’s categories of sacred, dangerous and so on. Evans identified eight key *wangarr* and they became the focus for his survey. Arriving in Yirrkala on 8 June 1966, Evans convened a meeting of informants: they included Mungurrawuy, Mawalan, Narritjin and Maw (Wonggu’s son and the sole Djapu representative).⁷⁴ They nominated who would speak for the sites associated with each selected *wangarr*. Mungurrawuy would speak for sites near Cape Arnhem and Dalywoi Bay; Mawalan for the sites associated with both Djambawal and Wuyal; and Maw would talk for the Morning Star (Banumbirr) site at Rocky Point.⁷⁵ The inspection would be conducted in four phases.

A fishing boat and crew were chartered from Elcho Island for the survey, and the first party set out for Cape Arnhem on 13 June.⁷⁶ Half an hour out from Yirrkala, the boat broke down and it was not until late the next afternoon that the group were able to make camp on a beach inside Dalywoi Bay. The following morning inspections were conducted at a number of sites by foot and by boat. The party was just about to return to the boat when they wandered into a place called Wirrawirrawoi, where Evans happened across stone outlines of Macassan praus, canoes and houses. While admittedly not a sacred place, it captured Evans’ imagination: to him it was ‘remarkable’ because ‘Aboriginals of some three or four generations past employed the use of stones ... to pass on to future generations the important elements of the Macassan material culture’.⁷⁷ Later he would say that the stone depictions represented ‘the origins of writing’ and ‘an attempt to make a public record for posterity’.⁷⁸ Berndt, who had not visited the site, had recorded Wirrawirrawoi as merely referring ‘to the trepang of the Baiini drying and the *wangarr* north wind blowing’.⁷⁹ It should be noted that Wirrawirrawoi lies just to the west of two sites in Dalywoi Bay that Berndt recorded as available for exploitation (see Fig. 5.10).

For the next leg of the survey — an investigation of the sites connected with Djambawal and Wuyal — Evans was accompanied by Mawalan, Wandjuk and Mungurrawuy.⁸⁰ Again, they put to sea, only to anchor a short way along the coast off Mt Dundas. They climbed the hill ‘to examine the extraordinary concentric undulating

74 The others were: Birikitji and Gawarrin (Dhalwangu); Waitjung (Gumatj); Mathaman (Rirratjingu); Nynbarrawoi (Marrakulu). These men did not go with Evans and Gray on their inspection of sites.

75 Evans also says that another man, Larry, would investigate the Rocky Point site as well. Mawalan would also talk for sites associated with the Turtle Man near Mt Dundas and Melville Bay. Mungurrawuy would talk for the sites associated with the Rainbow Snake, Whale, Dog, Stingray and Crocodile (Evans report, 1966, p. 3).

76 For this leg the party consisted of Mungurrawuy, Dadangya (as interpreter), Gray and Evans.

77 Evans report, 1966, p. 8.

78 Oral history interview with Evans for the NT Archives, recorded by M. Stephenson, April to June 1982 (NTRS TS 46).

79 Berndt 1964, p. 277 (site no. 73).

80 Welfare Officer Bill Gray also participated in all phases of the survey.



Fig. 5.10: One of the stone outlines at Wirrawirrawoi, 2004

grooves in the cliff', which Evans observed 'were not man made', but rather 'the result of wind erosion'. Upon hearing these remarks, Mawalan told him that 'of course they [were] not man made; they were made by Thunderman'. Shortly after returning to the boat, a thunder cloud appeared on the horizon, which made Mawalan 'most concerned and agitated that he may have offended ... Thunderman by taking us to see his sacred site'.⁸¹ Bad weather dogged the rest of this leg of the survey.

The last two stages of the survey were conducted by road. For the visit to Rocky Point, the informants were Maw, Mawalan, Wandjuk and Narritjin. (Narritjin had earlier refused to board the boat from Elcho Island for reasons that had to do with Garmali's death.⁸²) Mawalan and Wandjuk had previously asserted that Maw could not speak for the site authoritatively and that the site held 'no serious significance'. In order 'to obtain an objective and balanced expression of opinion', Evans insisted on the presence of both Maw and Narritjin,⁸³ who persuaded Evans of the site's merit. Mawalan and Wandjuk had previously told Evans the headland was open for exploitation, but when Evans reminded them of this in Maw's presence, they were considerably embarrassed.⁸⁴

From the survey, Evans concluded that 18 sites — including Wirrawirrawoi and two sites of personal interest to Mungurrawuy on Drimmie Head and at Point Dundas⁸⁵ — were 'inviolable' and warranted protection. At the outset of his investigation, he concentrated on eight *wangarr*, but only six found their way into his recommendations.⁸⁶ These sites are shown on Figure 5.11 (see over). Included on Evans' final list were four places associated with Djambawal: Djawulpawuy (Mt Dundas), Wurrumburmi, Rirudjuwi and the Wudawi jungle (mentioned by Wells, but not on Berndt's list). Only two places on the list were associated with Wuyal: Nhulunbuy

⁸¹ Evans 1970, p. 104.

⁸² Narritjin, who had tried to break up the fight in which Garmali was killed, later gave evidence in support of the defendants — Daymbalipu being his brother-in-law. On the way to the trial in Darwin, Narritjin was stabbed at Elcho Island and now feared further retribution (Evans 1966 report, p. 4).

⁸³ Evans 1966, p. 4.

⁸⁴ Evans, undated (but probably early 1967) (NAA E460/53 1974/1477).

⁸⁵ One was the graves of his parents on Drimmie Head; the other was the area adjacent to his hut on Point Dundas.

⁸⁶ They are: Djambawal, Wuyal, a pair of dogs, the lightning snakes, the whale and the turtle hunters.

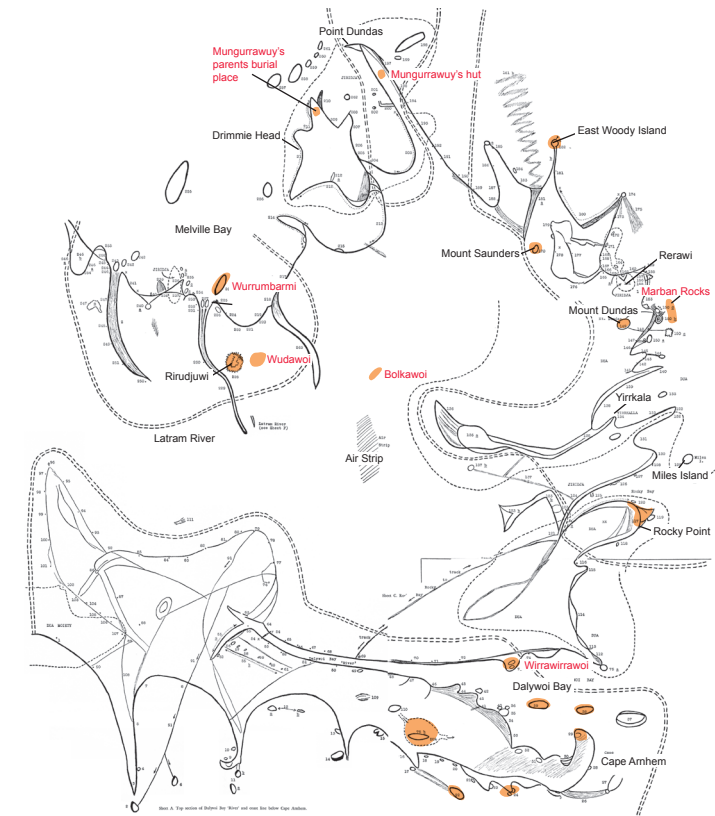


Fig. 5.11: Approximate location of Evans' 18 sites, 1966

(Mt Saunders) and Damadjinya (East Woody Island). Another significant inclusion was Rocky Point. Some of Evans' final sites are not identified by name, but rather by *wangarr*, and so it is difficult to identify the places on either Berndt's list or on a map. For example, the location of a hill associated with the Lightning Snakes is said to be 'on the western shore approx[imately] [a quarter of a] mile south of the eastern extremity of the Cape [Arnhem]'.⁸⁷

Some places identified by Evans as significant are not regarded as such by Berndt; and the opposite is also true. For example, while Evans identified three places in Dalywoi Bay as special to the *wangarr* whale, he did not list the place Berndt noted to be the most sacred place of this *wangarr*, a place called Doinguwoi that lies in the neck of the bay.⁸⁸ Instead Evans listed two blowholes associated with the whale — Dhawarang and Burrangji — neither of which is mentioned by Berndt, though both men identify an island to the south-east of Cape Arnhem, Wudjungduru, as associated with the whale. Another instance concerns the island known as Damadjinya or East Woody. While Berndt said it represented Wuyal's dilly bag, he did not explicitly nominate it as sacred, but it appears on Evans' final list. Given that Berndt and Evans relied, for the most part, on the same informants, it is not easy to explain the differences in their

⁸⁷ Evans 1966, p. 6. It is worth noting that the 1946 map (Sheet G) shows a hill on Cape Arnhem, which Berndt incorrectly annotated as 'Mt Dundas'. It should also be noted that by the time of his survey Evans was using a standard map onto which Berndt's notations and names had been transposed. (The map had been prepared by G.Tiver of the Lands & Survey Branch, but to date I have not located it.)

⁸⁸ Berndt 1964, p. 273, site no. 55. I suspect Evans' party did not visit this site, perhaps because of the delays caused by the boat's breakdown; perhaps the boat could not navigate this part of the bay.

categorisations of sacred, significant or dangerous places. One possible explanation is that when Evans and his informants actually visited the sites, the sites stirred stories, memories or emotions that were not evident in Berndt’s static inquiry, and so the Yolngu informants assigned different priorities to the sites when visited.⁸⁹ Perhaps too the Yolngu informants held Berndt and Evans in different regard: even though Evans was well known to them — he had visited Yirrkala regularly since 1946 — he was still the government’s man, while Berndt appeared to be primarily interested in their culture.

Personnel certainly did make a difference in the case of Rocky Point. If neither Maw nor Narritjin had accompanied Evans to this site, it would in all likelihood have escaped notice. For this place Berndt noted a large clearing that was ‘the ceremonial ground’ on which the Dhuwa spirits Wudeiana danced; Berndt in fact recorded the place as being named Wudeiana. Nearby Berndt noted two places associated with the Morning Star ceremony: Dangalangawoi, where the Wudeiana danced the ceremony, and Wuruwiri, a rock off the coast, that was ‘the feathered ball representing the Morning Star’.⁹⁰ These days Rocky Point is more usually referred to as Wirruwidi. As already noted, Berndt stated this part of the coast was held by the Rirratjingu clan in 1964, but had been Galpu territory in 1946 (see Figs 5.6 and 5.7 above). Since Rocky Point is a major site for the Morning Star ceremony, and most, if not all, Dhuwa clans have their own versions of this ceremony — which, according to Morphy, is associated with mortuary rituals and ceremonial exchange — it is hard to understand why Mawalan and Wandjuk would have told Evans it held no significance.⁹¹

Evans insisted that his list was ‘an exhaustive one’ and confirmed that the places designated by Berndt as available for economic exploitation were regarded by Yolngu as open.⁹² Berndt had stated that the entire Gove Peninsula belonged solely to the Rirratjingu and Gumatj clans, but Evans said that this contradicted the findings of both Warner and Webb, who, 30 years earlier, had reported the peninsula as belonging to the Lamamirri. (It must be remembered that both Webb and Warner were based at Milingimbi, and so their statements may not be as reliable as Evans suggests.) From this Evans concluded that ‘changes in land attachment have occurred within comparatively recent times’.⁹³ He urged that the results of his survey should be read ‘against the possibility of further changes in authority over land’.⁹⁴

In forwarding Evans’ report to Canberra, Administrator Dean chose to emphasise the points about change. To him it was ‘reasonable to assume that there [would] be further changes in land affiliation’. These attitudes towards change conformed to Berndt’s untested hypothesis and would come to have an undue influence in the eventual court case. In relation to sites available for development, Dean observed that ‘the industrial importance of the peninsula must have some influence on the thinking of some of the

more astute Aboriginal leaders’.⁹⁵ In his covering letter, Dean also stressed the need for just three of Evans’ places — Rocky Point, Mt Dundas and Wirrawirrawoi — to be given ‘some form of legal protection at an early date’, but felt no compunction to state reasons for his recommendations.⁹⁶ It is not clear why Dean did not recommend Nhu-lunbuy (Mt Saunders) for protection, but perhaps he already had an inkling that the surrounding area would be earmarked as the site for the new mining town. Although Evans made out his case for the inclusion of Wirrawirrawoi — which, of all the sites, corresponded most closely to the criterion of human embellishment in the preservation ordinance — there is nothing in his report to suggest that he favoured Rocky Point and Mt Dundas above any of the other sites he recommended. All in all, the list of significant sites had shrunk from Berndt’s original 320 or so sites to just three; it then expanded to 18 and now appeared to shrink again to three.⁹⁷

Dean recommended that a copy of Evans’ report be sent to both Nabalco and Methodist Overseas Mission (MOM). Replying on behalf of MOM, Symons readily agreed with all of Evans’ recommendations,⁹⁸ while Nabalco’s chairman, David Griffin, envisaged difficulties with five of the sites on Evans’ list. At the time the company was still weighing up its options for the siting of its operations, which Griffin labelled ‘the Rocky Bay solution’ and ‘the Pantless Point solution’. If Nabalco opted for Rocky Bay, then Rocky Point would be ‘of prime importance’ and the company ‘could not accept [the] restriction’ of a sacred site there. Wirrawirrawoi might also prove difficult, but Griffin conceded that ‘it may be practicable ... to proceed without interfering with this place of historic interest’.⁹⁹ Three other sites might obstruct the development of the alternative ‘solution’: Knoll Island (Griffin’s name for the island Berndt called Ngalangalwi); Wudawoi jungle, which ‘would appear to be in quite close proximity to Pantless Point’, as Griffin preferred to call the place that appears on Berndt’s list to be Warambulawi;¹⁰⁰ and the rocky outcrop Rirudjuwi — a most dangerous place — might be ‘a possible source of aggregate’. It seems strange that Griffin was willing to accommodate a site of historical interest, but was not prepared to entertain similar concessions for sites of true significance.¹⁰¹

In commenting upon Griffin’s response, Evans observed that ‘I am afraid that the top executives of Nabalco hold the view that their wishes are not going to be obstructed by any “superstitious nonsense”’, an attitude that in his opinion would only ‘harden

89 Evans makes a point of saying that Berndt did not visit the sites (Evans 1966, p. 2).

90 Berndt, 1964, p. 278, site nos 117, 119, 120. In the Morning Star ceremony long strings with tassels are used; the tassels seem to represent the star and so may be the equivalent of the feathered ball (see Morphy 1998, pp. 226-230).

91 Morphy 1998, p. 227; Evans 1966, p. 7.

92 Evans 1966, p. 8.

93 *Ibid.*, p. 4.

94 *Ibid.*, p. 5.

95 Dean to Secretary, Dept of Territories, 9/8/1966 (NAA A432 1968/649 Part 13).

96 *Ibid.*

97 The following year a further survey of Wirrawirrawoi was undertaken by the archaeologist Campbell Macknight, accompanied by Bill Gray. Macknight and Gray noted 45 stone arrangements, the oldest of which is said to date from 1850. From the stone pictures, when considered together, it was ‘possible to build up a picture of a complete Macassan trepanging site’ (Macknight & Gray 1970, pp. 5, 25 and 26).

98 Symons, 17/10/1966 (NAA E460/53 1974/1477).

99 Griffin to Moy (Dept of Territories), 23/12/1966 (NAA E460/53 1974/1477).

100 Berndt 1964, p. 286, entry 220.

101 Egan (1997, p. 234) noted that Griffin had ‘a deplorable propensity for bestowing... names on places that already had them’, and, while his ‘dull and uninspired names’ like Town Beach and Wallaby Beach remain, the more colourful and shameful names like Pantless Point have mercifully disappeared.

the Aboriginals’ views and ... inevitably lead to stalemate’. Evans was convinced that ‘if a genuinely sympathetic appreciation of the significance [were] brought to the conference table, then a satisfactory compromise [could] be arrived at where there is a clash between the wishes of the Aboriginals and that of the company’.¹⁰² Nabalco did not proceed with either of the ‘solutions’ identified by Griffin. By December 1966 the company had settled on Point Dundas as the centre of its operations. Hence, the sites to which Griffin objected needed no further negotiation, at least at this stage. Nevertheless, it remained for a surveyor to mark out the boundaries and record the exact locations of all Evans’ sites, and this was accomplished by May 1968.¹⁰³ Even so, most of the nominated sites never attained formal recognition or protection. As will be seen, they were held to ransom by the Commonwealth while court proceedings were underway.

V

It may have been that Daymbalipu’s standing had recovered sufficiently to be permitted to attend the 1966 FCAATSI conference, held as usual in Canberra over Easter.¹⁰⁴ At some point during the conference, he is reported to have said: ‘We send petition ... to government, [but] now mining people will come to our country. Aboriginal people on Yirrkala mission still want their country.’¹⁰⁵ I understand Daymbalipu to be expressing doubts about the efficacy of petitions and the political process. Following the conference, Daymbalipu was supposed to return directly to Yirrkala, but instead went to Melbourne, perhaps in the company of Stan Davey, FCAATSI’s general secretary. The trip exposed Daymbalipu to a bewildering array of novel experiences: Ron Croxford took him to see the open-cut coal mine at Yallourn; he accompanied Arthur Ellemor, in the course of his church work, to parts of rural Victoria; and he gave a few talks to students at Boronia High School, where Davey taught.¹⁰⁶ As well, Daymbalipu together with these three men visited Monash University, where they met Colin Tatz, who had arranged a meeting with two academic lawyers for them.¹⁰⁷

According to Davey, Professors Waller and Harari were ‘very interested in the Yirrkala situation and the need for generally establishing land rights for indigenous people’, though they had ‘no immediate advice to offer’.¹⁰⁸ With no prospect of concrete legal action, Davey realised that ‘the basic issues still require[d] political action’.¹⁰⁹ Nevertheless, he felt that as ‘full citizens’, ‘the Yirrkala people should have legal assistance quite

independent of both the Mission and the Welfare authority’, since he had little confidence in the adequacy or veracity of information they were given by NTA officers.¹¹⁰ Davey wanted a lawyer present whenever officials came to talk to Yolngu. ‘The flimsy nature’ of what passed for ‘consultations’ with the NTA had become all too apparent to Davey from his conversations with Daymbalipu.¹¹¹

Even before the FCAATSI conference, Daymbalipu had complained a number of times about the presence of a tower at Rocky Bay — first in a letter to John Jago from the Methodist Commission on Aboriginal Affairs (MCAA) in late 1964 and then to Dean and Long when they visited Yirrkala in early 1965.¹¹² The matter of the tower was still bothering him in 1966, and he seems to have raised it a number of times during and after the conference. One thing that Evans’ survey of sacred sites makes clear is that the tower was actually on Rocky Point, rather than Rocky Bay; and given the importance of this headland to the Djapu clan, Daymbalipu’s worry becomes understandable.¹¹³ In true FCAATSI fashion, Davey (and perhaps others) recommended a petition, which stated that Yolngu of various ‘tribes’ were ‘worried about the erection of a tower on their sacred ceremonial ground, called Dhajalarljalwuy (Rocky Bay)’. It told of how they had complained to ‘Mr Giese and Mr Dean ... a year ago but the tower is still there’ and repeated some of the sentiments from the bark petitions, before requesting ‘a committee from Canberra, like the Select Committee paper said, to come and talk to us sometimes’.¹¹⁴ Davey claimed a clause demanding the establishment of a parliamentary Standing Committee on Aboriginal Affairs was his, but ‘all the other points’ had come from Daymbalipu.¹¹⁵

So, by the time Daymbalipu flew out of Melbourne on 24 April, he had two options for future action to weigh: on the one hand, he could pursue an immediate political avenue via the petition or, on the other, embark on some, as yet, indeterminate legal route. From his utterance at the conference, noted above, it seems he had already lost faith in petitions, though this attitude seems to have firmed into a solid conviction soon after his arrival in Darwin. How exactly this happened is unknown. What is known is that he was collected from the airport by Gordon Symons, who talked to him about the petition. It is further known that Symons did not resort to the same ‘strong language’ that he used in subsequent letters to Davey, Croxford and Ellemor, but Symons was adamant that ‘no pressure has been brought to bear on Daymbalipu at this end at any stage’ to change his opinion of the petition.¹¹⁶ Davey was equally insistent that no one at his end had ‘got at’ Daymbalipu, who, in Davey’s assessment, was ‘a very astute and clear-thinking person’ and ‘a man of high integrity’.¹¹⁷

102 Evans’ undated memo (NAA E460/53 1974/1477).

103 Egan to Giese, 27/5/1968 (NAA E460/53 1974/1477).

104 The conference ran from Friday, 9/4 to Sunday, 11/4. From 1964 the FCAA became known as FCAATSI, the Federal Council for the Advancement of Aborigines and Torres Strait Islanders.

105 Taffe (2005, pp. 226-227) takes the statement as a sign of ‘the gulf which separated his people ... from southern activists’.

106 Davey to Symons, 19/4/1966 (Bryant Papers, NLA MS 8256/11/171). After serving at Yirrkala for 7 years, Croxford returned to live in Victoria in 1965.

107 Davey to Symons, 19/4/1966 (Bryant Papers, NLA MS 8256/11/171).

108 *Ibid.*

109 Davey to Dick Ward, 19/4/1966 (Bryant Papers, NLA MS 8256/11/171).

110 Davey to Symons, 20/5/1966 (Bryant Papers, NLA MS 8256/11/171).

111 Davey to Dick Ward, 19/4/1966 (Bryant Papers, NLA MS 8256/11/171).

112 Daymbalipu to Jago, 4/12/1964 (Bryant Papers, NLA MS 8256, Box 185); Beulah Lowe’s diary for 23/1/1965 records that Dean asked her about ‘*balanda* working at Rocky Bay’ and that ‘Daymbalipu had complained about the damaging of some of their sacred things’ there.

113 Evans (1966, p.6) writes that the Rocky Point site specified by Maw was ‘a clear area following the headland and extending back to the tree line, commencing 130 yards north of the tower on Rocky Point’ (NAA A432 1968/649 Part 13).

114 Urgent teleprint message from Dean to Territories, 27/4/1966 (NAA A432 1968/649 Attachment 20). According to Dean, the tower had been installed by Gominco to measure wind velocity.

115 Davey to Symons, 20/5/1966 (Bryant Papers, NLA MS 8256/11/171).

116 Symons to Davey, 7/5/1966 (Bryant Papers, NLA MS 8256/11/171).

117 Davey to Symons, 19/4/1966 & 20/5/1966 (Bryant Papers, NLA MS 8256/11/171).

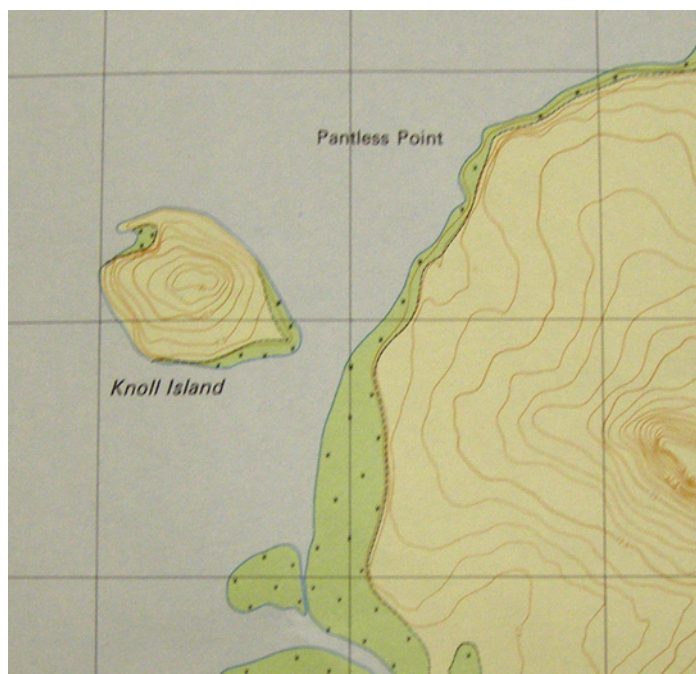


Fig. 5.12: A section of the Nabalco map

Symons was particularly irritated when Daymbalipu told him that people in Melbourne had said that ‘it was not necessary or desirable to show the petition to the Mission or to Welfare’: to Symons it was ‘a tragedy when groups or people working in the interests of some Aborigines are divided by secrecy’. Davey did not recall any such instruction, but he ‘would not seek to avoid some responsibility in sowing the idea’ of keeping the petition away from church and welfare officials. He assured Symons there had been ‘no desire to be secretive’.¹¹⁸

Whether on his own initiative or at Symons’ suggestion, the following day — which happened to be Anzac Day — Daymbalipu called on Ted Evans. He asked Evans if the petition meant that ‘the Canberra Government was being asked to send representatives to Yirrkala’. When Evans affirmed this, Daymbalipu responded that he wanted only the Northern Territory Legislative Council to watch over Yolngu interests. It is impossible to say why Daymbalipu was now placing his faith in the council, but it is clear from his response that he was disillusioned with the federal government. Daymbalipu repeated the supposed injunction on secrecy. He wanted further advice on what to do with the petition, and he wanted that advice to come from the Administrator. And so, Evans rang Roger Dean at 10 o’clock that night. Dean dispatched a telex, marked ‘urgent’ and ‘confidential’, to Canberra on 27 April. Dean asserted that ‘the Yirrkala people have never complained about its [the tower’s] installation to Giese or me’. He further noted that:

I consider it necessary to watch developments such as this, as it would be a pity to have the Yirrkala people again made restless and an atmosphere develop where old hatreds could be revived. I believe it more than possible that the promoters of the petition may contact people such as Wandjuk and encourage dissatisfaction because Daymbalipu is not carrying out their directions.¹¹⁹

¹¹⁸ Davey to Symons, 20/5/1966 (Bryant Papers, NLA MS 8256/11/171).

¹¹⁹ Urgent telex message from Dean to Territories, 27/4/1966 (NAA A432 1968/649 Attachment 20).

Here Dean is, of course, presuming Yolngu to be incapable of making up their own minds or taking their own decisions. He further conjures the image of sinister forces manipulating behind the scenes: in the climate of the day and in view of other current events (which I will discuss shortly) it was not an atypical response. It seems that Daymbalipu kept his own counsel on the option of legal recourse, preferring not to raise it with Evans or Dean: had he done so, alarm bells should have sounded all the way from Darwin to Canberra. It is not known whether Daymbalipu visited the lawyer Dick Ward while in Darwin, as Davey had hoped.¹²⁰ Daymbalipu returned to Yirrkala the following day, leaving the petition behind in Darwin.¹²¹

One more petition would emanate from Yirrkala before the community embarked on the momentous course of legal action — to be recounted in the following chapters — but here I note in a little more about how the discussion about land rights was expanding around the time of Daymbalipu’s rejection of the draft petition.

VI

While issues concerning land had been discussed at FCAA conferences since 1960 and while some non-Aboriginal members — especially Stan Davey and Barrie Pittock — were sympathetic, the council as a whole had found the issues too complex to distil into a campaign and had difficulty in even forming a cohesive committee to tackle the topic. Sue Taffe instead credits a number of individuals from church organisations — all affiliated with FCAATSI (as FCAA came to be known in the mid-1960s) — for taking the running on land rights: men like Arthur Ellemor, Ron Croxford and John Jago from the Methodist Commission on Aboriginal Affairs (MCAA, formed in October 1957); Frank Engel from the National Missionary Council; and Barrie Pittock from the Society of Friends (or Quakers).¹²²

It was not until after the success of the 1967 referendum that FCAATSI gave its full attention to land rights, as Taffe makes clear in her history of the organisation, and it did so by launching another petition campaign in 1968.¹²³ For the years between 1963 and 1967 FCAATSI’s main focus had been on equal rights — as its campaign for constitutional change was popularly known — and on equal wages for Aboriginal pastoral workers. In the push for equal pay, FCAATSI — together with the Northern Australian Workers’ Union (NAWU) and the ACTU — lodged three applications in 1964–1965 with the Conciliation and Arbitration Commission, which finally decided in March 1966 to rid the *Cattle Station Industry (Northern Territory) Award 1951* of its discriminatory clauses.¹²⁴ The sting of the decision lay in the postponement of its implementation until December 1968 in order ‘to give Aboriginal workers and the Commonwealth “time to prepare”’ and ‘the pastoralists an opportunity to consider the future of their aboriginal

¹²⁰ Davey to Ward, 19/4/1966 (Bryant Papers, NLA MS 8256/11/171).

¹²¹ As a postscript, Giese sent a copy of the petition to Gray at Yirrkala. Giese did not want Gray to take any immediate action ‘other than to keep an attentive ear to the ground’ for developments. Giese supposed the ‘composers’ of the petition would contact someone like Wandjuk to learn of its fate and instructed Gray to ‘please destroy this memorandum after reading it’ (Giese to Gray, 12/5/1966 (NAA A432 1968/649 Attachment 20 Item 6)).

¹²² Taffe 2005, pp. 165, 184.

¹²³ *Ibid.*, p. 165.

¹²⁴ *Ibid.*, p. 146.

employees’.¹²⁵ The deferral prompted a number of walk-offs by Aboriginal pastoral workers from a number of stations, most famously by Gurindji stockmen from Wave Hill in August 1966. The Gurindji strike soon came to include demands for land rights. In some ways the Gurindji protest resembled the Yolngu action. They, for instance, sent a petition to Canberra, although not to the parliament, but to the Governor-General.¹²⁶ Like the earlier bark petitions, it stated that Gurindji had ‘lived here from time immemorial’, but, unlike the Yolngu petitions, they wanted to hold their traditional tribal lands ‘as a leasehold to be run cooperatively as a mining lease and cattle station’.¹²⁷ This was because Gurindji country was not part of an Aboriginal reserve, but was held under a pastoral lease. The Gurindji petition specifically requested that the claimed land not be treated as an Aboriginal reserve.¹²⁸ The petition named a number of sacred sites, and these were pinpointed on an attached map. It was, as Attwood notes, a touch borrowed from Berndt’s 1964 exercise of mapping sacred sites around the Gove Peninsula.¹²⁹

Gurindji leaders were sceptical about sending the petition, because earlier Frank Hardy, the author, had sent on their behalf a similarly-worded letter to Canberra, which had been read out to the House of Representatives by Gordon Bryant in the early hours of the last sitting day for 1966.¹³⁰ They argued, rather like Daymbalipu, that nothing had come of that letter, and so why should they try again? Then, as Hardy reports, one of them, Pincher Manguari, found a reason: ‘That letter you wrote last year bin *ask* ‘em that Canberra mob, this letter bin *tell* ‘em we take ‘em back Gurindji country’.¹³¹ It was perhaps because the Gurindji demanded a lease that around the same time a number of Yolngu men also applied for individual leases on the Gove Peninsula. The 1963 Select Committee had observed that Yolngu were entitled to lease portions of Aboriginal reserve by virtue of s.112 of the Crown Lands Ordinance (see Chapter 4). In August 1967, Administrator Roger Dean encouraged five Yolngu men to make formal application for leaseholds on the Gove Peninsula.¹³² Mathaman wanted 4,280 acres on Bremer Island; Mithinari and Manyuwi asked for 275 acres on Mt Saunders; Dadaynga, 25 acres on ‘Gove Peninsula’; and Mungurrawuy sought 16 acres at Point Dundas. (The Methodist mission also requested 75 acres at Drimmie Head as a holiday camp.) Giese, the Director of Welfare, commented on their applications in January 1968 and recommended against the leases sought by Dadaynga and Mungurrawuy because they ‘would be surrounded by Nabalco’, while the one for Mt Saunders requested by Mithinari and Manyuwi was ‘unsuitable’ because it was adjacent to the planned town site of

125 *Ibid.*, p. 156.

126 Lionel Murphy had recommended petitioning the Governor-General, instead of Parliament (Hardy 1968, p.192), and this action in some ways echoes William Cooper’s petition to King George mentioned in Chapter 3. The petition reached the Governor-General, Lord Casey, on 19/4/1967.

127 The petition is reprinted in Attwood and Markus 1999, pp. 224-5. It was signed with the thumbprints of Vincent Lingiari, Pincher Manguari, Gerry Ngalgardji and Long-Johnny Kitgnaari and witnessed by Frank Hardy and JW Jeffery (NAA A452 NT1967/2623).

128 Attwood 2003, p. 275.

129 *Ibid.*, p. 277.

130 CPD (HR) 27-28/10/1966.

131 Hardy 1968, p. 192, emphasis in original.

132 Dean to Mungurrawuy and the people of Yirrkala, 20/6/1967 (NAA A452 1967/4463).

Nhulunbuy.¹³³ Like the proclamation of sacred sites, the issue of leases fell into abeyance until the court case was settled.

The big difference between the Gurindji and Yolngu protests was that the Gurindji had seasoned and politically astute activists advising them and campaigning with them. In the view of some, the Gurindji were merely puppets manipulated by Communists like Hardy or hard-headed unionists. Thus the Gurindji cause generated a great deal of media coverage, but the notoriety of people like Hardy also worked against them. It is due to the inordinate publicity that the Gurindji strike still lingers in the popular imagination as the birth of the land-rights movement, though that publicity did help to bring the issue of land rights to national attention and did draw further attention to the situation on the Gove Peninsula.

VII

Even before handing over its feasibility report — which included an assessment of all the former SMLs (i.e. SMLs 1-4) — Nabalco had signed a formal agreement with the Commonwealth to proceed with the Gove project on 22 February 1968, and that agreement became enshrined as the *Mining (Gove Peninsula Nabalco Agreement) Ordinance* 1968, passed by the Northern Territory Legislative Council on 28 February and given formal assent on 16 May 1968.¹³⁴ The agreement and the ordinance notwithstanding, it was not until August 1968 that the Swiss and Australian partners met in Honolulu to give ‘the green light to the project’.¹³⁵ The Australian partners were concerned about the deal’s profitability, claiming that it was over-capitalised and that the Swiss pricing structure seemed ‘low on current knowledge of world prices’.¹³⁶ The Australian interests decided to stay with the project, but they pressed the federal government to reduce their equity from 50 per cent to 30 per cent. The Gorton government agreed to the restructure, and this was reflected in an amended agreement of early 1969.¹³⁷

Initially, Nabalco had stated that it would bear most of the costs for infrastructure, seeking from the Commonwealth only funding for health and education facilities. By the end of 1967, however, Nabalco had changed its tune. Now, even before it had a solid agreement with the Commonwealth, Nabalco claimed that the costs of providing items such as water, energy, communications, roads for its plant and town — not to say the town’s actual buildings — were so prohibitive as to ‘impose [an] almost unupportable strain upon the viability of the project’ and so sought a contribution from the Commonwealth of \$39 million, ten per cent of which was earmarked for schools and a

133 Giese to Director of Lands Branch, 16/1/1969 (NAA A432 1968/649 Part 1).

134 Northern Territory legislation was held to be appropriate because mining at Gove was a Northern Territory project (A452 NT1966/2345). The feasibility report was handed to the Commonwealth on 28/3/1968 (NAA A2354 1968/108 Part 1).

135 The Australian partners were CSR, AMP, MLC, the Bank of NSW, the Commercial Banking Co of Sydney, Mount Morgan, Peko-Wallsend and Elder Smith Goldsborough Mort (NAA F1 1970/2624).

136 NAA A452 1968/1204.

137 The amended Gove Joint Venture Agreement was signed on 22/1/1969. Under the new arrangements, Nabalco no longer held any mineral rights or assets and became instead the project manager (Crough 1985, pp. 12-13). As Crough further comments (p.13): ‘It is probable that had this arrangement *not* been approved by the Government Swiss Aluminium would have proceeded with the development of a 500,000 ton plant at Gove without Australian equity participation’.

hospital.¹³⁸ In announcing the new equity arrangements, Prime Minister Gorton reiterated that Nabalco was responsible for all infrastructure, apart from that needed for ‘direct government purposes’ such as a police station, court house and government offices.¹³⁹ Even after the amended agreement had been secured, many details of the project remained to be settled. For instance, Special Purpose Leases (SPLs) covering the town, wharves and a construction camp were only signed in late May and early June 1969, while other SPLs continued to be let well into 1971.¹⁴⁰ The absence of formal leases did not, however, impede Nabalco’s progress.¹⁴¹

When Ted Egan arrived on the Gove Peninsula as the district welfare officer in February 1967, his main function was to act as the intermediary between Yolngu, Nabalco, the mission and the Commonwealth’s ‘many agencies’.¹⁴² He soon realised that information about Nabalco’s plans went in one direction only. The Administrator was acutely aware of the situation and urged Canberra to inform Yirrkala more fully of developments. As he chided the Secretary of the Department of Territories (now Warwick Smith):

Remembering the position in which the Government was placed on a former occasion ([i.e.] the bark petition presented to the House of Representatives in 1963 by the people of Yirrkala) I think the Government could be placed in a very embarrassing position if we cannot at least indicate to the Aborigines, even in fairly broad terms, what the company’s approach is in these matters.¹⁴³

Of course, Nabalco’s representatives did not feel compelled to disclose their plans and so Egan found himself regularly reporting Nabalco’s infractions to his superiors in Darwin, and especially so once the company entered its construction phase in earnest. He reported to Giese that a banyan tree had been destroyed at Wallaby Beach while Nabalco’s camp was being constructed.¹⁴⁴ Mathaman — the younger brother of Mawalan who had by this time died — told Egan in great distress that the tree was not only ‘Wuyal’s tree’, but was in fact ‘Wuyal himself’.¹⁴⁵ As it happened, the NTA had given Nabalco the ‘go ahead’ to clear the area, but had failed to inform Egan, who then used the infringement as a plea to his superiors to be kept abreast of developments. ‘So a lack of communication may have caused the destruction of the tree,’ he noted dryly, but in another way the ‘tree incident’ helped to improve communication. Thereafter Egan instituted meetings with Nabalco’s manager every Monday morning, at which they discussed developments — ‘particularly any activity involving bulldozers and graders’ — for the coming week. Then, on Monday afternoons, he would meet the Village Council and the mission superintendent (now Wally Falwell) to outline that week’s activities. ‘In this way it is hoped that, where possible, trees and rocks which have some significance may be saved.’¹⁴⁶

138 Aide memoire, 7/12/1967 (NAA A452 1970/7930)

139 Statement by Gorton, 9/12/1968 (NAA A452 1968/1208).

140 NAA A1734/15 NT 1969/1065 and A1734/15 NT 1969/1066.

141 For example, its camp at Wallaby Beach was completed a month before the relevant SPL was signed (NAA F1 1968/4585).

142 Egan 1997, p. 232.

143 Dean to Smith, 18/10/1967 (NAA A452/54 1967/7489).

144 Egan to Giese, 25/9/1968 (NAA A432 1968/649 Attachment 20).

145 Egan 1997, p. 244.

146 Egan to Milliken, 4/6/1968 (NTRS 44 Drawer 22.6).



Fig 5.13: The greeting card showing Dhanburama, c. 1971



Fig 5.14: Dhanburama, 2004

Upon hearing that another tree was under threat, Egan took the matter up with Nabalco’s local manager, Mr French, who initially said that the tree would ‘have to be removed’, but a little later he told Egan that ‘he would take all steps possible to try to preserve the tree’. Some time later again, French reported that he was under instructions from head office that the company was ‘bound only by the results’ of Evans’ survey of sacred sites. The company’s attitude appeared to be: ‘If we concede the sacredness or significance of these trees, where does it all end?’¹⁴⁷ It seems that privately Egan was having similar doubts, and he sought clarification from Beulah Lowe, the linguist based at Milingimbi, who happened to be visiting Yirrkala.¹⁴⁸ In her opinion, Yolngu did not distinguish between ‘sacred’ and ‘significant’. Furthermore, she doubted that Evans’ survey was an accurate inventory of all the sites Yolngu held to be significant.¹⁴⁹ From this, Egan concluded that, if Evans’ survey was somehow deficient, then either the places omitted ‘did not have the same significance’ or the ‘Aboriginals involved in the survey were to blame for not mentioning them’.¹⁵⁰

To clarify the position, Egan and Lowe called a meeting with the Village Council to determine if other unidentified sites lay within Nabalco’s leaseholds. The Yolngu present nominated a banyan tree known as Dhanburama, which stood on the site designated for the alumina plant, and a cluster of rocks called Dhimbuka, which lay quite close

147 Egan to Giese, 25/9/1968 (NTRS 44, Drawer 22.6).

148 According to Lowe’s diary, these discussions took place on 4/9/1968.

149 Egan to Giese, 25/9/1968 (NTRS 44, Drawer 22.6).

150 *Ibid.*

to the 20-mile conveyor line being built to carry bauxite from the mine to the alumina plant.

At the Village Council meeting, Egan asked Lowe to translate two further questions:

1. If the Aboriginals themselves were doing the mining would they remove any of these objects if the objects were in the road?
2. If the Aboriginals were paid any money would they object to the removal or disfigurement of any of these objects?

The response came as a shock to both Egan and Lowe. The consensus was that ‘these objects could all be compensated for by payment of money’. Egan quoted Dadaynga as saying, ‘Only one thing, the money’. According to Egan, Beulah Lowe found the Yolngu attitude to be ‘most unfortunate but nonetheless true’. She summed up the Yolngu position for him as:

[I]f a Company representative produced a sugar bag full of twenty cent pieces he could gain the assent of the group for the removal or disfigurement of any of the sacred sites in the area’.

If, however, Yolngu had ‘some hard headed Europeans advising them’, they would ‘be prevented from “selling their birthright”’.¹⁵¹ Egan would later refer to this encounter as the ‘only real “consultation” with Aboriginals’ to which he was privy in his ‘quite extensive career’ in Aboriginal affairs.¹⁵²

How are we to make sense of the reported exchanges? It is hard to know what to make of them, because they represent only fragments of that meeting and, further, they are responses to two hypothetical questions. They might cynically be taken as an intention to sell ‘their birthright’, but they might also be taken as another indication of the Yolngu desire to negotiate over any development on their country. Had Yolngu been thoroughly briefed about the impending mining on their land and involved in the various deals from the beginning, they would have had no need of European advisers.

As to the cynical suggestion attributed by Egan to Nabalco representatives that Yolngu invented sacred sites at whim, it is simply not the case. As Berndt argued in his 1964 paper, Yolngu regard all land as significant since it was all enlivened by *wangarr* and their journeyings. Since this is so, it is always possible to find additional sites that were touched by these ancestral beings but whose significance has hitherto gone unnoticed. Those places that have long been regarded as significant or sacred are those places Berndt has called ‘secret-sacred’. The discovery of additional or even new sites acknowledges that significance is not already fixed in specific sites, as Merlan argues. To adopt the view that significance is fixed and finite is to deny ‘the possibility of contemporary agency’, she adds.¹⁵³ To Merlan, Aboriginal people ‘continually “produce” places, assessing and reassessing their significance in terms of current conditions and relationships’.¹⁵⁴ This is socially-produced meaning, which comes about through discussion and negotiation. This is not to say that its initial impetus may arise through personal aggrandisement or individual opportunism, but such motivations are unlikely to with-

151 *Ibid.*
152 Egan’s foreword to Wearing’s biography of Beulah Lowe (2007, p. 9).
153 Merlan 2005/1995, p. 115.
154 *Ibid.*, p. 117.

stand lengthy discussion without persuasive argument or compelling evidence. Returning now to Dhanburama and Dhimbuka, it was because their plight came to Egan’s attention that both sites were saved. Signs were placed around Dhimbuka, warning that it was a ‘dangerous’ site associated with Wuyal.¹⁵⁵ As for Dhanburama, Nabalco redesigned its alumina plant to accommodate the tree. The NTA was pleased to inform Canberra that Dhanburama was ‘thriving’. ‘[E]very Monday morning it is supplied with 2,500 gallons of water by courtesy of Nabalco. A fence has been erected around the tree, with four notices posted which say “do not touch”’.¹⁵⁶ Dhanburama would later be celebrated on a greeting card,¹⁵⁷ and I can report that the tree was still flourishing in 2004. Dhanburama has not been killed by kindness (Figs 5.13 and 5.14). While this chapter has concentrated mainly on Ronald Berndt’s approach to land tenure and focused on sacred sites in particular, it also introduced — albeit in an understated way — another avenue Yolngu might pursue in their ‘dispute’ with Nabalco. I explore the legal option that was presented to Daymbalipu in embryonic form in the next chapter. Both Professor Berndt and Professor Stanner were closely involved in preparing the Yolngu case and both were ultimately expert witnesses in the case. Having outlined Berndt’s approach to land tenure in this chapter, I consider Stanner’s writings in some detail in Chapter 6, which, like this chapter, introduces yet another two federal institutions on Aboriginal Affairs — the Council for Aboriginal Affairs and the Office for Aboriginal Affairs.

155 Egan 1997, p. 244.
156 Telex from NTA to Interior, Canberra, 10/9/1969 (A1734/15 NT1968/2388).
157 The card, belonging to Howard Morphy, is probably from the 1970s. It is captioned: ‘The banyan tree at the alumina processing plant at Gove. This tree is sacred to the local tribe of aborigines whose chief is Mungurrawuy. He is reputed to have 11 wives, and is shown in the foreground of this picture. From the watercolour drawing by Brett Hilder.’

Chapter 6: A fresh perspective

I

The success of the 1967 referendum was widely interpreted as permitting the Commonwealth to assume the power to make laws for Aboriginal people in every part of Australia, but the Holt government had no intention of wresting that authority from the states. Rather, the Commonwealth’s preference was to co-ordinate Aboriginal policy at a national level, and, to this end, the Prime Minister announced the formation of the Office of Aboriginal Affairs (OAA) within his own department in September 1967. As well as co-ordinating policy, the office would ‘provide the machinery for joint consultations’ with the states and with relevant Commonwealth departments.¹ Some weeks later, Holt announced ‘a further stage’ in the revamping of Aboriginal policy — the establishment of a three-member Council for Aboriginal Affairs (CAA). The council’s functions were to advise the government in ‘the formulation of national policies’; to consult Commonwealth departments; to ensure ‘co-operation between the Commonwealth and State authorities’; and to ‘call into counsel members of Aboriginal communities and others concerned with their welfare and advancement’.² The CAA would be chaired by Dr H.C. (‘Nugget’) Coombs and lodged within the Department of Prime Minister. Coombs at the time was the Governor of the Reserve Bank and would continue in that role until July 1968; at this stage he had virtually no direct experience of Aboriginal affairs. A little later again Holt announced the remaining appointments to the CAA — Professor W.E.H. Stanner from the Australian National University and Barrie Dexter, who at the time was Australia’s ambassador to Laos. Dexter was to be the executive member and thus the OAA’s full-time director,³ while Coombs and Stanner were appointed on a part-time basis. Stanner at the time was wishing to get on with his writing, but felt he could not turn down an opportunity to ‘make a real difference to the state of Aboriginal life throughout Australia, not just in the Commonwealth territories’.⁴ Holt had told each of his appointees to the CAA that ‘he would probably establish us as a statutory authority to ensure our independence to pursue any line of inquiry’,⁵ although, according to Coombs, the council ‘was inclined to think that a charter expressed in a Prime Ministerial letter would probably have provided adequate security and greater flexibility’.⁶ But, before many of these plans could be set in train, Holt drowned off Cheviot beach, leaving the CAA in limbo, devoid of formal identity. Following Holt’s death on 19 December, Sir John McEwen acted as interim Prime Minister until 10 January 1968, when the coalition party room elected Senator John Gorton Prime Minister.⁷ Gorton’s triumph owed much to the lobbying efforts of

1 Holt, Ministerial Statement, 7/9/1967, CPD (HR), pp. 972-975.
2 Holt, Ministerial Statement, 2/11/1967, CPD (HR), pp. 2625-2627.
3 Stanner and Dexter were appointed on 24/11/1967 (Dexter Papers, Series 7/19).
4 Stanner, address to Belconnen church group, 1/7/1969, quoted by Barwick, Beckett & Reay 1985, p. 38. Elsewhere, Stanner wrote (1979, p. 315) that Coombs was the man most likely to make the CAA a success: ‘Dexter and I were in full mood to play Herminius and Lartius to his Horatius’.
5 Dexter, pers. comm., 22/8/2010.
6 Coombs 1978, p. 13.
7 As leader of the Country Party McEwen had been deputy Prime Minister; after Holt’s death he refused to serve in a Cabinet that included his nemesis, the Treasurer William McMahon, and so stepped aside.

W.C. Wentworth.⁸ On 1 February 1968, Gorton resigned from the Senate to contest the by-election for Higgins — formerly held by Holt — which he won comfortably on 24 February.⁹ (For the intervening three weeks Australia had a Prime Minister who occupied no seat in Parliament.) Gorton marked his formal installation as Prime Minister with a reshuffle of the front bench: the Department of Territories was abolished and the Department of the Interior, with Peter Nixon as its Minister, took over responsibility for the Northern Territory; Barnes, formerly Minister for Territories, became the Minister for External Territories. Gorton rewarded W.C. Wentworth by making him Minister for Social Services and Minister-in-Charge of Aboriginal Affairs, though the CAA and OAA remained within the Prime Minister’s department. Well before Gorton was installed as the member for Higgins and before the re-arrangement of portfolios, the CAA sensed that Gorton was uninterested in Aboriginal Affairs and that he would not want either the CAA or the OAA ‘directly attached to him’.¹⁰ Thus, the CAA’s immediate priorities were to secure a legislative basis for itself and to define some key inter-departmental relationships.¹¹ By March Coombs, Stanner and Dexter had drafted a Cabinet submission setting out a charter for themselves, but Wentworth tinkered with the CAA’s draft — as he would do with so many of other drafts for reformulating Aboriginal policy. Dexter and Stanner recorded — Coombs being overseas on Reserve Bank business at the time —that Wentworth’s intention was ‘to alter drastically the status and role of the Council’. They judged that Wentworth’s reworking had ‘no advantages’ over their earlier drafts and that it ‘constituted a rejection of much of the detailed work so far carried out’ by the CAA and the OAA.¹² It became clear to Dexter and Stanner that Wentworth was wanting to expand the Office of Aboriginal Affairs into a full department under his direct control and that he did not want ‘an organization which stands between him and the Prime Minister on the one hand and, on the other, between him and the Commonwealth and State instrumentalities and the Aborigines’.¹³ As early as May 1968 the council recorded its ‘grave concern’ that Wentworth was ‘showing no disposition to consult it, nor to use the facilities of the Office to the full extent except on specific issues of interest to him’.¹⁴ By March 1968 an agreement on the division of ministerial responsibility between Wentworth and Nixon had been struck. As Minister-in-charge of Aboriginal Affairs, Wentworth had ‘overall responsibility for policy in relation to Aborigines on an Australia-wide basis’, while the Minister for the Interior, Nixon, had carriage of ‘the implementation and administration of the Aboriginal Advancement Programme’ — that is, assimilation — in Commonwealth territories. The intention here seems clear, but it was confounded by a subsequent clause, which stated that ‘whilst the Minister for the Interior [also] has policies, the policies of the Minister for Aboriginal Affairs are paramount’ in respect of ‘Aborigines and Aboriginal Reserves’ for the Commonwealth’s

8 Howson 1984, p. 378.
9 Gorton captured 69 per cent of the vote; he did not reside in the seat of Higgins, but was enrolled for the seat of Mallee (*Canberra Times*, 24 & 26/2/1968).
10 CAA meeting, 8/2/1968 (Dexter Papers, Series 1/1).
11 CAA meeting, 8/2/1968 (Dexter Papers, Series 1/1).
12 Minutes of CAA meeting, 9/5/1968 (Dexter Papers, Series 1/2).
13 Dexter and Stanner to Coombs, 19/4/1968 (Dexter Papers, Series 2/3).
14 Minutes of CAA meeting, 9/5/1968 (Dexter Papers, Series 1/2).

territories.¹⁵ Council members shared their concerns at the seeming ambiguity, and Stanner raised it directly with Wentworth, who ‘seemed to put much reliance on the agreement that his policy would be “paramount”’. Stanner, however, was not convinced: he noted that ‘if a two-policy approach should start to take shape, it might be quite a job to make the paramountcy effective’.¹⁶ Further, the agreement could be interpreted to mean that the Minister for the Interior and his department had overriding authority in the Northern Territory, thus appearing to relegate the CAA’s influence on Aboriginal policy to state level only, though the council ensured this did not happen. For the nine years of its existence, the council was to operate without any underpinning legislation or charter. Taking Holt’s statements as their mandate, Combs, Stanner and Dexter pursued their own agenda and priorities — always within realistic bounds — trying to predict Wentworth’s current interest, to steer him toward some more appropriate course of policy and to offer innovative policy advice. Council members also sought to consult and cooperate with Commonwealth and state departments, and from many of these organisations the CAA received ‘warm support’, though the council rarely ‘managed to please’ either the Department of the Interior or the Northern Territory Administration.¹⁷ Stanner noted that no one ‘could have tried harder’ than Coombs ‘to persuade policy-makers to take more account of the facts and principles of Aboriginal life’.¹⁸ Council members travelled widely, consulting State authorities and Aboriginal communities. Coombs, Stanner and Dexter subjected themselves to ‘gross overwork’.¹⁹ At almost every turn in their nine long years, the trio would be thwarted. Whereas those of lesser fortitude might have deemed the situation hopeless and simply resigned, the trio pressed on. I cannot help but wonder the course Aboriginal Affairs might have taken had Harold Holt lived on or had the trio been able to push through their ideas and intended reforms.

While the CAA had held its first meeting in November 1967, the council did not become fully operational until July 1968, when Coombs retired from the Reserve Bank. In the interim, however, the three members still managed regular meetings. Almost from the start they were considering the situation at Yirrkala. For example, at its meeting of 12 January 1968, the council expressed concern at ‘the apparent absence of formal machinery for consultation with representatives of the aboriginal citizens themselves’ in the draft agreement between the Commonwealth and Nabalco, which duly passed into law — in the form of a Northern Territory ordinance — a month later. At this meeting too the council concluded that it would be useful to have ‘a comprehensive study of the economic and social effects of this [i.e. Nabalco’s] development ... and to consider positive proposals for enabling aboriginal citizens to be trained and helped to participate effectively in it’.²⁰ Developing programs along these lines was Coombs’ forté (see below).

15 ‘Responsibilities and relationships between Minister in charge of Aboriginal Affairs and Minister for the Interior’, tabled at CAA meeting of 7/3/1968 (Dexter Papers, Series 1/1).

16 Stanner to Coombs, 18/3/1968 (Dexter Papers, Series 2/2).

17 Stanner 1979, p. 317.

18 *Ibid.*, p. 304.

19 Coombs 1978, p. 11.

20 Dexter Papers (Box 1 Item 2).

In March the council agreed to talk to Swift of Interior about a process of consultation with Yolngu.²¹ The involvement of citizens in government and the need for clear communication were regular themes of these early meetings. The minutes of a meeting in February noted with approval the adage that ‘good government is no substitute for self government’ and that ‘therefore the problem of communication has to be regarded as just as important as doing the right things’.²² At their next meeting Coombs, Stanner and Dexter agreed that they would organise their communications with Aborigines in a way that ‘has not been attempted before’.²³

In February, Nugget Coombs had ‘wondered whether it might be possible to establish means whereby aboriginal groups could apply for recognition of legal title on the basis of traditional occupancy’,²⁴ and two months later the CAA established a small committee, chaired by Charles Rowley, to look into the question of tenure over Aboriginal reserves in keeping with the latest FCAATSI petition campaign. From the start, the council was aware that the issue of land rights would be central to its work and that the issue would bring it into ‘the most open conflict with ministers and with their departmental advisers’.²⁵ In March 1968, Wentworth referred the Gurindji matter to the council for advice — his first formal request. The CAA recommended that the Gurindji claims be independently examined, but Wentworth ignored this advice and in early April took himself to Wattie Creek. Upon return to Canberra, Wentworth announced to the media that all the Gurindji wanted was a lease of eight square miles — rather than the 600 square miles they had initially demanded. Cabinet refused Wentworth’s submission, preferring instead Nixon’s proposal for a government settlement close to the Wave Hill station.²⁶ In mid-1968 *Nation* commented that the Gurindji struggle represented ‘the first test of [the] future influence’ of both Wentworth and Coombs. *Nation* felt justified in describing the Gurindji struggle as ‘a double contest’ — between Interior and CAA and between Aborigines and pastoralists.²⁷

I will have more — much more — to say about the involvement of the CAA, and especially that of Stanner, but before doing so I want to return briefly to the earlier issues of sacred sites and consultation.²⁸ The reason for the excursion will, I trust, become clear from the following section.

II

Dhanburama and Dhimbuka, the sacred sites mentioned at the end of the previous chapter, were to be small and rare victories for Yolngu. Well before these two sites became issues, Egan had held discussions with Village Council and Nabalco about two

21 Meeting of 21/3/1968 (Dexter Papers, Box 1 Item 2).

22 Meeting of 8/2/1968, *ibid.*

23 Meeting of 15/2/1968, *ibid.*

24 Meeting of 8/2/1968, *ibid.*

25 Coombs 1978, p. 159.

26 *Ibid.*, p. 163.

27 *Nation*, 8/6/1968. To give one example of the difficulty: Wentworth paid a surprise visit in 4/1968 to the Gurindji camp at Wattie Creek, pronouncing his support for the Gurindji stance and vowing to recommend that eight square miles be handed over to them, but Interior vetoed the initiative (NAA A2354 1968/58).

28 To focus on Stanner is not to detract from the crucial roles played by Coombs and Dexter: Coombs through his advocacy for programs of economic development and Dexter through his measured negotiations with various branches of government.

other sites — Mt Saunders (Nhulunbuy) and Wirrawa — but here I will focus on just Nhulunbuy. As early as October 1967 the council had decided that it would not permit any building to be erected on the top of Nhulunbuy, but it had no objections to water tanks, radio aerials or a lookout being located there. Village Council made one further request of Nabalco: that the mountain's name, Nhulunbuy, be used for the new town.²⁹ Nabalco, however, was adamant that the town be called Gove. The company's attitude, according to Egan, was 'Whose money is building it anyway?'³⁰ Almost as soon as Beulah Lowe arrived in Yirrkala on 22 August 1968, she was called to a meeting of the Village Council to discuss the issue.³¹ That same day Yirrkala's superintendent, Wally Falwell, had been summoned to Darwin to discuss the matter with the Administrator's Advisory Committee on Place Names, which a short time later rejected the Yolngu suggestion on the grounds that 'white Australians would find the name hard to pronounce'.³² In appealing the decision the Village Council noted that:

We did not think that this name would be too hard for white people to learn and pronounce. As a matter of fact, we find English names hard, but nevertheless we try to pronounce them. We had hoped that white people this time would be willing to do the same. As long as we have minds to think with, tongues to speak with and eyes to see with, surely there can be an effort on both sides to understand each other's language and customs.³³

Nothing came of the appeal and so the people of Yirrkala decided to send another bark petition to Canberra (Fig. 6.1). The front of the petition carries a portrait of Wuyal; on its reverse are listed 17 signatures together with the latest Yolngu grievances, which boils down to one thing — that the town be named Nhulunbuy, since it was the name that Wuyal had bestowed upon the area. The petition was tabled in the House of Representatives on 8 October 1968 by the Leader of the Opposition, Gough Whitlam. The government did permit the Yolngu name to stand, but, while Nhulunbuy may be the town's official name, it continues to be more widely known by the informal name of Gove. The petition, to my mind, marks the end of the Yolngu campaign to find a political solution to their grievances. Beulah Lowe had come to Yirrkala to be on hand to interpret for Arthur Ellemor and John Little, a young barrister who had become interested in the Yolngu claims to land since returning to Australia after studying the topic of native title as part of his Master's degree in the United States.³⁴ Ellemor, together with Ron Croxford, had taken the leading role with the Methodist Commission on Aboriginal Affairs (MCAA) 'to secure a legal

²⁹ Egan to Evans, 25/10/1967 (NAA A432 1968/649 Attachment 20). On the naming of the town, Egan commented: 'Mr Hughes seemed most enthusiastic, but Mr Griffin would probably reckon the locals made it up on the spur of the moment in the hope that they might sell the name or evolve some sacred significance for profit's sake'.

³⁰ Egan to Giese, 3/10/1968 (NTRS 44 Box 1).

³¹ B. Lowe's diary entry for 22/8/1968. On this occasion she would spend two weeks at Yirrkala, returning to Milingimbi on 5/9/1969. On 4/9 she and Egan had their disturbing 'sugar bag' encounter, discussed in Chapter 5.

³² Coombs' 1969 talk as ABC Guest of Honour, 5/1/1969. The date of Falwell's departure comes from Lowe's diary.

³³ *Ibid.*

³⁴ Faine, Jon 1996, 'A man ahead of his time?', *Australian Lawyer*, V. 31 No. 8 (September), p.12. According to Ellemor, Little had initially become involved after reading a letter that Edgar Wells had written to the *Australian* (Ellemor to Wells, 18/7/1969, Ellemor papers).



Fig. 6.1: The 1968 bark petition

Text of 1968 petition (on reverse of painting by Dundiwuy Wanambi)

To the Honourable the Speaker and Members of the House of Representatives in Parliament Assembled.

The humble petition of the undersigned Aboriginal residents of Arnhemland and Aboriginal electors in the Northern Territory respectfully sheweth:

- (1) That from time immemorial the area the Administrator's Council proposes to be called "Gove" has been known to the Aborigines as "Nhulunbuy".
- (2) That this name "Nhulunbuy" was given to the area by Wuyal, our dream-time ancestor, who has given us our laws. We do not want the name he gave to this area to be changed.
- (3) That the life and livelihood of Aborigines in the area has been affected by the development of mining in the area.
- (4) That at least the House of Representatives might direct that heed be given the views of the original inhabitants of the area in the matter of a name.

Your petitioners therefore respectfully request your Honourable House to give direction that the name of the town be "Nhulunbuy". This name could be spelt "Nulunbuy" if this is more acceptable.

And your petitioners, as in duty bound, will ever pray.

Signed by: Mungurrawuy, Dundiwuy, Birrikiti, Maw, Matjidi, Munyu, Nanyin, Wandjuk, Djalalingba, Garrawin, Mr J.G. Yunipingu, Yinitjuma Marika, Mathaman, Djiring, Gunguyuma, Djayila, Roy Dadaynga Marika

opinion on land rights for Aborigines'.³⁵ Earlier in the year, Little and Frank Purcell — a solicitor from Arthur Secomb and Co, which acted for the Methodist Church — had worked up their argument and taken it to Edward Woodward QC for his opinion, and in June the trio delivered their memorandum of advice to Ellemor.³⁶ After securing the lawyers' services, the MCAA's main function was to raise funds for the impending case(s).

Now, with Lowe's help, Little and Ellemor were in Yirrkala to talk to Yolngu about the possibility of a court case. Arriving before Little, Ellemor and Lowe talked to Village Council about land rights on 26 August and to the community at large that evening.³⁷ On the strength of these discussions, Dadaynga as the council's president wrote a formal letter to Arthur Secomb and Co the following day to request that the firm represent them in the Northern Territory Supreme Court. In part, his letter read:

So I ask you and instruct you to help us and advise what we can do so that we can be sure the land is ours and so that the mining company and any other company can only do what we allow and they will pay us for the use of our land.³⁸

In all likelihood Beulah Lowe wrote the letter, which, I think, further helps to set the record straight on the Yolngu attitude to mining and to set an appropriate context for Dadaynga's comments on money noted at the end of the previous chapter. From the letter the Yolngu position becomes clear: they were not utterly opposed to mining, but they wanted the project to proceed on their terms and to be suitably compensated for the use of their land.

Barely three months later, the Yolngu statement of claim was lodged with the Supreme Court in Darwin on 13 December 1968. It stated that the Rirratjingu and Gumatj clans had 'from time immemorial been in possession of, and had the use and benefit of, all that land' from Yalangbara to the west of Melville Bay; and that their relationship with the land amounted to 'a proprietary interest'. These clans permitted certain other clans to share 'the use and benefit, and possession' of this land. According to the writ, Nabalco had 'wrongfully entered the said land', had damaged that land with heavy machinery; it had also 'erected structures', destroyed the flora and fauna upon which Yolngu depended and 'violated their sacred areas'. Further, the writ claimed that the company intended 'to repeat and continue those wrongful acts'. The Yolngu named in the writ sought damages against Nabalco and an injunction restraining the company 'from repeating and continuing' its ruinous activity. They further sought a declaration that they were 'entitled to the use and benefit' of the land 'free from interference'. Finally, they sought to have three ordinances declared *ultra vires* and thus void.³⁹ In their turn, co-defendants Nabalco and the Commonwealth asserted that the claims of the Yolngu

³⁵ MCAA (n.d.): 'Time-table of significant events leading to Yirrkala land rights case' (Ellemor papers).

³⁶ Woodward 2005, p. 99. Woodward had appeared for the Commonwealth in the Cattle Wage Industry case, which caused the Gurindji strike (Woodward 2005, p.92).

³⁷ Entries for 22-26/8/1968 in Beulah Lowe's diary.

³⁸ Dadaynga (Roy) Marika to Arthur Secomb & Co, 27/8/1968 (Ellemor Papers).

³⁹ They were the *Minerals (Acquisition) Ordinance* 1953-1954; the *Mining Ordinance* 1953; and the *Mining (Gove Peninsula Nabalco Agreement) Ordinance* 1968. *Ultra vires*, put simply, means that the lawmakers were acting beyond their authority in making such laws. (Writ against Nabalco and the Commonwealth, No. 341 of 1968, NAA A2354 1968/398 Part 3.)

plaintiffs were vexatious and frivolous and urged the court to strike out the case summarily. Before considering the preliminary hearing of the claim, I focus on the role that Stanner would play in these events.

III

The events at Yirrkala and the subsequent court proceedings would haunt and preoccupy Stanner for the rest of his life. For the years 1969 and 1970 alone, he wrote some 30 papers — all considered *sub judice* and thus unpublishable at the time — and for the three years thereafter he worked 'intermittently on his Yirrkala book' only to abandon it, because his role with the CAA 'inhibited publications of his views on legal and political aspects of the case'.⁴⁰ I draw on some of this unpublished material below, particularly that which analyses the Yolngu disposition towards Nabalco's venture and their relationship with their country. I do so to introduce a fresh and thoughtful perspective into the discussion. While it may not seem an obvious place to start a discussion of Stanner's role, I begin by considering his celebrated Boyer lectures of 1968, known by their abbreviated title of *After the Dreaming*.

These days Stanner's lectures for the ABC are principally remembered because they were the first in the Boyer series to take an Aboriginal theme and because Henry Reynolds would later make much of the perceptive phrase Stanner used in the lectures — 'the great Australian silence' — to characterise the ways Aboriginal people had been written out of Australian history.⁴¹ In these lectures Stanner made only brief mention of developments on the Gove Peninsula. From a two-day visit there — in August 1968 — he had gathered that Yolngu were not opposed to mining 'in an outright way', but were rather 'simply overborne by the weight of external initiative, authority and advice that all will be well'. They were, he reported, worried by one fact: that 'some large tracts of country which they believe ... to belong to them, will be foreclosed for a long time, perhaps lost forever'. He personalised the account by talking of 'one elderly man', who had 'declaimed the names of territories and places within the tribal domain' to assert it as 'our country' and who 'named the places already or soon to be lost under the special leases created over them'.⁴²

Stanner talked too in a more general way about land, finding this English word 'too spare and meagre' to do justice to the Aboriginal concept of country. Those of us 'brought up on ideas of land as "real estate" or "leasehold"', Stanner observed, would find their concept of country difficult to understand; but when 'we took what we call the "land" we took what to them meant hearth, home, the source and locus of life, and everlastingness of spirit'.⁴³ Only occasionally can a note of irony or irritation be detected in Stanner's lilting prose. Listen to him, for example, without paraphrase or abridgement on the topics of British sovereignty and native title from his second lecture.

⁴⁰ Barwick, Beckett and Reay 1985, pp. 40-41.

⁴¹ Reynolds 1972, *Aborigines and Settlers*, p. ix; Reynolds 1989, *Dispossession: Black Australians and White Invaders*, p.xiii. The annual Boyer lectures began in 1959, but only came to be known by this title in 1961 upon the retirement of Sir Richard Boyer as chair of the ABC.

⁴² Stanner 1968, pp. 49-51. His five lectures aired on the ABC's 2nd network (cf Radio National) between 31/10 and 28/11/1968 (*ABC Radio Guide*, 1968).

⁴³ *Ibid.*, pp. 44-45.

All land in Australia is held in consequence of an assumption so large, grand and remote from actuality that it had best be called royal, which is exactly what it was. The continent at occupation was held to be disposable because it was assumed to be ‘waste and desert’. The truth was that identifiable aboriginal groups held identifiable parcels of land by unbroken occupancy from a time beyond which, quite literally, ‘the memory of man runneth not to the contrary’. The titles which they claimed were conceded by all their fellows. There are still some parts of Australia, including some of the regions within which development is planned or actually taking place, in which living aborigines occupy and use lands that have never been ‘waste and desert’ and to which their titles could be demonstrated, in my opinion beyond cavil, to a court of fact if there were such a court. In such areas if the Crown title were paraded by, and if the aborigines understood what was happening, every child would say, like the child in the fairy-tale, ‘but the Emperor is naked’.⁴⁴

Seamlessly, he returned to this theme towards the end of his fifth and final lecture, where — having conducted various mapping exercises which ‘tied identifiable groups to identifiable tracts’ — he declared himself to be ‘morally satisfied that in many places a form of title exists which could be recognized if we thought it proper or worthwhile to do so’.⁴⁵ Thereafter he talked about the ambiguous nature of Aboriginal reserves. Like any other reserve, an Aboriginal reserve was Crown land, and as such was ‘subject to a complex body of land law, which few aborigines know anything about’. As Stanner saw it, the only thing that distinguished Aboriginal reserves from other reserves was ‘the purpose of reservation’; in this case they were for ‘the use and benefit’ of Aboriginal people, who were inclined to take that phrase at face value. Stanner could not help noticing how ‘notably elastic’ that phrase was: ‘neither “use” nor “benefit” is thought to be affected adversely by the creation of mining and other leases’ was his wry remark. Moreover, he pointed to a double standard: whereas leases over Aboriginal reserves all contained vague clauses about aboriginal ‘rights and interests’, other clauses in the same leases specified the precise ‘rights, liberties, easements, advantages and appurtenances’ of entrepreneurial leaseholders.⁴⁶

I have quoted Stanner at length not only to give the reader a sense of his fine use of language and his restrained tone, but also to show that by this time — just ahead of the lodgment of the Yolngu writ on 13 December 1968 — Stanner was already thinking quite deeply about the nature of land rights and land law. It was on the strength of such sentiments as those just quoted that Frank Purcell, the solicitor acting for Yolngu, was inspired to contact Stanner to ask if he would ‘be prepared to assist in our case by supplying material and giving evidence’ before the court. In particular, Purcell was seeking information about whether Yolngu clans had traditionally ‘occupied the lands on which they now live’ and presumed a map showing the boundaries of clan territories would be needed. He also wanted to know whether it was possible to compare Yolngu notions of ownership with ‘our concepts of ownership in fee simple’ and whether exclusivity was a feature of Yolngu use of

⁴⁴ *Ibid.*, pp. 26-27.

⁴⁵ *Ibid.*, p. 61.

⁴⁶ Stanner 1968, pp. 61-62.

the land.⁴⁷ Purcell closed his letter to Stanner by mentioning he had also requested similar assistance from Ronald Berndt. Early in the new year Stanner wrote to both Purcell and Berndt outlining his predicament. To Berndt he wrote: ‘You will have no doubt where my sympathies lie but as a member of the Government’s policy advisory body ... I am not free to advise plaintiffs against the Commonwealth as one of the defendants’.⁴⁸ To complicate his position further, Stanner received a request around the same time from the Crown Solicitor’s Office to assist with the Commonwealth’s case. Stanner’s papers contain a draft paper entitled ‘The Yirrkala Land Case’, subtitled ‘the Sixth Boyer Lecture’ and dated 13 January 1969. It was never broadcast and I doubt whether Stanner ever approached the ABC with it; rather it appears to have been written as Stanner wrestled with the competing requests from Purcell and the Crown Solicitor. The paper shows that Stanner had undertaken further research on legal questions to do with land and had made an intensive study of Yolngu anthropology in the wake of the Boyer lectures. Over the Christmas break he had, for instance, read — or, more likely, re-read — Warner’s *A Black Civilization* and concluded that Warner’s data ‘established satisfactorily that the members of patrilineal descent clans existing in 1925-28 are genealogically connectable by family pedigree with members of the clans which have taken legal action before the Supreme Court’. Moreover, Stanner found Warner’s methods were ‘standardized, objective, testable and repeatable, in other words fully scientific’; they were also in keeping with the results of ‘later scientific workers’ such as Berndt. Such information led Stanner to conclude that ‘aboriginal occupation, possession and control [of land] are far older than the European settlement of Australia’.⁴⁹

This writing exercise seems to have helped convince Stanner to lend his support to the Yolngu case, even while continuing to put himself at the disposal of the Commonwealth. Perhaps it was because of his long-standing acquaintance with Stanner that Wentworth endorsed Stanner’s controversial stance. In formally declining to involve himself in the Commonwealth’s case, Stanner enclosed an information paper for the Crown Solicitor’s Office, with ‘the consent of my Minister’.⁵⁰ This was a paper he had originally sent to Purcell at the end of January, then revised for a seminar at the ANU in early February and finally, with further refinements, sent to the Crown Solicitor’s

⁴⁷ Purcell to Stanner, 23/12/1968 (Stanner Papers, Series 15/7b).

⁴⁸ Stanner to Berndt, 3/1/1969 (Stanner Papers, Series 15/7a); Stanner to Purcell, 3/1/1969 (Stanner Papers, Series 15/7b).

⁴⁹ ‘The Yirrkala Land Case’, p. 15 (Stanner Papers, Series 1/276).

⁵⁰ Stanner, draft chapter for planned book on the Gove case, c.1971-73 (Stanner Papers, Series 14/5a). Dexter noted the arrangement in a footnote to a letter of 11/5/1970: ‘Professor Stanner incidentally made it a condition of his assistance to the Aborigines that he should not be brought into collision with the Commonwealth, and would consider himself at the disposal of both sides. These facts have been known to Dr Coombs and myself from the beginning.’ (Dexter to Deputy Secretary, PM’s Dept, 11/5/1970, Dexter Papers Series 2/10.) The Commonwealth then retained Donald Thomson as a consultant.

Office later the same month.⁵¹ Stanner’s decision more or less coincided with Nixon’s announcement that the Commonwealth would underwrite the legal costs incurred on behalf of the plaintiffs.⁵² Both Wentworth’s acquiescence and Nixon’s guarantee of funds are perhaps best understood as signs or gestures that the Commonwealth did not regard itself as utterly antagonistic to the Yolngu cause.

The various iterations of Stanner’s paper warrant further consideration because they show Stanner continuing to investigate the legal issues surrounding Aboriginal land rights in ever greater depth and because they represent, as Stanner says, ‘a first and provisional attempt to deal with property rights, as aborigines understand them, in a way that makes a measure of sense from the viewpoint of European law’.⁵³ Stanner accorded the paper tentative status, because, he said, while anthropologists had ‘often discussed’ the topic of land, they had not considered it ‘in the express context of property rights’.⁵⁴ When anthropologists wrote of Indigenous attachment to land, their characterisations sometimes seemed ‘vague’ and even ‘mystical’ to Europeans. As an example he quoted the aphorism that ‘people belonged to the land rather than that the land belonged to people’ without attributing it to Elkin.⁵⁵ Once allowance was made for the difficulties of translation, research confirmed for Stanner that all the Aboriginal groups hitherto studied in depth ‘had a conception of land as property’. They had ‘(a) an idea of ownership under right of title, (b) an idea of corollary right of possession, and (c) an idea of correlative or connected rights of occupation and use’.⁵⁶ These three (lettered) notions lay ‘at the foundation’ of Indigenous thinking about land, in which ‘there was a real if un verbalized conception of “estate” in land’ and ‘a true “system” of land-holding, occupation and usage in rational connection with the circumstances of aboriginal society’.⁵⁷ That Aboriginal people did not talk about people holding or owning land in the same way as Europeans was due entirely to the accident of ‘a particular legal history’.⁵⁸

Stanner regarded it as axiomatic that Aboriginal people enjoyed both a spiritual and a legal relationship with country and that the ‘clearest ownership relation’ was that between a clan and its estate. Principles such as these were so fundamental to Aboriginal thinking as to form ‘a grammar or syntax of thought which no aboriginal [person] conceived of as being open to question’.⁵⁹ In fact, he argued, Aboriginal conceptions

51 According to annotations in the series descriptions for Stanner’s Papers (AIATSIS MS 3752), a paper, entitled ‘The Yirrkala case: some general principles of Aboriginal land-holding’, was sent to Purcell on 31/1/1969. The paper was revised for the ANU seminar of 10/2/1969 (Series 1/284), although another seminar was held there on 28/2 with Coombs, Prof. Julius Stone, Tony Blackshield, Prof. John Barnes, among others, attending (Series 15/2). The expanded paper — ‘Land as Aboriginal property: the Yirrkala case’ — was prepared for the Crown Solicitor on 20/2/1969 (Series 1/283). See also Stanner to Hutchison (Crown Solicitor’s), 20/2/1969 (NAA A432 1968/649 Part 1 [letter] & Part 5 [paper]). Hereafter the ANU version is referred to as Stanner 1969a; the paper for the Crown Solicitor as Stanner 1969b.

52 Nixon, press release, 25/1/1969 (NAA F1 1968/6673). Ellemor and Purcell had lobbied hard for this outcome.

53 Stanner 1969a, p.1; Stanner 1969b, p. 1.

54 Stanner 1969a, p. 1; Stanner 1969b, p. 1.

55 Stanner 1969a, p. 3; Elkin 1964, p. 79.

56 Stanner 1969a, p. 2; Stanner 1969b, p. 2.

57 Stanner 1969a, p. 2; Stanner 1969b, pp. 2-3.

58 Stanner 1969a, p. 3; Stanner 1969b, p. 3.

59 Stanner 1969a, p. 3; Stanner 1969b, p. 4.

of ‘person’ and ‘clan’ intrinsically carried notions of ‘land’ or ‘territory’ within their definitions.⁶⁰ For the benefit of the Commonwealth, he added in the later version: ‘While it may seem to a European mind that there is a gap of logic ... between “individual” and “clan”, there was no such dubiety or antithesis to the aboriginal mind’.⁶¹ In other words, members of a clan related to their territory jointly ‘without distinction of sex, age, status or any other criterion’.⁶² Joint owners would invariably cite the ‘same particular acts in The Dream Time ... as having given them entitlement to an identified territory’ and the interest of each person ‘extended to the whole of the entitlement, so that unity of possession was added to unity of title’.⁶³ Other clans ‘publicly acknowledged’ that a particular clan had ‘sovereignty’ and ‘dominion’ over particular territory. ‘The claim and fact of ownership ... did not have to be asserted or demonstrated because both were matters of universal public record’, but were nonetheless reinforced ‘in ceremonies, art, mythology, symbolism and even secular affairs of life’.⁶⁴

Clan members routinely intermingled with members of other clans in larger groupings, most usually called bands by anthropologists, which ‘hunted, foraged, camped, took part in ceremonies’ across the territories of the constituent clans. In other words, these bands used and occupied the territory of these clans on a regular or episodic basis, though not necessarily on a daily basis. For the ANU seminar, Stanner predicted that perhaps ‘the greatest single handicap’ for Yolngu to overcome in the impending court action would be ‘the widespread but erroneous idea among Europeans — and especially NTA officials — that ‘the day-to-day usage of land was itself the system of ownership and possession’.⁶⁵ Stanner dispelled other misguided European notions for his ANU audience: among them that ‘bands wandered freely wherever they pleased’ and that ‘territorial attachments were too vague or too changeable’ to amount to possession or ownership. Such views were, in Stanner’s opinion, merely ‘the survival into the present of old errors of observation mixed with arguments of European self-interest’.⁶⁶ These sentiments were reframed and expanded for the sake of the Crown Solicitor to read:

It is presumed in the Northern Territory, and perhaps elsewhere, that aboriginal use and control of land did not amount to significant ‘possession’. This is an arbitrary and ethnocentric view. It is also factually mistaken. The manual and physical control of the natural surround was detailed and masterful, and its intensity compared more favourably with that of agricultural cultures. The aborigines dug the ground with precision and energy for water, animals, plant-foods, stone, pigments and other necessities. They marked ... useful particular trees and shrubs. They placed fixed capital items (quarries, weapon manufactories, weirs, grinding stones, shelters) widely. Their territories were criss-crossed with paths, to save time and effort, and were dotted with well-used camp-sites and ritual places. Every notable physical feature was identified by name. ... The

60 Stanner 1969a, p. 5; Stanner 1969b, p. 5.

61 Stanner 1969b, p. 5.

62 Stanner 1969a, p. 5; Stanner 1969b, p. 5.

63 Stanner 1969b, p. 5.

64 Stanner 1969b, p. 6.

65 Stanner 1969a, pp. 6-7.

66 Stanner 1969a, p. 10.

plenitude and solidity of the available information of this kind indicates the unwisdom of the argument that ‘significant’ possession must be modelled on European conventions, e.g. the farming of land, the sedentary settlement of it, and the erection of buildings upon it.⁶⁷

This remains one of the clearest and most powerful statements of Aboriginal land usage, which for Stanner formed part of what he called ‘the doctrine of possession’. According to this doctrine, clan members could not ‘have their legal possession taken away’; nor could they ‘give it away, lose or abandon it’ because there was no way for them ‘to disconnect themselves corporeally from the spiritual elements which related them to their estates’. The doctrine linked bodies and souls to particular territory, and ‘through the territory to the formation of the world and the ontology of human existence’. The same doctrine was ‘the anatomy of a plan of reference for personal identity, group membership, kinship relationships, descent, marriage, religious and some non-religious observances, and even some mundane transactions of life’.⁶⁸ In other words — words added for the Commonwealth’s benefit — ‘the plan of possession was like a grid on which the main affairs of life could be given co-ordinates’.⁶⁹

IV

As noted earlier the Yirrkala Village Council had informed Nabalco via Ted Egan about what it could and could not do on Nhulunbuy in October 1967. It was acknowledged by all sides that the town lease — when it was eventually issued on 30 May 1969 — would omit the actual mountain, which, in any case, was on Evans’ list of sacred sites. The council did, however, expect to be consulted before any work was undertaken. In January 1969 — that is, a month after the lodgment of the Yolngu writ — survey markers for a water tank and pipeline were detected during another site inspection and, since the company did not see fit to consult the Village Council about this, council chairman Dadaynga took matters into his own hands by removing some of the survey pegs.

The next day Village Council informed Nabalco that it intended to seek an injunction and, to ensure the message was not ignored, followed this up in writing two days later. Signing himself ‘liaison officer’, Dadaynga wrote that the council wanted ‘no more buildings, no more roads, no more survey pegs and no more mining people until the court [action]’. He then requested details about ‘your plans for the next few months’ within a further two days so that ‘we can ask the court for an injunction to stop until the court case’. Nabalco’s representative, a Mr Peel, refused to talk to Dadaynga on the appointed day, preferring to tell the mission superintendent, Wally Falwell, that ‘his company had told him to have no more meetings at that stage’.⁷⁰ Dadaynga advised that copies of the letter were being forwarded to

67 Stanner 1969b, pp. 8-9.

68 Stanner 1969a, p. 7; Stanner 1969b, p. 9.

69 Stanner 1969b, p. 10.

70 Dadaynga’s affidavit, p. 4 (NAA A432 1968/649 Part 20). It is interesting to note that a year or so after these events, Ted Egan wrote that once the writ had been lodged, Nabalco was inclined to treat Yolngu with some respect, though that quality seems to have been in abeyance on this particular occasion (Egan 1970, ‘What is Wrong with Gove?’, 23/1/1970, Dexter Papers, Series 2/9).

‘Mr Egan and to our solicitors who will tell what it says to your Sydney headquarters and the Government leaders’.⁷¹

The injunction, it seems, was designed in part to forestall the signing of the final agreement between the Commonwealth and Nabalco. This latest version of the deal included the amended Australian equity arrangements and the new minerals lease, which now covered the old SMLs 1-4 and was henceforth known as SML 11 (see Chapter 5 for further details). On the same day as Dadaynga was writing to Nabalco, Frank Purcell wrote to Barrie Dexter, hinting that the injunction would proceed if the signing occurred.⁷² When Purcell wrote to the Crown Solicitor a week later, the lease appears to have been signed, because Purcell noted that ‘the signing of the lease can be construed by the defendant Nabalco Pty Ltd that it has the authority to proceed’ and recommended that the Commonwealth refrain from implementing the lease until the injunction had been heard.⁷³ An application for the injunction was lodged with the NT Supreme Court on 19 February, and an interim injunction was issued on 14 March, four days before the interlocutory proceedings — brought in Mathaman’s name — began.⁷⁴

Even though Interior Minister Peter Nixon thought that Yolngu had no hope of succeeding in either the injunction or the court action, he drafted a Cabinet submission advocating that the government make a compulsory acquisition of the Gove Peninsula to protect the Nabalco project.⁷⁵ Whereas Nixon argued for compulsory acquisition, the Council for Aboriginal Affairs favoured an out-of-court settlement. Coombs wrote to Wentworth on 13 February that the Commonwealth’s case could only succeed if it relied on arguments that were inconsistent with British practice in its other colonies or with its own practice in Papua New Guinea or with Convention 107 of the International Labour Organisation, which recognised the ‘traditional land rights of aboriginal peoples’. Such arguments, he warned, would damage ‘the Government’s standing domestically and internationally’. Should the Commonwealth win the case, Coombs continued, there would be ‘an intensified sense of grievance’ among Yolngu, as well as widespread public sympathy for their cause, which ‘may easily express itself in overt resistance to the mining development’ and hence embarrass the government. Coombs predicted there was ‘a real prospect that the Yirrkala case will be successful’; and, if this came to pass, the government could expect other claims for land from other Aboriginal groups. Thus, he advised Wentworth that ‘it would be wise for the Government by its own act and *on its own terms* to establish a procedure by which such claims [could] be tested and dealt with’.⁷⁶ Coombs then

71 Roy D. Marika to Mr Peel, 13/1/1969, Attachment A to his affidavit (NAA A432 1968/649 Part 20).

72 Purcell to Dexter, 13/1/1969 (NAA A432 1968/649 Part 1).

73 Purcell to Renfree, 22/1/1969 (NAA A432 1968/649 Part 1).

74 NAA A432 1968/649 Part 3.

75 Draft submissions, 28/2/1969 (NAA A2354 1968/398 Part 1) and 14/3/1969 (NAA A2354 1968/398 Part 4). It is interesting to note that the Commonwealth’s counsel in both stages of the Gove case (Harris and McLelland) advised on 4 June 1969 against an argument of compulsory acquisition because it might suggest the land ‘is already vested in some person or persons other than the Commonwealth’ (‘Joint Memorandum of Advice’, 31/3/1970, NAA A432 1968/649 Part 7).

76 Coombs to Wentworth, 13/2/1969, emphasis in original (NAA A2354 1968/398 Part 4). Coombs had put a very similar paper to the CAA on 7/1/1969 (Dexter Papers, Series 1/4).

renewed the CAA’s earlier call — first raised in response to the Gurindji land claim at Wattie Creek — to establish ‘a quasi judicial body or Commission to examine and determine claims based on traditional rights *and* continued occupancy’ and to award land or compensation.⁷⁷

In turn, Nixon argued that an out-of-court settlement had the ‘disadvantage’ of leaving ‘the legal questions unresolved’ and was not ‘practicable’ since there would be ‘criticisms ... not only that the Aboriginals will not receive a large enough share but that the industrial development is immoral because at this stage it will inevitably “debauch” the Aboriginals’.⁷⁸ Stanner’s position lay somewhere between Coombs and Nixon: he did not favour an out-of-court settlement, since he thought it would ‘appear a weak response by the Crown’ and ‘would leave under a cloud matters of fact and law of great importance to places and people outside Yirrkala’, but thought compulsory acquisition should be the ‘course of last resort’.⁷⁹ Elsewhere Stanner observed that Nixon’s pre-emptive submission had failed to inform Cabinet that the principles of law applying to interlocutory proceedings were ‘distinct’ from those applying to the main trial.⁸⁰ Until a court of law settled the issue of land rights, Stanner argued, it would continue ‘to plague’ the Commonwealth. Stanner therefore recommended that the Commonwealth pursue the court case, but on the conditions that Yolngu withdraw their injunction and that the Commonwealth adopt a non-adversarial stance with the Yolngu litigants. To Stanner it was also ‘abundantly apparent’ that the government should not presume that ‘*no* aborigines have *any* kind of rights in land’, since this was an issue upon which ‘no court appears directly or expressly to have ruled’. In his opinion as well, the Commonwealth should not ‘oppose strenuously any judicial creativity’ that might emerge in the hearing.⁸¹

In the end, Wentworth followed the advice of neither Coombs nor Stanner, but opted instead to draft his own cabinet submission on compulsory acquisition, which began by assessing Nixon’s submission as ‘inadequate’. Noting that Yolngu wanted the mining project to proceed, Wentworth argued that acquisition could ‘have great advantages, provided it were done with general consent’ and ‘preceded by public undertakings’ by both the Commonwealth and Nabalco to: a) allow Yolngu ‘maximum participation in ancillary ventures round the main project’; b) preserve Yolngu ‘traditional life and culture’; and c) pay Yolngu ‘just compensation for whatever rights the court may decide they hold’. Wentworth was, however, prepared to recommend that Cabinet consider legislation on Aboriginal reserves as soon as possible, without providing details of such legislation. It is uncertain if the submission ever went to Cabinet, because Dexter had alerted the Secretary of the Prime Minister’s Department of its existence in the hope of foiling its consideration.⁸²

77 Coombs to Wentworth, 13/2/1969, emphasis in original (NAA A2354 1968/398 Part 4).
78 Nixon’s draft submission, 14/3/1969 (NAA A2354 1968/398 Part 4).
79 Stanner to Wentworth, 21/2/1969 (NAA A2354 1968/398 Part 1).
80 Stanner’s comments for CAA on Nixon’s draft submission, 11/3/1969 (A2354 1968/398 Part 4).
81 Stanner to Wentworth, 21/2/1969, emphasis in original (NAA A2354 1968/398 Part 1). At the start Stanner notes this paper was originally written for the CAA, but the council had not as yet considered it.
82 Telex from Dexter to Hewitt (in Melbourne), 17/3/1969 (NAA A2354 1968/398 Part 4). According to Rowse (2000, p. 51), Wentworth’s submission went to Cabinet, but Nixon and Attorney-General Nigel Bowen persuaded their colleagues to reject it.

The preliminary or interlocutory proceedings were heard by Justice Richard Blackburn in the Northern Territory Supreme Court over four days, beginning on 18 March 1969. As defendants in the action, the Commonwealth and Nabalco had sought in the first instance to have the Yolngu case summarily dismissed on the grounds that the issues it raised — notably Aboriginal property rights — were not only insubstantial and untenable, but wholly unknown to Australian law. In short, they argued that the plaintiffs’ entire case was frivolous and vexatious. They then proceeded to develop an argument around the notion of adverse possession, upon which the plaintiffs’ statement of claim had depended.⁸³ Senior counsel for Yolngu Edward Woodward, however, made out a novel case for the common-law doctrine of native title. Curiously, no hint of the doctrine had appeared in either his initial advice or his clients’ original statement of claim. Woodward would later write that when the statement had initially been formulated, ‘we had not understood’ the doctrine, which only emerged as their research deepened.⁸⁴

One major difference between the established case law on native title — the bulk of which existed in other or former British possessions — and the actual Yolngu situation lay in the fact that Yolngu were presumed to be nomadic, and thus their legal team had to prove that theirs was not a tenuous connection to country. Through the anthropological expertise of Stanner and Berndt as exhibited by their affidavits — they did not appear as witnesses at this stage of proceedings — Woodward and his legal team were able ‘to make out a case for an Aboriginal system of land ownership that should have been recognised by the different governments that had jurisdiction over the Northern Territory over the years’.⁸⁵ No doubt, Woodward and his colleagues were well pleased with their new line of argument, in part because of its novelty and in part because it carried an element of surprise with which they hoped to catch the opposing legal teams off guard. Even though the Commonwealth’s senior counsel, Bill Harris QC, made no reference to native title in the initial presentation of his case, he made it perfectly clear that ‘the Commonwealth was fully aware of all the relevant cases’ when time came to respond to Woodward’s arguments.⁸⁶

Some ten days after the interlocutory hearings, Dadaynga visited Melbourne for a few days before heading to Canberra for the 1969 FCAATSI conference. The ‘mission’ — perhaps Symons or mission superintendent at Yirrkala Wally Falwell — had contacted Purcell, asking him to keep an eye on Dadaynga lest he ‘fall into the wrong hands’ or ‘say things which would be prejudicial to the case’.⁸⁷ From his conversations with Purcell it seems Dadaynga had a fresh or fuller appreciation that Australian law considered the Gove Peninsula as Crown land, not Yolngu land, because he opened his address to FCAATSI with these questions:

83 Adverse possession is said to pertain where a person has occupied the land in question for an unbroken period of 60 years; at the end of this time any pre-existing title is said to be extinguished.
84 Woodward 2005, p. 102.
85 Woodward 2005, p. 100.
86 Woodward 2005, p. 101.
87 Dexter to Coombs reporting on phone call from Purcell, 31/3/1969 (A 2354 1968/398 Part 2).

- a) Who owned the land in the whole of Australia and who lived here before the white man came to Australia?
- b) Who, the white man or the aboriginal, who is the owner of the land?

He concluded his remarks with another question and a plea for help:

Is it right for the two tribes of people, Rirratjingu and Gumatj, to ask the court if we could get the lands back? We think that this can be solved only in the court and therefore we ask you to help us if you care. One way you could help us is by giving freely to pay for the court, that is if you are really interested in us and always want to hear a claim that these lands are ours.⁸⁸

The response from the 300-strong audience was a resounding ‘yes’, according to the *Canberra Times* the following day.⁸⁹ Justice Blackburn subsequently ruled that the native-title argument had ‘a substantial degree of novelty’ and should proceed to a full hearing, but first the original statement of claim needed to be put in order to reflect the questions of law arising from it.⁹⁰ Thus, round one in the proceedings went in favour of the Yolngu plaintiffs. According to Stanner, they were greatly buoyed by the result and were ‘eager to go into court to testify’.⁹¹ Stanner held some reservations about Blackburn’s preliminary findings: it seemed to him that the judge had ‘not quite grasped the affidavits’ sworn by Berndt and himself, which were greatly distilled versions of their positions on Yolngu land holding that I have already described. According to Stanner, Blackburn had considered the Yolngu relationship with their country primarily in terms of use, but Stanner insisted that the ‘basic relationship is much more than usufructuary’, as already shown, and it would be ‘most important at the trial to force the court’s thinking away’ from such a narrow characterisation and towards a proprietary interest.⁹² Barely two weeks before Blackburn handed down his preliminary findings, Nabalco was again caught in flagrant breach of agreements over Nhulunbuy. A bulldozer had been found clearing ground for the installation of a water tank and pipeline on 5 May, and Ted Egan had called a halt to the work the following day. Nugget Coombs was among a group inspecting the latest damage, and on this occasion Mathaman said he ‘regretted it had been necessary to make such a big excavation’ and requested that ‘all possible steps be taken to restore the cliff face to its original shape’ and to allow the trees to grow again.⁹³ The *Northern Territory News* devoted a two-page spread to the incident. The story was accompanied by a dramatic photograph of ten or so Yolngu warriors, their bodies painted in white ochre and brandishing spears. The picture and text were by the radical journalist Cecil Holmes, who had also filed a piece on the event

for the ABC’s *This Day Tonight*.⁹⁴ Holmes explained that the men had painted up for a ‘corroboree’ on Mt Saunders, but it seems they had done so at his request in order to provide sensational television footage. When the photograph came to Canberra’s attention, Egan was asked for an explanation. According to Egan, Holmes had ‘chartered’ the mission’s truck to convey the Yolngu dancers to the mountain and had offered \$3 to each dancer and \$4 to Dadaynga, Mathaman and Wandjuk. The deal had been organised between Holmes, Dadaynga and Wandjuk, but, by the time of Egan’s response (13 June), no money had changed hands.⁹⁵

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Stanner had found the time to sit through the four-day interlocutory proceedings in Darwin, taking copious notes, and in due course he circulated a lengthy summary of the proceedings. He recorded the arguments not only ‘from natural interest but also from a belief that in fifty or a hundred years’ time people will want to study how we approached the complexities of the first case of its kind to arise in 180 years of settlement’. He wondered how the case would be seen by future generations and what the case might have to say about ‘our mentality and institutions’ to them.⁹⁶ In sending his summary to Wentworth, Stanner reflected in a covering letter that he had had three expectations for the hearings: ‘that the Commonwealth’s main interest would be to assist the Court to determine the law in relation to aboriginal land claims; that it would take care not to appear as an antagonist of the aborigines; and that, if hard things had to be said, they would be said by Nabalco rather than by the Commonwealth’. ‘I was wrong on each count,’ he added ruefully.⁹⁷ These observations disturbed R.B. Hutchison, the First Assistant Crown Solicitor. Stanner’s covering letter filled him ‘with considerable apprehension in case the Minister is misled by it and by his advisors ... [into pursuing] a course of action which being based on false premises could be highly detrimental not only to the Commonwealth’s interest but to the aboriginals themselves’.⁹⁸ Hutchison and other legal officers set about clarifying the legal issues for the benefit of CAA members: among other things they tried to impress upon council members that court cases were by their very nature adversarial.⁹⁹

At a meeting of various Commonwealth agencies on 21 May 1969, various options for ‘minimising or avoiding the extent to which Aborigines would need to give evidence’

88 ‘Text of statement by Roy Dadaynga at Easter Conf of FCAATSI’, (A 2354 1968/398 Part 2).
89 *Canberra Times*, 5/4/1969, p. 3.
90 Judgment, 16/5/1969, (1969) 14 FLR, pp. 23-24. Blackburn’s recommendations for improving the claim appear on p. 25. The fullest account of these interlocutory proceedings remains Stanner’s ‘The Yirrkala Land Case: Dress-rehearsal’, which appears in Stanner 1979.
91 Stanner, ‘Notes on the Yirrkala Case as at 31st May 1969’ (Stanner Papers, Series 1/289).
92 Stanner to Purcell, 30/5/1969 (Stanner Papers, Series 15/7b). The section of the judgment he was concerned about can be found at (1969) 14 FLR 22: ‘Of the nature of the native custom...held by identifiable individuals.’
93 Statement by Ted Egan, 3/6/1969 (NTRS 43, Drawer 21.10).

94 *Northern Territory News*, 19/5/1969, pp. 6-7.
95 Nixon, in a press release of 15/5/1969, said the incident could not be attributed to ‘ill will or deliberate disregard of the rights or feelings of the Aborigines’ on the part of nabalco or its sub-contractor, Leightons. In his opinion, ‘relations between the company and the Aborigines are good ... and steps taken to improve communication ... will further help’. (NAA A2354 1970/104).
96 Stanner 1979, p. 280. Elsewhere he noted that he preserved some words for ‘historians who may be interested in a conqueror’s first-blush response to a challenge’ (Stanner Papers, Series 14/5a).
97 Stanner to Wentworth, 1/4/1969 (NAA A1734 NT 1970/110).
98 Hutchison (Crown Solicitor’s) to Hook (Secretary, A-G’s), 2/5/1969 (NAA A432 1968/649 Part 2).
99 See, for instance, Hook to Coombs, 13/5/1969 (NAA A432 1968/649 Part 2).

in the trial were canvassed.¹⁰⁰ From the options identified at the meeting as warranting further investigation I shall focus on just two: an out-of-court settlement and a pre-trial agreement on issues of fact between the various parties. Within a couple of weeks Nugget Coombs had revised his proposals for a settlement, which required Yolngu to desist from any further legal action or claim on Nabalco and to cooperate with the Commonwealth and Nabalco in developing the bauxite project. Yolngu would benefit through a program of economic development, which Coombs had been devising over the previous year and which was supported by both Interior and the NTA.¹⁰¹ At this stage, the people of Yirrkala, however, did not support Coombs' program: according to Purcell, they regarded 'running their own business as a form of punishment' imposed on them by Welfare Branch; in their opinion 'they are not able to run their own business just yet', but their young people might eventually do so with the help of the mission.¹⁰²

Nevertheless Coombs pressed on with his plans. He, like Rowley, advocated the incorporation of Yolngu organisations to undertake a range of business activities, most of which were designed to mesh with Nabalco's plans. He recommended projects like brickmaking, saw milling, supplying the new company town with fresh produce and raw materials like sand or gravel; a commercial outlet for bark paintings and other artefacts; and various building projects, including a village council meeting house and a motel. Coombs would have been heartened by a gesture of cooperation that he encountered on his brief visit in May. Despite the bulldozing of Mt Saunders, Yolngu had set aside a small area at Rainbow Cliffs as a weekend picnic spot for Nabalco workers — two shelters and two toilets were under construction.¹⁰³ By year's end, Coombs could report to Wentworth that Interior was 'as anxious as I am to push the programme into effectiveness' and advocated that the council meeting house and the brick-making scheme be given top priority. Negotiations were yet to begin with Yolngu: they were to be handled by Ted Egan, who was by this time working for the OAA, and Ted Evans, who remained the Chief Welfare Officer in the Northern Territory.¹⁰⁴ Coombs' program was the one point of agreement between the CAA, Interior and the NTA; and it would soon be used as a bargaining chip by the Commonwealth in trying to secure a deal with counsel for the plaintiffs.

Coombs' specific program for Yirrkala fed into a larger but more general plan to foster appropriate development of Aboriginal reserves in the Northern Territory. Fundamental to this larger scheme was a Commonwealth Aboriginal Lands Trust, which would be independent of the NTA and which would ensure that reserves were for the genuine use and benefit of resident Aboriginal populations.¹⁰⁵ Coombs had urged Wentworth to introduce legislation for such a trust, but Prime Minister

Gorton had made clear to the CAA his 'strong reservation about legislation for special

100 Swift, note on file, 26/5/1969, reporting on a meeting of 21/5/1969 (NAA A432 1968/649 Part 1).

101 Dexter's notes on meeting of 21/5/1969 (NAA A2354 1968/398 Part 2).

102 Dexter to Coombs, notes from a phone conversation with Purcell, 31/3/1969 (NAA A2354 1968/398 Part 3).

103 Report on visit by Phillip Roberts, 16/5/1969 (NAA A2354 1968/108). While Rainbow Cliffs is still designated a leisure area, no structures remain there.

104 Coombs to Wentworth, 15/12/1969 (NAA A1734 NT1969/2073).

105 Rowse 2000, p. 49.

privileges for the Aborigines'.¹⁰⁶ In his latest proposal for an out-of-court settlement, Coombs also called for a Commonwealth Commission to settle Aboriginal land claims.¹⁰⁷

Stanner again found himself disagreeing with Coombs: he could not see any of the parties agreeing to a settlement at this stage. He felt too that Coombs' program was too 'complex' and did not take sufficient account of 'local authority'. Stanner viewed the program as an attempt 'to improve the government's image, to be within prudent bounds from Treasury's viewpoint, to keep the imaginations of Interior and the N.T. Administration and to ask the minimum of the Company'.¹⁰⁸ Stanner was no more optimistic about the strategy for minimising either the length of the trial or the Yolngu evidence. On top of the 'adversary court system, the language problem and the dearth of experience of Australians in this kind of case', Stanner was also concerned that it might be 'very troublesome' to establish the facts in the case.¹⁰⁹

As part of its strategy, the Commonwealth wanted to test with the other side 'how far statements by anthropologists could be accepted as common ground so as to avoid the need for evidence on these points';¹¹⁰ and it was particularly keen to arrive at a statement on 'the nature of Aboriginal land holding', a statement 'which the Commonwealth would be prepared to accept without commitment' and which, it was hoped, would shorten proceedings 'relating to the precise nature of Aboriginal land claims'. No matter how substantial such a statement might turn out to be, Stanner doubted that the government or Nabalco would concede that 'the aborigines had, or have, any land-system worthy of serious consideration'.¹¹¹ Stanner also chided the Commonwealth for failing to employ a government anthropologist in the past to undertake such research.¹¹²

By June, Jeremy Long — who had been hired as researcher for Rowley's project from the NT Social Welfare Branch — had penned a four-page draft statement on Yolngu land holding for the Department of the Interior, though, as one of the department's assistant secretaries commented, there could be no agreement on basic principles until a revised statement of claim had been lodged.¹¹³ Long emphasised the 'ritual' or spiritual nature of the Yolngu relationship to land, and it seemed to Frank Payne, the assistant secretary, that if Yolngu claimed this 'special relationship' with the entire Gove Peninsula, the Commonwealth would find it 'difficult to disprove'. Payne further noted that from such a relationship an argument for Yolngu 'possessory rights' could

106 Record of meeting between the Council and the Prime Minister on 4 August 1969 (Dexter Papers Series 2/7).

107 Coombs, 'Yirrkala: Possible Basis for Settlement', 10/6/1969 (NAA A432 1968/649 Part 2).

108 Quoted in Rowse 2000, p. 81.

109 Stanner to Purcell, 31/5/1969 (Stanner Papers, Series 15/7b).

110 Swift, note on file, 26/5/1969, reporting on a meeting of 21/5/1969 (NAA A432 1968/649 Part 1).

111 Stanner to Purcell, 31/5/1969 (Stanner Papers, Series 15/7b).

112 Since Stanner had so recently formulated a 'first and provisional' paper on property rights, the remark seems churlish. Swift, note on file, 26/5/1969, reporting on a meeting of 21/5/1969 (NAA A432 1968/649 Part 1).

113 From Payne's observations of 12/6/1969 it is clear that Long is the author. The paper begins with a quotation from Stanner, mentioned above: 'The aborigines did not conceive that people (as we would say) "have" or "hold" or "own" land in the precise ways which make sense to us because of, and only because of, a particular legal history.' (NAA A432 1968/649 Part 1).

easily be developed, before concluding that Long’s paper left ‘open how far the Crown could press a view that Aborigines have not exercised rights with regard to land which amount to possession in law’.¹¹⁴

Clearly, Long’s was not the paper Interior had anticipated, but when the paper was sent to Darwin for comment, Social Welfare Branch (as it became known after 1964) remarked that it ‘more accurately describes Aboriginal interest and attachment to land than do the generalisations of Berndt and Stanner’ in their affidavits.¹¹⁵ Long had claimed that each clan had a ‘specific and exclusive’ relationship with ‘one or more sites’ and that this relationship extended ‘in a less precise way’ to the surrounding area, thus making for indistinct boundaries.¹¹⁶ While the branch agreed with this assessment, it commented that ‘it is more than probable that individual Aboriginals under cross-examination would give varying descriptions of this relationship and of tribal boundaries, so confusing is the situation today’. Social Welfare Branch noted that ‘there is not always a clan area which can be enclosed by an imaginary line on a map’, although Long had suggested that ‘boundaries along the sea coast and inlets are generally well-known and relatively precise’. Long also briefly described how one clan came to look after another’s country when the owning clan died out. Here the branch remarked that ‘irrespective of whether or not Long is correct in his appreciation of the situation, it would nevertheless appear to be correct to state that “possession” of land was not non-transferable and inalienable as claimed by both Berndt and Stanner’.¹¹⁷ Rather than accept the findings of anthropologists, the branch preferred to rely on and repeat its own intelligence about the fate of Lamamirri land (see Chapter 5) as evidence of the changing nature of Yolngu land holding.¹¹⁸

In August a fresh round of meetings began between counsel from both sides as they tried to settle such matters as the date, place and mode for the next hearings.¹¹⁹ At this stage it was hoped that the trial might begin in October 1969, but for a number of reasons neither side could make this deadline.¹²⁰ A preliminary face-to-face meeting between counsel was convened in Sydney on 26 September, and on 6 October Purcell and Woodward submitted their first written proposals for streamlining the trial. From a possible list of ‘upwards of 20 issues of fact’ they nominated just eight as open to serious challenge. They identified three central issues: ‘the nature and incidence of land ownership according to aboriginal laws and customs’; ‘the particular claims of the

Gumatj and Rirratjingu’; and the ‘recognition of native title at common law’.¹²¹ For the purposes of the trial, the Yolngu legal team suggested that the ‘approximate boundaries shown on the plan drawn by Professor Berndt’ would suffice.¹²² Here, Purcell and Woodward were alluding to the maps that Berndt had incorporated into his affidavit (reproduced in Chapter 5). They further requested that attempts be made ‘to define more precisely and to arrange for the permanent protection of [Yolngu] sacred sites’ and to agree on ‘appropriate compensation’. They asked too that the Commonwealth compile ‘all material of a documentary nature’ into a single volume ‘for ease of reference’ by all counsel well ahead of the trial.

In early December, Swift on behalf of Interior advised Nixon that while Berndt’s map ‘could be said to show the areas which the [Rirratjingu and Gumatj] are claiming at this stage, there has been considerable movement of clans in recent times and this has resulted in many changes in clan land affiliations in the area’. This, he said, was the ‘advice of experts’ from within the NTA, advice that was ‘supported by independent writings’.¹²³ As previously noted, this ‘expert advice’ stemmed from a fleeting remark in Evans’ sacred-sites report, which in turn came from a reference to an event that occurred in the 1930s in Chaseling’s book, *Yulengor*. Its repetition in official correspondence had helped to elevate its status to that of a convenient truth. No doubt Stanner counted officials who helped to shape truths of this sort among those ‘Commonwealth people’, who suggested that his paper on property rights was based ‘merely on “things people tell you”, presumably meaning hearsay or shallow opinion’, though these bureaucrats did not appear to be equally capable of evaluating their own information.¹²⁴ Following advice from the Crown Solicitor’s Office, Swift observed that ‘the plaintiffs should be required to lead evidence’ on matters such as clan land-holdings. If at this stage the Commonwealth conceded the areas designated as Rirratjingu or Gumatj by Berndt, it might ‘go a long way towards establishing a right in respect of that area’ — an admission that the Commonwealth should not make. All in all, he concluded, there seemed no way of ‘avoiding the need to call some Aboriginal witnesses’.¹²⁵ The Commonwealth was ‘agreeable to further discussions’ on the matter of a map and acknowledged that maps would be required during the trial. On the question of sacred sites, Swift asserted that Yolngu ‘appear generally to accept Administration findings on sacred sites’ — that is, the Evans’ report — though they might also seek ‘protection for many of the areas noted as sacred by Professor Berndt’ in his 1964 article.¹²⁶

From the Commonwealth’s point of view, the chief stumbling block was the issue of compensation, and this issue came to dominate the Commonwealth’s formal response, which found final form only on 23 January 1970. The government’s position in short

114 Note on file, Payne, 12/6/1969 (NAA A432 1968/649 Part 1).

115 There is nothing recorded on the telexes in reply, dated 3 and 4/7/1969, to indicate that the responses came from Welfare Branch, but I presume this and suspect their author to be Ted Evans. It is little wonder that the branch endorsed Long’s paper; it after all had trained him. Long’s paper was forwarded along with the affidavits of Berndt and Stanner and with the revised Yolngu statement of claim, dated 17/6/1969 (NAA A2354 1968/398 Part 3).

116 Long (NAA A432 1968/649 Part 1).

117 Telex from NTA to Interior, 3/7/1969 (NAA A2354 1968/398 Part 3).

118 NTA telexes of 3 and 4/7/1969 (NAA A2354 1968/398 Part 3).

119 NAA 1734/15 NT 1969/1242.

120 Among the reasons cited by Stanner (1979, p. 277) were: that Woodward was involved in another case; the ‘Crown itself was not ready’; and a federal election was ‘in the very near offing’ — actually held on 25/10/1969.

121 Another four questions had to do with what might be termed Australian legal history; and the final matter concerned the form of declaration sought from the proceedings (Purcell to Crown Solicitor, 6/10/1969, Ellemor Papers).

122 Purcell to Crown Solicitor, 6/10/1969 (Ellemor Papers).

123 Swift to Nixon, 5/12/1969 (NAA A432 1968/649 Part 2).

124 Stanner to Purcell, 31/5/1969 (Stanner Papers, Series 15/7b).

125 Swift to Nixon, 5/12/1969 (NAA A432 1968/649 Part 2).

126 Swift to Nixon, 5/12/1969 (NAA A432 1968/649 Part 2). It will be remembered that Evans recommended that 16 sites be protected, though the Administrator recommended to Canberra only three sites for preservation (see Chapter 5).

was that it did not want to discuss the issue ahead of the trial.¹²⁷ One reason the Crown Solicitor's Office advanced for this reluctance was that the Commonwealth had 'prepared a programme of measures ... for the assistance and furtherance of the welfare of the Yirrkala people' — in other words, Coombs' program — but if the court found in favour of Yolngu and awarded them 'ample resources', then they would be expected 'to provide for their own welfare' to some extent.¹²⁸ The Commonwealth was prepared to brief Purcell on the program, but only on condition that he did not disclose it to his clients, because it was 'of the utmost importance that there should be no misunderstanding by them' about what the Commonwealth was planning.¹²⁹ Not surprisingly, Purcell declined the offer, and thereafter any agreement between the parties to streamline the trial dissipated.¹³⁰

In rejecting its terms, Purcell also reprimanded the Commonwealth for its tardiness in bringing on the trial. 'I find it very difficult to accept that the Commonwealth with all its resources could not be ready for trial until June'.¹³¹ One reason for the delay was that, following the death of Mathaman on 11 January 1970, Milirrpum was nominated as principal plaintiff and this in turn required another affidavit to be sworn.¹³² The trial finally got underway in Darwin before Justice Blackburn on 25 May, and yet scarcely a month before this, Hutchison was still organising the Commonwealth's evidence. He sought, for instance, from the Interior Secretary details of 'directly observed facts in relation to the physical activities of the natives on and in relation to the subject land' prior to the lodgment of the Yolngu statement of claim and 'as far back as such evidence is possible to be obtained'. He wanted expert opinion, too, on 'the clan and social structure'; 'the polygamous nature and lack of testamentary habits' of Yolngu; and 'the proprietary and legal concepts' Yolngu held. He hoped that Harry Giese, Ted Evans and Bill Gray of the Welfare Bureau might make themselves available for interview when the Commonwealth's legal team were in Gove and Darwin in the week starting 27 April.¹³³

Well before this last-minute activity, Hutchison's office had summoned Evans and Egan to Canberra in January 1969. Their first interview took place in Nixon's office. The minister wanted to know 'whether we felt there had been effective consultation with Aborigines; whether they had understood what they had been told; whether they tended to voice objections to operations in the area without being prompted; and finally he sought

¹²⁷ Hutchison to Purcell, 23/1/1970 (NAA A432 1968/649 Part 3). The delay is probably explained by the High Court's ruling in the 'Bouganville case', delivered on 9/12/1969: *Tau v The Commonwealth* concerned the Commonwealth's power for compulsory acquisition on just terms in a territory, whether domestic or overseas. Following this decision, Swift was obliged to amend his original minute significantly: see Swift to Nixon, 16/12/1969 (NAA A432 1968/649 Part 2).

¹²⁸ Another reason for the delay was that Hutchison had carriage of the Commonwealth's case in the Bouganville matter, as he did for the Mathaman case.

¹²⁹ Hutchison to Purcell, 23/1/1970 (A432 1968/649 Part 2).

¹³⁰ Purcell to Hutchison, 5/2/1970 and Hutchison to Purcell, 3/4/1970 (NAA A432 1968/649 Part 3).

¹³¹ Purcell to Hutchison, 5/2/1970 (NAA A432 1968/649 Part 3). Here he also complained that he had not as yet received the volume of documentary materials.

¹³² Stanner 1979, p. 278. Milirrpum's affidavit was finally lodged with the court on 18/5/1970.

¹³³ Hutchison to Secretary, Dept of the Interior, 17/4/1970 (NAA A432 1968/649 Part 2).

our opinions as to the main reasons for dissatisfaction among Aborigines'.¹³⁴ Later in the day they were interviewed by three solicitors from the Solicitor-General's office. Egan found the session quite 'mystifying':

We spent almost the entire afternoon describing the floor areas, types and sizes of buildings erected by the RAAF, the Mission and ELDO. The only other information the three solicitors wanted was estimates of the Aboriginal population between 1946 and 1969, the numbers living at the Mission, and some other information on whether anybody hunted nowadays on the Gove Peninsula.¹³⁵

Egan further reported that while he and Evans were being questioned by Nixon, Donald Thomson was being interviewed by Solicitor-General's staff about Yolngu claims of their 'quiet and undisturbed occupancy' of the Gove Peninsula. According to Egan, Thomson had 'volunteered his services' to the Commonwealth on the conditions that 'there be no other anthropologist present' and that he be permitted travel to north-east Arnhem Land.

Thomson was unable to fulfil his obligations, because a note from the University of Melbourne advised that Thomson had 'not been well at all lately and had not been able to do any work on the maps or the information for which you had asked him'. According to this note, Thomson passed away on 12 May 1970.¹³⁶ Just before Thomson's death, the Crown Solicitor's Office had requested the secondment of Jeremy Long, who, since drafting his land paper, had transferred from Interior to the OAA. Given 'the unavailability of any other suitably qualified officer', Long's services were needed from 18 May 'to assist in the preparation of the defence of the action and to be present in the court'.¹³⁷ Dexter advised that Long was not only the OAA's senior researcher but the only officer charged with co-ordinating federal policy throughout Australia. Dexter suggested that Hutchison approach Stanner instead, because he was 'a recognised authority' and because 'his services are still available to the Crown'. Dexter pointed out the potential embarrassment for Long: he was 'not a professional anthropologist' and would come off second best if the Crown pitted him, for instance, against Stanner. Dexter was also concerned that Long's involvement might strain Yolngu relations with the OAA and CAA, because of the impression that the Commonwealth had aligned 'itself with the interests of a substantially foreign-owned business enterprise against this group of Aboriginal citizens'. In spite of these reservations, Dexter was prepared to make Long available on the condition that his services were also offered to the plaintiffs and in the hope that his presence might help serve justice.¹³⁸ Long was duly released.¹³⁹

¹³⁴ Undated report from Egan (F1 1968/6673). By this stage Egan was still working for Welfare Branch.

¹³⁵ Ibid. ELDO refers to the European Launch Development Organisation, which was in the process of establishing a base some five miles south-west of the Gove airfield.

¹³⁶ Judith Wiseman, 12/5/1970. Thomson had had his first interview with the Solicitor General (Anthony Mason) on 23/1/1969 (NAA A432 1968/649 Part 3). Mason would soon leave the position to go to the NSW bench; Robert Ellicott succeeded him as Solicitor General (Cabinet Decision 956, 15/5/1969, NAA A5882 CO550).

¹³⁷ Townsend (dep. secretary, PM's Dept) to Dexter, 8/5/1970 (Dexter Papers Series 2/10).

¹³⁸ Dexter to Townsend, 11/5/1970 (Dexter Papers Series 2/10).

¹³⁹ Townsend to Dexter, 15/5/1970 (Dexter Papers Series 2/10).

By comparison, the plaintiffs’ legal team were very well organised. Purcell, Stanner and Croxford had visited Yirrkala in November 1969 to collect the final ‘proofs of evidence’ for their case. Even though this visit was ‘unofficial’, Stanner felt obliged to report the Commonwealth’s weak presence on the peninsula to Wentworth. ‘One looks immediately for signs of the Crown’s authority,’ he observed, only to find Nabalco in charge. ‘The Crown must appear to the aborigines as little more than a spectator, but an approving spectator, of events in Nabalco country,’ he continued.¹⁴⁰ For all the talk about mining since at least 1963, according to Stanner, Yolngu still had no real notion of what was involved, but now that construction had begun at Point Dundas and near Mt Saunders, Yolngu were ‘aghast’ at the developments. ‘No one told us it would be like this,’ one man told Stanner. Stanner warned Wentworth not ‘to place confidence in any statements, from missionaries or officials or Company that the Yirrkala people “understand” or “appreciate” the good things supposedly in store for them through the Nabalco project’. In Stanner’s opinion, Yolngu had been ‘inadequately ... and incompetently prepared’ for what was about to befall them. It was ‘disingenuous’ for either the Commonwealth or Nabalco to claim Yolngu had consented or agreed to Nabalco’s developments, because ‘[t]hese people simply do not get the picture’. Stanner was amazed that no one from government or the company had seen fit to have ‘a large-scale relief map with models’ made to help them get the picture: such a map ‘would have been worth a score of visits and exhortations’.¹⁴¹

Plans for this trip to Yirrkala had been set in train at a meeting in Melbourne in early October, attended by both Stanner and Berndt. Purcell had hoped that Berndt would be able to join them, but Berndt ‘could not possibly give us time to visit Yirrkala ... until early next year’. All year, Purcell had repeatedly asked Berndt to clarify his ideas on land holding, and Berndt responded to each request that he had already supplied ample material. Berndt had first sent Purcell material — including two copies of his ‘Gove Dispute’ article and a sketch map of moiety holdings (Fig. 6.2) — in early February and in March he sent his final affidavit, including another map (Fig. 6.3). At the same time Berndt had promised ‘as soon as I am able’ to send a copy of ‘my 1946-47 Gove Peninsula map’, but at this stage he had no idea of ‘how long this will take to compile’.¹⁴² It was a promise that Berndt was unable to fulfil. By October, Purcell confided to Ellemor that he was ‘quite troubled about Berndt’s definition of the land owning group and we must do a lot more work with him before trial’.¹⁴³ The main difficulty appeared to lie with Berndt’s conceptualisation of *matha-mala*, which Stanner attempted to tease out while in Yirrkala (discussed in Chapter 1). After a session with Mungurrawuy and Galarrwuy, Stanner thought the matter was ‘clear enough’: *matha* referred to a patrilineal exogamous descent group ‘defined by dialect rather than descent, also defined by land or territory’.¹⁴⁴

140 Stanner 1969, ‘The Situation at Gove and Yirrkala’, p. 2 (NAA A1734 NT 1969/2073). The visit was for 8 days, 18-25/11/1969; the 12-page report to Wentworth is dated 28/11/1969.

141 *Ibid.*, p. 6-7. Sometime earlier, Dexter had wanted to commission a large scale model from the Snowy Mountains Authority, only to learn that its model maker had recently been made redundant (NAA A2354 1968/108).

142 Berndt to Purcell, 3/2/1969 (Stanner Papers Series 15 Item 15).

143 Purcell to Ellemor, 31/10/1969 (Ellemor Papers). Berndt’s correspondence puts the meeting at 1/10/69 (Berndt to Purcell, 25/2/1970, further details below).

144 Quoted in N. Williams 2008, p. 205.

To Stanner *mala* was a general term for ‘group’, but in Berndt’s usage it appeared to be akin to a sub-clan and thus of possible use in distinguishing one branch of a *matha* from another. ‘The upshot of my inquiries at Yirrkala’, he wrote elsewhere, was that while ‘Berndt was apparently justified in referring to *matha-mala* combinations’, Yolngu were now speaking ‘more frequently and freely of *matha* than of *mala*’. He observed further that ‘probably nothing would be gained and much might be lost by changing the *matha-mala* names now entered in the statement of claims’, but, happily for him, the names recorded there were in fact *matha* or clan names, like Gumatj or Rirratjingu.¹⁴⁵ In the new year Purcell again approached Berndt to visit to Yirrkala, and again Berndt begged off, saying he was ‘not anxious to revisit Yirrkala at the present time’. In response to a specific request for a ‘greater definition of boundaries’, Berndt noted testily that the ‘map I prepared doesn’t just show the distinction between Yirritja and Dhuwa moieties’, but the ‘boundaries are fairly clearly marked and are prepared from Aboriginal charts [which] show quite clearly that the whole Gove area was territorially divided and that the whole was owned by the local people’.¹⁴⁶ Throughout his ten-page response to Purcell, Berndt could barely keep his exasperation in check. He was reluctant to supply Purcell with ‘actual cases of persons, fights, marriages, elopements etc.’ as requested or with amended ‘territorial plans or maps’, not only because he had already supplied what he regarded as sufficient data, but because additional detailed material would ‘only lead to confusion’ on the part of ‘the judge, yourself and the jury’.¹⁴⁷ Berndt further claimed that he ‘had covered a great deal of “territory” in my detailed commentary’ of the previous September, but most of those details, like the current missive, was rendered in terms of *matha-mala*. At one point in the ‘commentary’, Berndt put a series of questions to Purcell: ‘What [was] meant by an accurate definition of the land?’ Did Purcell want another map, if so what kind and how detailed? How far did Purcell want him ‘to go in terms of defining the Aboriginal concept of land?’ And Berndt had to ask himself ‘how far can I go on the basis of empirical material, beyond what I’ve already said?’¹⁴⁸ So far as Berndt was concerned, the September commentary had explained ‘the nature of the *matha-mala*’ at length; and now in February he could see ‘no point in repeating what I said there’. ‘If I may be excused for saying so,’ Berndt continued, ‘I am surprised that you and the barrister “are struggling with the *matha-mala* terms” after my reasonably lucid explanation in the Commentary! I thought this was straight forward, without going into any finer details of names (variations) and cross-affiliations.’¹⁴⁹

145 Manuscript fragment, n.d. (c.1969-1970) (Stanner Papers, Series 14/8). Despite this remark, Stanner continued to be troubled by *matha-mala* to the extent that he sought the advice of Nancy Williams, who sent a four-page letter on 26/4/1970 (Stanner Papers, Series 14/1) and from Prof. A.L. Epstein of ANU, who provided a 10-page critique of the concept, dated 25/8/1970 (Stanner Papers, Series 15/10).

146 Berndt to Purcell, 25/2/1970, pp. 3-4 (Stanner Papers, Series 15/15).

147 In the Milirrump case there was, of course, no jury.

148 Berndt to Purcell, 9/9/1969. This ‘commentary’, running to 26 pages, is Berndt’s critique of Blackburn’s initial decision (7pp) and of Purcell’s draft of the amended Yolngu statement of claim (19pp) (Stanner Papers, Series 14/20).

149 Berndt to Purcell, 25/2/1970, written in response to Purcell’s request of 13/2/1970, which I have not seen. As always, I have amended the spelling of *matha-mala* for the sake of consistency. In Berndt’s February letter he says the issue of *matha-mala* was explained on pp. 1-3 of his commentary of 9/9/1969 and this is so. A one-page appendix to Berndt’s letter of 25/2/1970 lists all his correspondence with Purcell to date (Stanner Papers, Series 15/15).

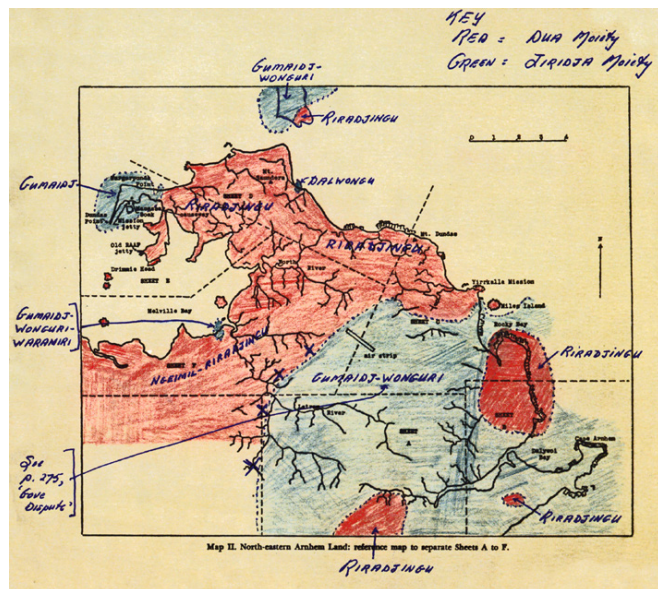


Fig. 6.2: Berndt's small sketch map

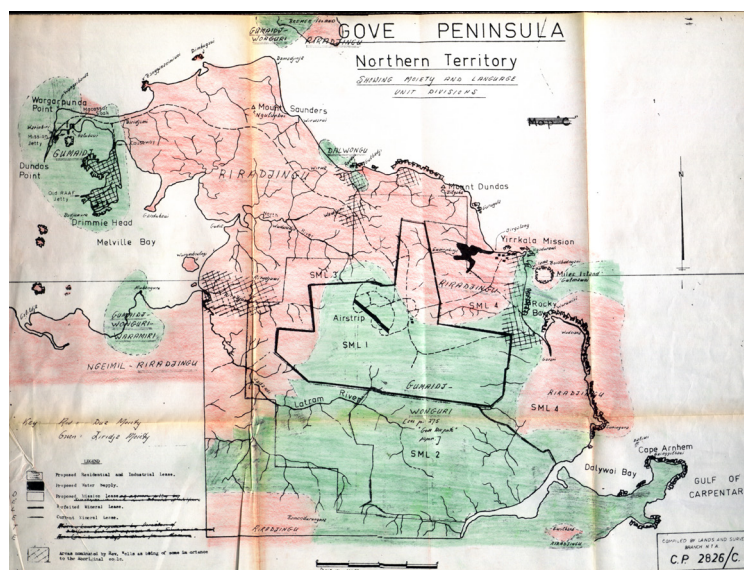


Fig. 6.3: Berndt's large affidavit map

Clearly, Berndt and Purcell were talking at cross purposes when it came to *matha* and *mala*. Nevertheless, Berndt exhorted Purcell to 'keep our statements clear, unencumbered by numerous examples, exceptions and case histories'.¹⁵⁰ As Berndt saw it, three things could 'cloud the clear-cut issue before us', and all three concerned the anthropological evidence that he or Stanner might present. In Berndt's opinion the more anthropological information they presented, the greater the scope for both legal and anthropological 'quibble'. He foresaw the 'danger' of confusion arising from a 'divergence in anthropological interpretation'; and, finally, there was 'the very real issue of what local Aborigines say in contrast to sophisticated statements made by anthropologists in the light of their knowledge of a broader perspective'.

Stanner had sometime earlier expressed similar concerns to Purcell: he feared that

150 Berndt to Purcell, 25/2/1970.

'the Crown may try to treat the evidence which Berndt and I will give as mere gossipry' and, if this happened, 'the approach will boomerang', leaving the Yolngu case in tatters. Stanner was worried that the Commonwealth and Nabalco would 'do their best at the trial to rubbish both the aborigines' and the experts' evidence' on land holdings.¹⁵¹ Given these observations and given the ongoing confusion about *matha-mala*, it is surprising that Berndt seemed incapable of re-framing his ideas — particularly on *matha-mala* — to make them more readily understandable. In his diplomatic way, Stanner tried to impress on Berndt that the biggest problem lay in finding 'the best form and ways of using the data on aboriginal law and custom', and 'to a very great extent' the onus fell on Berndt. For good measure, Stanner tried reassuring Berndt with flattery: 'You and your evidence are vital to the success of the case. No one can replace you or compete with you.'¹⁵²

Even at this late stage, Berndt felt the court case should be dropped in favour of a 'confrontation' between all parties — his term for an out-of-court settlement — who would, he hoped, in the end acknowledge that Aborigines had rights in land and be compensated for the land they had been dispossessed of. If this approach were unpalatable, Berndt felt 'we should press for a Royal Commission to investigate the whole position of land *vis-à-vis* Aborigines' nationally rather than the limited focus a court would adopt in examining 'the Gove situation'. It was also Berndt's feeling that the OAA should stand together with Welfare Branch and Yolngu against the 'commercial exploitation' of the Gove Peninsula. He put these suggestions to Purcell because he was 'worried that nothing much will come out of litigation' and because he wanted to see the Commonwealth supporting 'the Aboriginal case in positive terms'.¹⁵³ Berndt sent a copy of this correspondence to Stanner, seeking to enlist his support for these proposals,¹⁵⁴ but Stanner's response could hardly have been more discouraging. Regarding the 'confrontation' Stanner wrote with some condescension that it was 'no secret in Canberra, though it may not be known to you in Perth, that before and after the legal action started strong and persistent efforts were made [by the CAA] to induce the Government to see the wisdom of negotiating the matter out of court, or having its background ... examined by a judicial committee or commission.' He pointed out too that a Royal Commission would merely force 'a major political confrontation between the Commonwealth and the States, especially perhaps Western Australia and Queensland', and this was 'the last thing' any government wanted. For emphasis Stanner added: 'So there it is: both your proposals are, in my opinion, political non-starters.' With regard to Berndt's hope for a show of unity between the OAA and Welfare Branch, Stanner reminded Berndt that he had not factored in Interior, with which the OAA 'has perforce

151 Stanner to Purcell, 31/5/1969 (Stanner Papers, Series 15/7b).

152 Berndt had sent a copy of his letter of 25/2/1970 to Stanner, and Stanner replied to Berndt on 13/3/1970. It is this reply from which I quote (Stanner Papers, Series 15/7a). In his February letter, Berndt had expressed his anxiety over the purpose of Stanner's visit to Yirrkala and over the presence of Nancy Williams there, when he thought she would be carrying out her fieldwork in Darwin. Stanner wrote: 'Mrs Williams ... is solely concerned with her own affairs ... she is in no way concerned with the case ... I understand she was not happy in Darwin and, when invited by the Methodist Mission to go to Yirrkala, [she] understandably accepted the invitation.'

153 Berndt to Purcell, 25/2/1970 (Stanner Papers, Series 15/15).

154 Berndt to Stanner, 4/3/1970 (Stanner Papers, Series 15/7b).

to work’ and which ruled over Welfare Branch. Between the OAA and Interior there was ‘more or less continuous difference of policy’; both Interior and Welfare Branch regarded OAA as ‘an unnecessary fifth wheel’. Even so, the OAA had ‘managed to do a great deal in a confused and unhelpful situation’, though there were limits to what it could achieve — and no one found this ‘more frustrating’ than Stanner himself.¹⁵⁵ These, then, are some of the issues and tensions that were swirling around in the long lead-up to the Milirrpum case. From them we are able to gauge something of the mentality and the institutions — Stanner’s terms — that were in play 40 years ago. These issues and tensions provide crucial context for assessing the Milirrpum case, which is the subject of the next chapter.

155 Stanner to Berndt, 13/3/1970 (Stanner Papers, Series 15/7a).

Chapter 7: Dissecting a trial

I

After the Yolngu statement of claim was lodged with the Northern Territory Supreme Court, the Department of the Interior chose to regard every issue raised in the Yolngu writ as *sub judice* and this became the latest excuse for excluding Yolngu from most, if not all, discussions after January 1969.¹ Thus, Yolngu wishes were largely ignored in the planning and construction of Nhulunbuy township, which was rapidly taking shape in 1970 and which Nabalco hoped to have fully functional by December 1971.² The town was no longer envisaged as a closed company town, but rather as a regional centre, and with the amended status came the need for additional involvement from the Commonwealth. As a regional hub, Nhulunbuy’s government facilities, services and staff would need to expand greatly. As the Minister for the Interior, Peter Nixon, argued in a Cabinet submission, the change in status meant the Commonwealth should now contribute to the cost of town services — such as roads, water supply, sewerage, electricity and other ‘community facilities’ — in proportion to its usage, which was estimated to be about 15 per cent of overall costs. Originally, it will be recalled, Nabalco had undertaken to pay all the costs of developing the town, save for the school and the hospital, but, upon realising the prohibitive costs of such an undertaking, the company sought a hefty contribution from the Commonwealth of \$39 million (see Chapter 5). Later, when considering the request from the Australian partners in Nabalco to amend the original agreement (also discussed in Chapter 5), Cabinet stated that any revised deal did not obligate the Commonwealth to provide ‘for infrastructure or town facilities at that stage’.³ Noting that ‘the Commonwealth’s involvement in the town had not been accurately determined’ at the outset, Nixon’s submission estimated the latest costs to the federal government to be a further \$1.4 million in capital works and \$350,000 in recurrent expenditure, all of which Cabinet duly approved.⁴ Much of the earlier discussion about Nhulunbuy’s status had centred on the question of alcohol: if Nhulunbuy were declared open, hotels selling take-away alcohol would be permitted.⁵ Plans for a ‘two-storey Javanese style’ hotel had advanced to the stage where Walkabout, a Perth-based company, felt able to apply for a liquor licence on 16 December 1969, a full year after the Yolngu writ had been lodged with the Supreme Court.⁶ The Yirrkala Village Council vehemently opposed the application, because since the advent of wet canteens at Nabalco’s two construction camps — to which Yolngu access was restricted and from which take-away beer could not be sold — drunkenness was already an issue for the community, and the council feared the collapse of Yirrkala social life if Yolngu had unfettered access to alcohol from the

1 Egan 23/1/1970, p. 16 (AIATSIS MS 4167/2/9).
2 Dean to various departments, 23/5/1968 (NAA F1 1972/2624).
3 Decision 730, cited in Nixon’s submission 168 of 9/3/1970 (NAA A5869 168).
4 Cabinet submission 168, 9/3/1970 (Nixon), and Cabinet Decision 235 (GA) 18/3/1970 (NAA A5869 168).
5 NAA F1 1969/768.
6 The description of the hotel is taken from the *NT News* of 27/5/1970; the application date comes from Nixon’s Cabinet submission 538, 21/9/1970 (NAA A5882 CO1047).

Walkabout Hotel.⁷ Protests to authorities from the likes of Dadaynga and Daymbalipu went unheard, largely it seems because life for Europeans in the tropics was almost unimaginable without the salve of chilled beer.⁸ Yirrkala Village Council was left with little option but to engage an Adelaide barrister, Jack Elliott QC, to challenge the liquor licence in the Darwin Licensing Court.

Thus, by May 1970 Yolngu had two court actions on their hands. Fifteen Yolngu were scheduled to fly into Darwin on Friday, 22 May to allow them time to settle into their temporary Darwin accommodation before the Milirrpum trial finally got underway the following Monday.⁹ At least three of the Yirrkala contingent — Dadaynga, Daymbalipu and Rev. Wally Falwell, the mission superintendent — flew into Darwin a day or two earlier to appear in the Licensing Court.¹⁰ W.E.H. Stanner was also on hand to give evidence; he told the magistrate that ‘for too long Europeans had ignored the wishes of the Aborigines and it was now time to listen to them’.¹¹ Ronald Berndt put the matter rather more stridently in an affidavit: ‘Their voice must be heard in this instance ... To ignore their plea will be one further example of our lack of interest in their welfare as Australian Aborigines and as Australian citizens.’¹² In drawing the Yolngu case to a close on the Friday, Elliott pointed to a technical oversight: to date no permit had been issued by Welfare Branch for the Walkabout Hotel to bring liquor onto the Arnhem Land Reserve, as required by s. 140e of the Liquor Licensing Ordinance, and such a permit was needed before any liquor licence could be granted. The following week the magistrate used this argument to refuse Walkabout a licence.¹³ This, however, was not the end of the matter, but for the moment, Yolngu had again won the first round.

7 One construction camp was at Wallaby Beach, the other was located close to where the Gove Peninsula Motel now stands. Any Yolngu working for Nabalco (and there were very few of them) was allowed to drink in the wet canteens, while other Yolngu bought beer from them or other Nabalco employees or sub-contractors, no doubt at inflated prices. A club for Nabalco staff and their families was also said to be operating in the town by October 1970 (*NT News*, 22/10/1970, p. 8).

8 See, for example, Giese’s comments made at the first Joint Liaison Committee meeting, 25/6/1968 (NAA F1 1972/2624).

9 MOM advice on numbers and movements to NTA, forwarded to Interior on 20/5/1970 (NAA F1 1974/4476). They stayed at the Baptist Hostel, Ross Smith Avenue, Parap. Purcell had arranged and paid for the accommodation and the airfares, though he expected to be reimbursed by the Commonwealth. Since at least February Purcell had been seeking suitable lodgings for, initially, 30 Yolngu, who, he said, refused to stay on the Bagot reserve (Purcell to Philip Roberts, 17/2/1970, NAA A2354 1968/398 Part 3). A little later he sought the help of Giese, who mentioned Bagot as a possibility, before promptly adding that ‘there would be considerable difficulty in accommodating this number of people at Bagot’ for the 3 or 4 weeks Purcell required. He then suggested Purcell try ‘one or other’ of Darwin’s motels or guest houses (Giese to Purcell, 16/4/1970 NAA F1 1968/6673).

10 According to Beulah Lowe’s diary, Fawell had resigned his position in early May (entry 2/5/1970), but he sat through the Darwin leg of the case and finally departed Yirrkala in October 1970 (entry 22/10/1970).

11 Reported in the *NT News*, 23/5/1970. Dadaynga had requested the CAA to allow Stanner to appear in the case. Notes from CAA meeting of 3/4/1970 (Dexter Papers, Box 1, Item 6).

12 Berndt’s affidavit, dated 30/4/1970 (NTRS 44 Box 1).

13 *NT News*, 27/5/1970, p. 5. The magistrate was Mr Haynes Leader.

II

The Milirrpum case came before Justice Richard Blackburn on Monday, 25 May 1970. Between May and August Darwin’s weather is at its best, although still too warm for the wearing of the usual legal garb of black robe and horse-hair wig. The curious dress would have been one of the first differences the Yolngu witnesses noticed between this hearing and their appearance before the parliamentary select committee seven years earlier. These witnesses were themselves wearing strange, new outfits —long-sleeved white shirts, navy trousers, socks and shoes, purchased upon their arrival in Darwin by Falwell.¹⁴ The characters had donned their costumes and were poised to act out their drama on the stage of Darwin’s Supreme Court. As Frances Morphy comments for a more recent case, it was obvious to the Yolngu witnesses that the courtroom was a ‘performance space’ and thus ‘a constructed ritual space’.¹⁵

The Yolngu plaintiffs had come to court expecting ‘to explain to the court in their terms how they owned the land they claimed’ or at least in terms ‘they thought the English-speaking court could understand’.¹⁶ Despite their previous experience of the parliamentary inquiry, Yolngu saw the courtroom as ‘analogous to traditional meetings where they expected explanation and persuasion to lead to the expression of consensus’.¹⁷ As Nancy Williams also remarks, the notion of explanation to the Yolngu way of thinking entails a physical demonstration. Twice the court permitted Yolngu to demonstrate their claims by showing *rangga* and performing songs for judge and counsel in chambers,¹⁸ and, while they might have been awed by the performances, the legal audience did not regard these emblems as evidence, but as something lesser, known to legal circles as ‘a view’ or an aid for ‘understanding the evidence in the case’.¹⁹ Blackburn came to the conclusion ‘that the sacred *rangga* are, among other things, charters to land, is a matter of aboriginal faith; they are not evidence, in our sense, of title’.²⁰

On show at the Milirrpum trial were two distinct systems of law and tradition — white Australia’s legal system, firmly based on written precedent, and Yolngu *rom*, which relies upon the oral transmission and the performance of knowledge through singing, dancing and painting. Only one of these traditions would prevail, and that, of course, was the white legal system. This system of law may boast its impartiality and equity; its rules and practices may seem entirely reasonable to those initiated in its ways, but they remain obscure to the rest of us who have been insufficiently inculcated in those ways. For the Yolngu witnesses the court and its procedures must have seemed utterly surreal. They had come with the expectation of telling their stories and of explaining

14 Informal chat with Wally Falwell at Yirrkala on 12/6/2004. He said Mungurrawuy’s feet were sandpaper, and he struggled to put socks on them.

15 F. Morphy (2009, p. 105) in commenting on the Blue Mud Bay case.

16 Williams 1986, pp. 157, 159.

17 Williams 1986, p. 159.

18 The first showing of *rangga*, together with the singing of ‘sacred songs’ by representatives of the Rirratjingu and Galpu clans, was held in chambers at 9.30 am on 27 May. On 5 June Dhalwangu, Marrakulu and Galpu *rangga* were similarly shown (Milirrpum transcript —hereafter MTS — 4/6/1970, p. 658). That Yolngu would perform for the court was known well in advance of the trial: e.g. a note from Welfare Officer Bill Gray informed the NTA of this on 10/4/1970 (NAA A432 1968/649 Attachment 20). Counsel agreed on statements about the meaning of the displays, and these were read into the transcript.

19 Agreed statement re *rangga*, MTS, 3/6/1970, p. 571.

20 Blackburn 1971, p. 183. See also Morphy 1983, especially pp. 114-6.

matters in their own terms, but instead they were forced to give formulaic responses to interminable questions, which only yielded artificial and truncated accounts of their attachment to the land in question. As the Yolngu witnesses would find, the court was set in its ways and willing to make few concessions to accommodate them, while they had to adapt themselves to its alien and arcane practices.

In this chapter, I consider only the evidence presented by Yolngu and by the two expert witnesses, the anthropologists Ronald Berndt and Bill Stanner; and I consider only what these witnesses had to say about the land in contention. That is, I do not discuss any of the testimony pertaining to Yolngu kinship or social organisation, because Nancy Williams has addressed these aspects of the trial in great detail in her 1986 book, *The Yolngu and their Land*, and because this aspect of the testimony was the least satisfactory, the most confusing.²¹ Moreover, I consider neither the evidence of the Crown's only witness — Rev. Wilbur Chaseling — nor the extensive legal argument over historical documents, aimed at proving the Crown's exclusive sovereignty and title to the Gove Peninsula.²² This line of argument consumed the greater part of the trial, accounting for two-thirds of its 53 sitting days. It is sobering to note that the ten Yolngu witnesses together occupied 12 days of the court's time, while the two anthropologists took just six.²³ The allocation of time is an elegant index of the priorities and prejudices of white law.

Since the focus is to be on evidence, it is necessary to examine some rudiments of how lawyers understand and use the concept, and for this discussion I rely almost entirely on the second Australian edition of the standard text on the subject, *Cross on Evidence*.²⁴ The volume opens enigmatically with: 'The evidence of a fact is that which tends to prove it — something which may satisfy an enquirer of the fact's existence'.²⁵ Thus, it is immediately apparent that in order to understand the nature of evidence, it is necessary to explore the legal notion of facts as well. While the law appears to have a myriad of categories for facts, the facts central to this inquiry are those known to the law as the 'facts in issue': that is, 'all those facts which the plaintiff ... must prove in order to succeed'.²⁶ For clarity, it is perhaps more apt say that the 'facts in issue' are really only the allegations or assertions set out by plaintiffs in their statement of claims and only become facts once proven. Such an explanation entails, however, a certain degree of circularity.

Of the 35 or so 'facts in issue' contained in the Yolngu writ none was more important for their counsel to prove than the three clauses pertaining to land. The fourth clause

claimed that, according to Yolngu law and custom, each clan held communal lands and had 'a proprietary interest', shared between clan members, in those lands. The fifth clause asserted that the clans' interests in land were inalienable and that a number of associated rights affirmed this relationship: the rights to 'occupy and move freely' over the land; to exclude others from the land; to forage for food on the lands and waters; 'to dig for and use the flints, clays and other useful minerals' of those lands; and, finally, 'to dispose of any products in or of the lands by trade or ritual exchange'. The sixth clause insisted that the Rirratjingu and Gumatj clans had held and exercised such rights over all the lands of the Gove Peninsula 'from time immemorial'. Furthermore, this clause promised to reveal the 'approximate boundaries' of the clans' territories on a map 'to be supplied before the hearing of this action'.²⁷ The map in question was that appended to Ronald Berndt's affidavit (see Fig. 6.3).

Given the 'notorious fact that Yolngu have no writing' — to borrow Justice Blackburn's expression²⁸ — how were plaintiffs' counsel to prove their case? Their *rangga* did not constitute evidence, and Berndt's map (Fig 6.3) was treated in a similar fashion to the *rangga*: it was regarded as 'particulars and not as evidence'.²⁹ In the absence of documentary or material evidence, counsel for the plaintiffs could rely only on the testimony of their clients; and testimony is regarded by the law as the strongest form of evidence, which by definition includes both 'direct' and hearsay evidence.³⁰ Such testimony must stem from the direct personal knowledge or experience of witnesses — matters that witnesses have perceived through one of their five senses.³¹ Hearsay falls within the category because it concerns something the witness has heard someone else say, but hearsay is generally held to be inadmissible because the person who originally uttered the statement is not available to be examined or cross-examined in the courtroom, and such availability is held to be the standard procedure for proving the facts in issue before the court.³² For a fact to be admissible it has to be deemed relevant, and the law defines relevance as the fit or relationship that can be established between facts.³³ How the relevance of a fact can be gauged before the fact has been discussed or established is a moot point.

For the most part, all the ten Yolngu witnesses could offer by way of testimony were the stories and recollections about their entitlements to land. So long as 'the witness spoke from his own recollection and experience', Justice Blackburn had no problem in

21 The confusion stemmed largely from the adoption on all sides of Berndt's conceptualisation of *matha/mala*. Further difficulties arose from an incomplete understanding of terms like *bapurru*. Williams (1986, p.163) comments that Blackburn's description of Yolngu social organisation 'consists of negative characterisations hedged with dubiety'. Her book is subtitled 'A system of land tenure and the fight for its recognition'.

22 Henry Reynolds, in *The Law of the Land* (1988), details much of this historical material.

23 The trial was in two parts: the court sat for 13 days during May and June 1970 in Darwin and 40 days in Canberra, intermittently from September to November 1970.

24 The 2nd Australian edition, edited by Gobbo, Byrne and Heydon, appeared in 1979 and relied heavily on the 4th British edition, published in 1974. The volumes differ minimally; the Australian edition includes relevant Australian cases and precedents. I use the 2nd Australian edition because it is closest in time to the Milirrpum case; and for convenience I refer to the 2nd Australian edition as 'Cross 1979'.

25 Cross 1979, p. 1.

26 *Ibid.*, p. 4.

27 Revised statement of claim, 1/3/1970 (Purcell Papers).

28 Blackburn's decision, [17 FLR 1971], p. 156 (henceforth cited as Blackburn 1971).

29 MTS, 10/6/1970, p. 901. On 9/9/1970 Woodward showed the map to Berndt, but before he could ask any specific question about it, Ellicott objected 'to any question which seeks to get this map into evidence'. According to Ellicott, the map did not have 'any probative value, though this did not stop him from showing it to Stanner two days earlier (MTS, 7/9/1970, p. 934 & 9/9/1970, p. 1071/2).

30 Cross 1979, p. 8.

31 Cross and Wilkins 1996 (7th edition), p. 15.

32 Cross 1979, p. 6. Holdsworth (2nd edition, Vol. 9, p. 217) quotes Wigmore as saying that hearsay became inadmissible as evidence at some point between 1675 and 1690.

33 As an appropriate test of relevance, Cross (1979, p. 18) endorses the practice of rendering the matter under discussion into the form of a syllogism, in which 'the alleged evidentiary fact constitutes the minor premiss'. (A syllogism typically takes this form: all A have spots [major premise]; B has spots [minor premise]; therefore B is an A [conclusion].)

admitting Yolngu oral testimony.³⁴ Difficulty arose, however, when witnesses repeated what others had told them — in other words, hearsay — and so a way had to be found to preserve such testimony. It was senior counsel for the Commonwealth — Solicitor-General Robert Ellicott — who offered a solution, even before the first Yolngu witness had taken to the stand.³⁵ It might be possible, he suggested, for Yolngu testimony to be heard as ‘reputation’, the name given to a recognised exception to the hearsay rule.³⁶ Reputation concerns certain ‘ancient facts’ that are reputed or accepted by a particular community to be true: well-known and well-established facts such as the course of an old road, the location of a river ford or the limits to public land.³⁷ Ellicott set out the conditions that needed to be satisfied for the reputation to be admissible: it had to pertain to an ancient matter and the reputation itself had to be ancient; the reputed statements had to be those of a deceased person; it had to be a widely-held reputation, one ‘formed among a class of persons who were in a position to be aware of the subject matter’, rather than an individual’s assertion; it had to concern a matter of ‘public or general interest’, not some private affair.³⁸

Before outlining these conditions for reputation, Ellicott had suggested that once all the Yolngu evidence had been heard — and only then — could Blackburn ‘determine whether the evidence they have given [was] within those categories of traditional evidence’ and thus admissible.³⁹ Justice Blackburn responded that he was ‘not convinced of anything yet’ and was unsure about the suggested course of ‘applying the principles’ only after hearing the evidence.⁴⁰ Curiously, after all the evidence was heard, it was Ellicott who argued that all facts established through reputation should be declared inadmissible; and it was Blackburn who, in his written judgment, endorsed reputation as the correct principle to follow. In a later section I will canvas the objections of Woodward and Ellicott, together with Justice Blackburn’s rulings, on reputation and the admissibility of Yolngu testimony.

In prescribing reputation as the appropriate course, Ellicott also stipulated that Woodward should refrain from putting leading questions to his witnesses, not only because legal etiquette required him to do so when adducing his evidence but also because Ellicott did not want to be constantly interrupting Yolngu testimony with objections to inappropriate questions. Woodward could only say he would do his best, though he would be picked up time and time again by either Blackburn or Ellicott or

34 Blackburn 1971, p. 153.

35 Ellicott was appointed Solicitor-General in May 1969, following the appointment of the incumbent Anthony Mason to the NSW Court of Appeal (NAA A5882 CO550). The only changes in counsel since the interlocutory proceedings were the addition of Ellicott and the subtraction of A.B. Kerrigan from Nabalco’s team. Note that Yolngu did not attend the earlier interlocutory hearing.

36 MTS, 26/5/1970, pp. 138-139. The full transcript is available in 7 volumes at the AIATSIS library; substantial portions can also be found in digital form in the NAA — A432 1968/649 Attachments 6 & 7.

37 Cross 1979, p. 479.

38 MTS, 26/5/1970, pp. 138-139. Ellicott mentioned two further conditions: the reputation ‘must be as to the custom, or right, itself and not as to particular occasions of its exercise’; and ‘the reported statements must have been made before a dispute in the matter arose’.

39 MTS, 26/5/1970, p. 113.

40 *Ibid.*

another member of defence counsel for his manner of questioning.⁴¹ As Woodward later observed, ‘Justice Blackburn took a rather narrow view about what constituted a leading question’. According to Woodward, it was fine to ask ‘What did your mother say to you when you were with her at Caledon Bay?’; but ‘Did your mother talk to you about that land?’ was held to be leading.⁴² The difference might be discernible in English, but who could possibly say how the questions might fare in translation? At various points during the trial Blackburn expressed other doubts about the soundness and relevance of the questions. The judge confessed that he failed to understand the significance of a great many questions posed during the trial;⁴³ and that he had ‘heard so much in this case, on both sides, the relevance of which I simply do not yet understand, but I have learnt to be fairly patient’.⁴⁴ At another stage, Blackburn declared that he was ‘prepared to take the relevance’ of some line of questioning ‘on trust for the moment’ until he ascertained the direction of the questions, though he did wonder aloud whether Yolngu witnesses were thinking ‘what on earth have I been asked that question for?’⁴⁵

It is almost time to consider some of the Yolngu testimony about their country, but before doing so, I want to reintroduce the Yolngu witnesses, most of whom have made appearances in earlier chapters. On this occasion the Rirratjingu clan was represented by Milirrpum, Dadaynga and Wandjuk Marika; only Mungurrawuy Yunupingu appeared on behalf of the Gumatj, although Mungurrawuy’s son Galarrwuy interpreted some of the proceedings and for a time was considered a potential witness (see below). The following men were the sole representatives of their clans: Daymbalipu Mununggurr for the Djapu; Birrikiti Gumana for the Dhalwangu; Larritjanga Ganambarr, the Ngaymil; Narritjin Maymuru, the Manggalili; Matjidi Wanambi, the Marrakulu; and Monyu Gurruwiwi, the Galpu. As in the interlocutory hearing, Daymbalipu was a named plaintiff — along with Milirrpum and Mungurrawuy — since he was bringing the action on behalf of all the clans normally resident on the Gove Peninsula, excepting of course the Rirratjingu and Gumatj. Of the eight clans whose members appeared as witnesses, five had actual land holdings on the peninsula: Rirratjingu, Gumatj, Dhalwangu, Galpu and Ngaymil.⁴⁶

During the Darwin phase of the trial, there was a constant Yolngu presence in the courtroom; even when they were not in the witness box offering testimony, most of the Yolngu witnesses attended, and, while they heard everything that was said, it is doubtful that they understood much of it.⁴⁷ Of course, they would have grasped the flow of the dialogue rendered in Gumatj *matha* or another of the Yirritja dialects because these were the languages with which the three interpreters were most conversant. As well as Galarrwuy, Wulanybuma Wunungmurra (a Dhalwangu man) and Joyce Ross — who had been a teacher at Yirrkala since 1963 and who spoke only Gumatj — were on hand

41 *Ibid.*, p.141A. During cross-examination, counsel are free to ask leading questions.

42 Woodward 2005, p. 102.

43 MTS, 8/6/1970, p. 738.

44 MTS, 4/6/1970, p. 652.

45 MTS, 8/6/1970, p. 738.

46 As noted in Chapter 5 another small piece of land on the southern shore of Melville Bay was said to be held jointly between the Gumatj, Wangurri and Warramiri clans, but since no witness was called from either of the latter clans, I have ignored this parcel of land here.

47 MTS, 24/11/1970, p. 2831.

to undertake the translation and interpretation.⁴⁸ Yolngu had wanted Beulah Lowe to be the main interpreter, but Rev. Bernie Clarke — who was acting Chairman of MOM’s Northern Synod at the time — forbade her doing so, because he feared ‘it would be too much of a strain seeing [she had] been unwell for so long’.⁴⁹ In the event, Miss Ross undertook the bulk of the translation work in the Milirrpum trial.

So that the court could fully appreciate the Yolngu evidence, counsel for both sides agreed that some anthropological contextualisation might be helpful, and so W.E.H. Stanner became the first witness, although his cross-examination was deferred until after the conclusion of the Yolngu testimony. In a similar move, Woodward sought to have Galarrwuy appear as a witness ahead of his father: he felt Galarrwuy’s facility with English, together with his ability to decipher maps, would prepare the way for Mungurrawuy’s testimony. Woodward argued too that Galarrwuy’s evidence would help to prove that ‘the custom of handing down the boundaries [between clan territories] by word of mouth has continued into recent years’.⁵⁰ Ellicott objected to the proposed reordering of witnesses on the grounds that ‘if the basic reason for calling the evidence is that Mungurrawuy cannot communicate, then this should be first established’. He further objected that Galarrwuy would be ‘giving hearsay from his father’, though the point is surely debatable, since Mungurrawuy would have been able to corroborate or refute his son’s versions of his own statements. Blackburn, however, refused Woodward’s request,⁵¹ and so Galarrwuy did not testify, but was on hand as an interpreter.

The following sections, like this one, draw primarily on the transcripts of the Milirrpum trial. In adopting this course, the thesis departs from a number of earlier works, which have relied almost exclusively upon Justice Blackburn’s published decision.⁵² I have chosen to focus on the transcripts, because, when read in tandem with the scholarly work and the formal decision, they provide a more well-rounded perspective of the issues at hand. In arriving at this strategy, I have found the academic writing, and even the final judgment, to be occasionally at odds with the transcripts and hence susceptible to misrepresenting a number of crucial matters. As one example, from her reading of the published judgment historian Miranda Johnson came to the conclusion that reputation — which in her opinion is the most memorable aspect of the case today — entered the proceedings on Blackburn’s initiative, a position that certainly runs contrary to my understanding of the matter, as I have already

48 Williams 1986, p. 2. Joyce Ross was first posted to Galiwinku in 1961, but was transferred to Yirrkala 13 months later (McKenzie 1976, pp. 185-6). She is initially referred to in MTS as ‘Jean Ross’ (26/5/1970, p. 144).

49 See Beulah Lowe’s letter of 1/5/1970 in Wearing 2007 at pp. 338-9. She had spent four months in Sydney recuperating from a severe bout of depression.

50 MTS, 29/5/1970, p. 435.

51 *Ibid.*, pp. 434-6. Another reason Woodward gave for Galarrwuy’s immediate appearance on 29/5/1970 was convenience: his offsider Fogarty had had a few conferences with Galarrwuy and was currently available to take this witness through his evidence, but would soon return to Melbourne. On 10/6/1970 (MTS, p. 870), Woodward announced that Galurrawuy would not be called as a witness.

52 For example, Gumbert 1982. Williams 1986 relies for the most part on the official judgment, but she does note at one point that ‘the transcript does not record what was said originally in Yolngu dialects, nor does it, therefore, demonstrate the errors and truncations that occurred in translation’ (1986, p. 161).

shown.⁵³ Nevertheless, the use of transcripts still has inherent difficulties, one of them being that the procedures of law and the exchanges between lawyers and witnesses, especially when speaking via interpreters, are far messier, far more equivocal, than legal textbooks or polished decisions generally admit. Thus, oddities of one sort or another are encountered in the accounts below, and these have been included to show something of the rub between two disparate traditions in the novel legal quest of native title. Mention of such oddities should not, however, be taken as a mark of disrespect for the law.

III

Dadaynga was called as the first Yolngu witness. After a few preliminaries to establish Dadaynga’s identity, Woodward asked awkwardly, ‘Do you understand a map?’, which he immediately rephrased as, ‘Can you read a map?’ To this Dadaynga responded simply, clearly and, I presume, confidently, ‘Yes’. For the court’s benefit he was asked to indicate on a map the respective locations of Yirrkala, the mission, Nhulunbuy and Drimmie Head. After successfully completing these exercises, Dadaynga was asked to show the places he lived before the coming of the mission in 1934.⁵⁴ The map under discussion was Nabalco’s of the Gove Peninsula, which eventually became Exhibit B.⁵⁵ As Dadaynga pointed, Woodward attempted to describe the various locations. Woodward then wanted to know whether only Rirratjingu living at these places. Dadaynga’s reply was unclear, and so the question was put again via interpreter Joyce Ross: it seemed that sometimes his immediate family lived at these places with members of the Gumatj clan. When he was young, Dadaynga was shown country by his mother, brothers and uncles: they nominated Nhulunbuy, Melville Bay and Wirrawa as Rirratjingu places; Warrimbiri (Point Dundas) and Butjumurru (Drimmie Head) as Gumatj.⁵⁶ Woodward then asked: ‘Is there any part on the top part of the map which they told you belongs to any other clan except Gumatj or Rirratjingu?’ Dadaynga pointed to a Galpu place, Bukpukbuy, and he nominated Banambarrnga as a Dhalwangu place.⁵⁷

Until this point, Dadaynga had been talking mainly about the country shown to him by his mother and his uncles, but since two of Dadaynga’s uncles — Birrikitji and Mungurrawuy — could ‘come and give evidence’ in person, Ellicott suggested it was time for Dadaynga ‘to tell us the stories that his brothers told him’, because his brothers — presumably Mawalan and Mathaman — were ‘the only ones who can’t come’ to court (due to their demise).⁵⁸ The story he embarked upon was that of the Djang’kawu travels, starting at Yalangbara. The name prompted a surprisingly gauche question from Woodward: ‘Has it got a proper name?’ Dadaynga responded simply, ‘Port Bradshaw’.⁵⁹ Another place associated with the Djang’kawu was rendered in the

53 See Johnson’s chapter in Attwood and Griffiths (eds) 2009.

54 MTS, 26/5/1970, pp. 148-9.

55 *Ibid.*, p. 174/5. The map had been introduced to the court the previous day in the course of Stanner’s evidence.

56 *Ibid.*, pp. 152-156.

57 *Ibid.*, p.156.

58 *Ibid.*, p. 166.

59 *Ibid.*, p. 172. With subsequent witnesses he would ask, ‘Does it have an English name?’ (e.g. MTS, 9/6/1970, p. 829).

courtroom as ‘Bilidi’, which Dadaynga could not locate on the Nabalco map, but which he described as ‘a little mountain somewhere around, just up here away from the sea’. At this point Woodward switched to another map, which he identified as a Gove survey map with the improbable scale of 1: 2,500 (later corrected to 1: 250,000) (Fig 7.1).⁶⁰ ‘Bilidi’ is, in fact, Bilirri, which has more recently been described as a ‘prominent rocky hill on the western side of Luluwuy Bay’ or Dalywoi Bay.⁶¹ Dadaynga could not find ‘Bilidi’ on this map, either.

Discussion of the Djang’kawu soon gave way to the question of whether Rirratjingu people could give away or sell their land, to which Ellicott objected. Blackburn advised Woodward to put his question ‘in the least possible leading fashion’, even while appreciating that ‘you have got to bring something to his mind to introduce a new topic’.⁶² The question eventually became ‘Can the Rirratjingu people get rid of the Rirratjingu land?’, to which Dadaynga responded bluntly ‘No’ before explaining that because ‘*wangarr* gave it’, the land was considered inalienable.⁶³

It was late in the afternoon of Tuesday, 26 May, when Ellicott began cross-examining Dadaynga; on the following day he continued raking over much the same ground covered by Woodward. When Ellicott asked Dadaynga to point out Lamamirri country on the Nabalco map, Dadaynga responded curtly, ‘I pointed to Lamamirri country already, yesterday’, signalling perhaps that he was becoming exhausted or irritated by the proceedings or that he had an imperfect grasp of those proceedings.⁶⁴ Undeterred, Ellicott called for the Gove survey map, on which Dadaynga indicated the location, but for some reason Ellicott was still not satisfied with Dadaynga’s response and so called for yet another exhibit. This he introduced with: ‘I don’t know whether you can understand this, but that is what we call an aerial photograph. ... Do you think you could follow an aerial photograph if I tell you where the various places are?’ On the photograph Ellicott successfully pointed to Melville Bay, Drimmie Head, Point Dundas and Wirrawa, but, strange as it may seem, he failed to accurately locate Yirrkala.⁶⁵ Dadaynga again successfully identified Lamamirri country on the aerial photograph.

The matrix for the questioning of all Yolngu witnesses was laid down in the course of Dadaynga’s testimony, and the bulk of the questioning was aimed at establishing which clan was responsible for which country. It was hoped that this line of questioning would establish beyond doubt that a solid reputation regarding territorial holdings existed among the plaintiff clans. I shall return to this point about reputation shortly, but first I want to dwell a little further on the means by which such testimony was elicited — the maps and photographs.⁶⁶ I do so to demonstrate Yolngu proficiency with visual material, which also serves to highlight the lawyers’ lack of visual literacy.

Milirrpum followed Dadaynga into the witness box. He too was made to demonstrate

60 MTS, 26/5/1970, p. 174. The survey map becomes Exhibit A.

61 West (ed) 2008, p. 187; N.Williams (pers. comm., 24/9/2012).

62 MTS, 26/5/1970, p. 179.

63 *Ibid.*, p. 180-181.

64 MTS, 27/5/1970, p. 251. As mentioned in earlier chapters — especially Chapter 5 — because the Lamamirri clan had dwindled to two women, its country was being looked after by the Gumatj clan.

65 *Ibid.*, p. 254.

66 Half of the witnesses were considered capable of reading such material: besides Dadaynga, Milirrpum, Laartjanga, Narritjin and Wandjuk were called on to do such readings.



Fig 7.1: The relevant portion of the ‘survey’ map of the Gove Peninsula

his ability to read maps, and, after he had successfully completed the exercise, he was asked to point out Lamamirri country on the Nabalco map, Exhibit B.⁶⁷ In the course of doing this, he mentioned the Manyjarrarrnga River, which flows into Dalywoi Bay, as one of the defining features for Lamamirri country. He was asked by Woodward to show the location of the river on the map, but he inadvertently pointed to Garriri or Rocky Creek, which runs into Rocky Bay. Woodward then produced an enlarged version of the aerial photograph Ellicott had used the previous day; in doing so, he wondered whether this latest exhibit would cause confusion because it used a ‘different shading of the sea’ to that of the map.⁶⁸ Before Woodward had a chance to introduce the image to Milirrpum, Ellicott intervened to give Blackburn a lesson in reading aerial photographs. This time he mistakenly referred to Dalywoi Bay as Caledon Bay. While Milirrpum had no difficulty in locating Manydjarrarrnga or in pointing out the current extent of Gumatj landholding (which now encapsulated Lamamirri country), Woodward found it difficult to put Milirrpum’s demonstration into words and admitted the difficulty was due to his own lack of familiarity with aerial photography.⁶⁹

In cross-examination, Milirrpum was asked about the location of Bilidi. It seems he had both the aerial photograph and the Gove survey map (Exhibit A) in front of him, since he, according to Blackburn, seemed ‘to be pointing to one point on the aerial photograph and another one on the map’. Blackburn wondered if the witness would find it easier to read the photograph, and to this suggestion interpreter Joyce Ross responded

67 MTS, 28/5/1970, pp. 329-332.

68 *Ibid.*, p. 333. The enlarged photo becomes Exhibit 2; exhibits for the defence are denoted by numerals, those for the plaintiffs with letters.

69 He says: ‘If I could read air photographs better I would know what that was; it looks like a swamp’ (MTS, 28/5, p. 335).

that the image reversed mapping’s conventions: according to her, Milirrpum was ‘used to reading a map that has the mountains marked brown’, whereas the dark bits in the photograph denoted something else, possibly jungle.⁷⁰ Milirrpum had no difficulty in locating Bilidi on the survey map; Woodward rendered Milirrpum’s demonstration into words: ‘you pointed to the hills ... and they are coloured brown, above the word “Reserve” on Exhibit A’.⁷¹

For the remaining witnesses, the questions took the form: what place did your father (or mother) show you? What did your father (or mother) tell you about that place? If the questions were put any other way, the predictable objections of hearsay and leading the witness ensued. For example, while examining Narritjin, Woodward boldly varied the question to include place names: ‘Did your mother tell you anything about the country between Yirrkala and Warramina?’ Harris, for the Commonwealth, immediately objected on the grounds that Woodward should first ‘get the witness’s answers unprompted by direction to particular places’; to his mind, it was another form of leading question.⁷² Woodward countered by saying that he deliberately asked the question in this way, because stating place names was ‘the only way in which one can make any progress’, but in asking the question he was also trying to find out about places that did not appear to have names. He continued with obvious exasperation:

Places that have a particular name can thus be identified. I think I could go on asking ‘And what other country?’ forever, and it would not occur to the witness to talk about the country between the particular places that are identified and, unless I do bring his mind to that [country in between], I believe that I would be just wasting the time of the Court in keeping on asking about places that do not have an identifiable name.⁷³

By the time Woodward came to his last witness, Wandjuk, he had almost perfected his questioning. He grouped four or so places in close proximity to each other and asked Wandjuk about each place in turn. Then he would ask Wandjuk to leave the witness box and point to the four places in turn on one of the maps. This procedure was repeated five times, although on the third occasion Wandjuk, with apparent ease, indicated the places on an aerial photograph. If Woodward had become a little more astute in his questioning, then the same could also be said about Wandjuk’s appreciation of courtroom rules. He had, for example, been talking about places associated with Wuyal the Sugarbag Man, but in mentioning Nhulunbuy he forgot to say that his father told him the story. Unprompted and uninterpreted, he immediately added, ‘That what my father was telling’.⁷⁴

The ten Yolngu witnesses were asked about many of the same places: overwhelmingly, they nominated Banambarrnga and Rerriwuy as Dhalwangu places; Butjumurru and Warrimbiri as Gumatj; Bukpubpuy as Galpu; Wirrawa and Yirrkala, Rirratjingu. As they linked specific places with specific clans, Yolngu were unaware that their responses were being tabulated by an officer from the Crown Solicitor’s office. The purpose of

70 MTS, 29/5/1970, p. 412.

71 *Ibid.*

72 Warramina lies just to the east of Rerriwuy; MTS, 8/6/1970, p. 711.

73 *Ibid.*, p. 712.

74 MTS, 9/6/1970, p. 823.

the table was to ascertain the degree of consistency in the Yolngu testimony and thus gauge if a reputation could be said to exist among the witnesses for the places listed. The table does provide ample reassurance of consistency, at least for well-known places, though for more obscure places, errors and omissions can be detected.⁷⁵ For example, no mention was made of Bilidi, the place that Dadaynga had trouble locating on the exhibited maps.⁷⁶ Or, to take another example, the entry for Wurriwidi (Rocky Point) is highly ambiguous. According to the table, Wurriwidi was mentioned by Matjidi and Wandjuk as being a Rirratjingu place, while Mungurrawuy was recorded as suggesting it belonged not only to Rirratjingu, but to Galpu, Ngaymil, Datiwuy and Djapu clans as well. As it happened, Mungurrawuy’s response came in just one sentence:

Woodward: Did your father tell you about Rocky Point, Wurriwidi?
Mungurrawuy (via interpreter): Djapu, Rirratjingu, Galpu, Ngaymil, Datiwuy, Ngaymil.
Woodward: Did your father say who was first — which clan was first in that country?
Mungurrawuy: Djapu, Rirratjingu, Galpu.⁷⁷

The table accurately recorded the response, but in doing sowed the seeds of confusion. Above all, Mungurrawuy was acknowledging it to be a site for the Dhuwa moiety. In his final submission, Ellicott made much of the table’s inconsistencies. He tried to insist that perfect consistency might have been achieved if every witness had affirmed the same land-clan linkage for an identical list of places, but for this to be accomplished every witness should have been asked the same questions about the same places, perhaps in the same tedious order.⁷⁸ In mounting such an argument, Ellicott was attempting to show, in the first place, that no reputation or consensus existed among the Yolngu community on land holdings and, more contentiously, that no system of law and custom could be said to exist within that community. I will go through Ellicott’s argument in some detail, even though, as we shall see, the argument was ultimately rejected by Blackburn. I begin with the issue of system or its lack.

The question about system arose from a number of assertions in the Yolngu statement of claim: for example, the fourth paragraph held that ‘pursuant to the laws and customs of the aboriginal native inhabitants of the Northern Territory, each clan holds certain communal lands’. Ellicott claimed that assertions of this kind needed to be proved, and perfect agreement among all Yolngu witnesses about clan-land association would have been sufficient proof, since complete consistency would point to a system of law and culture. While the table showed some ‘coincidence as to particular places’, it did not prove the existence of ‘a body of law or a set of rules covering their conduct, which they regard as obligatory’.⁷⁹ For rules to be regarded as a body of law, an entire community had to submit or subscribe to a particular set of rules.⁸⁰ Ellicott further argued

75 The table can be found at NAA A432 1968/649 Attachment 4. A simplified version appears as Appendix 3 to this thesis. See also Blackburn 1971, p. 180.
76 The copy I cite does not mention Bilidi, but Ellicott cites another version, in which Bili-di appears at ‘the top of the first column’ (MTS, 29/10/1970, p. 1958/1959).
77 MTS, 1/6/1970, p. 462/3.
78 MTS, 29/10/1970, p. 1957; 3/11/1970, p. 2146.
79 MTS, 29/10/1970, p. 1957.
80 MTS, 4/11/1970, p. 2195.

that since in Yolngu society there was ‘no body, whether it is an individual or a group, who make[s] rules’ and there was ‘no person or body who resolves disputes between groups or between people’, no system of law could be said to exist.⁸¹ At best Yolngu society could be said to operate ‘according to the law of nature ... and not according to the law of man’.⁸² Ellicott would return to his argument about lack of system time and time again.

When it came to reputation, the issue of community was again at the fore. According to Ellicott, it was necessary for the plaintiffs ‘at least to identify the community within which the reputation’ was said to exist. It was further necessary to show that an ‘identity’ existed ‘between the community of people in which the reputation is alleged to be held and the community of people which enjoys the right which the reputation seeks to establish’, because if these two communities could be shown to share knowledge — or were in fact one and the same community (a point Ellicott left unstated) — then ‘the reputation was likely to be trustworthy’ and hence recognisable to the common law.⁸³ Ellicott argued further that even if a reputation was found to exist, then it pertained to rights not of a public or general nature — as the common-law rule required — but rather to private rights to territory of a particular clan, and these were ‘not rights enjoyed by the whole community’.⁸⁴

In his final submission, Woodward agreed with Ellicott that three requirements needed to be satisfied for reputation to be proven: there had to be ‘a community within which the laws and customs relied upon have their operation’; the evidence had to ‘relate to public or general rights, not private rights’; and the evidence ‘must be of reputation, not of personal opinions’.⁸⁵ He added, however, that these requirements were not of a ‘narrow, technical’ kind, but were rather ‘broad, commonsense principles’.⁸⁶ The community, he said, was readily identifiable: it was ‘the cultural bloc of clans which inhabits north eastern Arnhem Land’, but it was unnecessary ‘to be precise in identifying all the persons belonging to this community’, as Ellicott seemed to imply.⁸⁷ The rights asserted by the plaintiffs ‘belong[ed] to all members of each clan’, were ‘recognised by all members of the community’ and ‘publicly acknowledged in ritual ceremonies’.⁸⁸ Woodward chose to distinguish reputation from personal opinion by talking of the ‘duty’ of Yolngu parents ‘to inform their children about the ownership of the land on which they would spend their lives and about the spiritual significance of all the places they visited or passed’. In doing so, they ‘were passing on an oral tradition’, which was within the realm of reputation, but which did not stem from ‘personal opinions or prejudices’.⁸⁹ He argued further that not all the Yolngu testimony had to be heard as reputation: at least some of it ‘related to the situation today or at least to events within the direct knowledge of the witness[es]’.⁹⁰

81 *Ibid.*, p. 2195.
82 MTS, 3/11/1970, p. 2105.
83 MTS, 28/10/1970, pp. 1912-13.
84 *Ibid.*, pp. 1913.
85 MTS, 20/11/1970, p. 2771.
86 *Ibid.*, p. 2771.
87 *Ibid.*, p. 2771.
88 *Ibid.*, p. 2772.
89 *Ibid.*, p. 2772.
90 *Ibid.*, p. 2772.

At base the arguments about reputation from Ellicott and Woodward concerned the admissibility of Yolngu evidence, and, in this respect, Blackburn’s judgment favoured Woodward. Blackburn declared Ellicott’s public-private argument ‘ingenious’ but ultimately ‘unconvincing’, and, while he judged the argument about community identity to be Ellicott’s ‘most weighty’, Blackburn found it was ‘not sound’: there was, he said, a recognisable community, as well as ‘a complex of different but consistent rights’ that was capable of being attributed to this ‘whole community’.⁹¹ Significantly, Justice Blackburn chose to conclude the point by noting:

If it were practically possible for each witness to describe the total system applicable to all the people in the group, *in one speech without interruption*, the matter would be easier to see in its true light.⁹²

Here Blackburn may appear to be endorsing the notion of allowing Yolngu to state their position fully, but the notion was a passing or idle fancy, since he, in presiding over the court, felt constrained to ensure that the more usual practices of evidence giving were upheld. Justice Blackburn further noted that Ellicott had failed to make out his case for ‘insufficient unanimity’ among the Yolngu witnesses and could find ‘no cases of actual contradiction’ in the table of place names.⁹³ To Blackburn the ‘remarkable’ thing about the table was ‘its consistency’; he could find ‘no instance of any given place being attributed to one clan by one witness and to another clan by another’,⁹⁴ although discrepancies do exist as I have already suggested for Wurriwidi. Blackburn would later ‘exaggerate the gist’ of Ellicott’s argument concerning the table: the judge parodied the Solicitor-General as demanding that every witness be ‘not only unanimous, but word-perfect’ on every place raised in the case.⁹⁵ Blackburn construed Ellicott’s argument as amounting to:

[I]f there is property in land, there must either be a written or pictorial means of discovering who is the owner of any particular piece of land (the function carried out by title-deeds or registers of title) or, if that is not possible among primitive people, then there must be a sufficient number of witnesses who can produce a register of title out of their memories; that is that an oral register of title must be repeated in full detail by each witness.

The ‘fallacy’ of Ellicott’s argument, the judge continued, lay in ‘the assumption that there cannot be rights of property without records or registers of title’.⁹⁶ Also noteworthy is the curious reference to title deeds in ‘pictorial’ form: it may be an allusion to some obscure fact of legal history or it may simply be a rhetorical flourish on the judge’s part. Most certainly it connotes neither bark paintings nor *rangga*, because, as we have already seen, Blackburn refused to equate these objects with title deeds, though Yolngu certainly did.

91 Blackburn 1971, pp. 156-8.
92 *Ibid.*, p. 158, my emphasis.
93 *Ibid.*, p. 271.
94 *Ibid.*, p. 180.
95 *Ibid.*, p. 271.
96 *Ibid.*, p. 272.

As the last plank in his argument, Ellicott suggested that the Yolngu testimony did not amount to ‘evidence of a reputation at all’; at best it was nothing more than a statement of ‘opinion’ or ‘a statement of faith’.⁹⁷ Ellicott claimed that since the rules about reputation had developed ‘to enable ancient rights and duties to be established ... under English law’, they did not extend to similar ‘ancient rights under some other system of law’, unless that other system had been formally recognised by, or incorporated into, the domestic law — in this case, the laws of the Northern Territory.⁹⁸ According to Justice Blackburn, in this Ellicott was essentially arguing that since ‘the common law had no knowledge of, and could not recognize, rights of the kind which the plaintiffs [were] seeking to enforce ... the reputation principle therefore had no application’. The judge found such reasoning unacceptable: Ellicott’s reading of the rules of evidence was, he said, ‘mechanical’, rather than ‘rational’.⁹⁹

IV

Counsel for the defence also attempted to have much of the anthropological evidence declared inadmissible as hearsay; it also disputed the anthropologists’ standing as expert witnesses in the case. No sooner had Stanner, the first witness, taken the stand than Ellicott launched into his first objection over a seemingly trifling matter, which he exploited to foreshadow the main themes of his case against the anthropologists and their evidence. He argued that the ‘kernel’ of the plaintiffs’ case was, as already noted, to prove the existence of a system of Aboriginal law and custom, a subject upon which the anthropologists could not testify because they could not speak about it from their own knowledge or experience but rather ‘relied upon what others [had] told’ them. Those others, if they were alive, could give their own testimony to the court: it was, he said, ‘a clear case’ of applying the hearsay rule; reputation did not come into play here. Without the slightest hint of contradiction, Ellicott also argued that the interpretation of Aboriginal law and custom did not present any ‘special problem’; it was ‘simply a matter of saying what it is’, and those best placed to give an account of it were Yolngu witnesses. After all, Aboriginal law and custom were merely ‘a question of fact’ and not a question of law. ‘There is no science which one can apply to it; therefore, an anthropologist is in no better position than Your Honour is in determining what that law and custom is.’¹⁰⁰ On the topic of Indigenous law and custom, Ellicott insisted that Stanner could not add ‘any expertise’: he was ‘merely a channel of communication and in that sense there [was] no science in interpreting the laws and custom’.¹⁰¹ Again, Justice Blackburn was unconvinced by Ellicott’s arguments, suggesting that in fact ‘a great deal of science’ might be required when interpreting Aboriginal law and custom. Anthropologists should, for instance, be able to explain the principles of social organisation to the court in ways that Yolngu witnesses could not.¹⁰² Ellicott countered that if Yolngu failed to explain ‘simple notions’ like social organisation, then the difficulty lay

97 MTS, 28/10/1970, p. 1912.
98 *Ibid.*, p. 1913.
99 Blackburn 1971, p. 155.
100 MTS, 25/5/1970, p. 29.
101 *Ibid.*, p. 30.
102 *Ibid.*, p. 30.

not with communication but was rather an indication that such concepts did not in fact exist in their society.¹⁰³

After a broad discussion of Yolngu social organisation, the talk between Woodward and Stanner turned to the relationship Yolngu clans enjoyed with their country. The discussion about land proceeded uncontroversially until the point where Woodward asked whether ‘a system of land tenure’ existed in the Gove district. Ellicott objected to the question on the grounds that this was now a question of law and, since Stanner was not a lawyer, he was in no position to respond.¹⁰⁴ When Woodward protested that the Solicitor-General was putting ‘quite unnecessary difficulties’ in his way, Blackburn suggested that Ellicott’s objection could be side-stepped by deleting ‘tenure’ from the question.¹⁰⁵ The way was then clear for Stanner to give a brief account of clan-land association along the lines of those set out in the previous chapter.

Ellicott’s strongest and most sustained objection stemmed from Woodward’s question about the possible effect the Macassan presence had had on Yolngu social organisation; he insisted that Stanner’s testimony on the topic be ruled inadmissible. The objection generated so much debate that Stanner was obliged to quit the stand — on the judge’s suggestion — until the following day.¹⁰⁶ Ellicott tried to argue that in responding to the question Stanner was giving ‘the historian’s evidence’, though he was not qualified to do so, and that Woodward was attempting to introduce speculative evidence about Yolngu social organisation in 1900.¹⁰⁷ The essential difficulty, Ellicott argued, was that no records on Yolngu society existed at the turn of the 20th century and so it was impossible to make any pronouncement about its organisation at that time. According to Ellicott, one could make meaningful statements about the society only in the wake of Lloyd Warner’s research, conducted in 1927 and eventually published in 1937.¹⁰⁸ In the course of the discussion Justice Blackburn made his views on history known, opinions that are invisible in his final judgment. The judge preferred to reserve the term ‘history’ for ‘something which is written by people who are conscious of what they are doing’ and by ‘an ordered and settled civilization which has known all about its history for hundreds of years’.¹⁰⁹ Ellicott conceded that Yolngu might give ‘traditional evidence’ on such matters, but an expert witness like Stanner was in no position to do so.

Ellicott maintained that under the ‘ordinary rules’ of evidence, an expert’s ‘facts’ were really ‘only assumptions’ until they were proven by the rules of evidence; an expert was required to state his assumptions so that the court could check that they were correct.¹¹⁰ In Blackburn’s view it was usual for an expert to summarise ‘a field of knowledge, which is contained in many learned treatises’ and if necessary ‘to defend his opinions on the basis of what has been written’ by citing the books upon which he

103 *Ibid.*, p. 34.
104 *Ibid.*, p. 53.
105 *Ibid.*, p. 53.
106 *Ibid.*, p. 108. Stanner was asked to leave the stand at p. 81 and did not return until p. 114, on 26/5.
107 *Ibid.*, p. 81.
108 *Ibid.*, p. 87. Incidentally, it was Warner’s work which triggered the objection. He suggested (1958, p. 37) that the Macassan presence encouraged greater Yolngu mobility and also prompted Yolngu clans to diminish in size and for the overall number of clans to expand.
109 MTS, 25/5/1970, p. 93 and 85 respectively.
110 *Ibid.*, p. 87.

relied.¹¹¹ After each of the judge’s interventions, Ellicott’s position seemed to harden, until finally he declared that it was insufficient for an expert to state that he assumed the documents upon which he relied to be correct, but that those writings ‘must be shown to be factually correct in themselves’.¹¹² Ellicott explained the rule in this way: if an expert simply said, ‘“Well, I based it on what X wrote in 1947”’, and X is in no better position than he is, then of course he cannot pull himself up by those boot straps’.¹¹³ According to Ellicott, it made no difference that X’s work was ‘widely recognized as a classic in this field and [had] great authority’, as Blackburn suggested.¹¹⁴ These various arguments formed the central strands to Ellicott’s challenge on expert evidence. It will be noted that they all come from Stanner’s evidence in chief, though the point about anthropological evidence amounting to hearsay was repeated a couple of times in the course of Ronald Berndt’s evidence.¹¹⁵ It should also be noted that Ellicott intervened far less in Berndt’s testimony, and one reason for this may be attributed to Berndt’s standing as the researcher (along with his wife Catherine) with the greatest field experience of and best publishing record for the Yolngu of the Gove Peninsula. Whereas Stanner had spent 11 days all told at Yirrkala, the Berndts had by this stage visited the community on at least six separate occasions and had spent about 15 months in total there. Ellicott sought to have Stanner dismissed as an expert witness because of his limited experience at Yirrkala, although Blackburn preferred to weigh his evidence accordingly.¹¹⁶ In responding to Ellicott’s major arguments on expert evidence, Woodward reminded the court that an expert witness did not have ‘to disclose all the material’ upon which his opinion was based, since an expert, by definition, was someone who over time ‘has learnt about his subject and he has gradually acquired more and more knowledge about that subject until he becomes able to express an opinion which is admissible as evidence’. The basis of that opinion could be challenged in cross-examination; the judge could determine how much weight the opinion deserved; and thus it was unnecessary to rule Stanner’s evidence inadmissible.¹¹⁷ In the realm of ‘historical fact’, Woodward continued, it was not necessary for an anthropologist to have observed some particular occurrence on some ‘particular visit to a particular place’. That anthropologist could also learn by directly ‘questioning these people about the habits of their childhood; what their fathers have told them and what their grandfathers have told them and what their legends are’. Anyone who had made such inquiries was, in Woodward’s opinion, a historian, and ‘the real importance of the historian’ lay in the fact that ‘he gets his facts from all sorts of contemporary sources, some of which he accepts, some of which he rejects, and weighs some things against other things’ before drawing conclusions.¹¹⁸

In his published decision, Justice Blackburn rejected Ellicott’s proposition that

111 *Ibid.*, p. 87.
112 *Ibid.*, p. 94.
113 *Ibid.*, p. 95.
114 *Ibid.*, p. 95.
115 See for example MTS, 8/9/1970, p. 1060 and 9/9/1970, p. 1069.
116 Blackburn 1971, p. 160.
117 MTS, 25/5/1970, p. 100.
118 *Ibid.*, p. 103.

anthropological evidence was inadmissible because it was based on hearsay.¹¹⁹ The judge accepted that ‘there is a valid field of study and knowledge called anthropology which deals with the social organization of primitive peoples’ and accepted that an anthropologist ‘should be able to give his opinion, based on his investigations by processes normal to his field of study, just as any other expert does’.¹²⁰ The law of evidence did not require him to treat anthropology differently to any other category of specialist knowledge. An anthropologist’s facts, like a medical practitioner’s facts, included ‘both what the expert observes and what he hears from other persons’, whether they be informants or patients.¹²¹ Furthermore, Blackburn agreed with the principle that ‘expert evidence is evidence of opinion, and that every opinion must be shown to be based either on proved facts or on stated assumptions’, but wondered how the principle should be interpreted.¹²² Part of an expert’s ‘special skill’, he continued, was ‘to select, and state, the “facts” which are relevant and significant, and reject, and omit to mention, those which are not’; part of the selection process was the inclusion or ‘the application’ of ‘unexpressed opinion’. Included in an expert’s ‘facts’ were many generalisations, which were now ‘accepted as valid within his field of knowledge’, but which had previously been regarded as ‘matters of disputed opinion’.¹²³ All in all, Blackburn concluded that ‘the question is one of weight, rather than that of admissibility’ of expert evidence and that ‘the court must be astute to inquire how far any conclusion proffered by an expert is indeed based on facts and to weigh it accordingly’.¹²⁴

It is for Blackburn’s various pronouncements on expert evidence — rather than reputation — that the Milirrpum case is chiefly remembered in legal circles these days. In their 2005 textbook on expert evidence, Freckelton and Selby hold it to be ‘the seminal Australian case’ on the admissibility of expert evidence and, more particularly, that of anthropologists and that of expert opinion.¹²⁵ Such status notwithstanding, the area of expert evidence is still not settled, and much of the difficulty stems from trying to distinguish fact from opinion.¹²⁶ When they are ‘in the realm of fact’, as Freckelton and Selby put it, experts are subject to the same rules of hearsay as other witnesses, but when they are within the realm of opinion, ‘some leeway has regularly been extended to them by bending the hearsay rule’. The ‘most controversial and most litigated issue’ remains the status of expert opinion ‘when not all of its factual issues have been proved to the court’.¹²⁷

V

Having seen how Stanner’s evidence was treated, it is now time to consider Ronald Berndt’s testimony. Contrary to what might be expected, Woodward’s questioning of

119 Blackburn 1971, p. 161.
120 *Ibid.*, p. 161.
121 *Ibid.*, p. 162.
122 *Ibid.*, though he used ‘applied’ instead of my ‘interpreted’.
123 *Ibid.*
124 *Ibid.*, pp. 162-163.
125 Freckelton & Selby 2005, pp. 33, 239-40. See also Freckleton 1987, pp. 85-86.
126 Freckelton & Selby 2005, pp. 11-12.
127 *Ibid.*, p. 209; emphasis in original.



Fig. 7.2: Milirrpum (left) and Mungurrawuy (right) ‘dividing’ country.

Berndt did not proceed along the same lines he used with the Yolngu witnesses. Only after Berndt had left the stand, did Woodward explain that he did not lead evidence to show which clans were associated with which country, because he expected such information would be treated as ‘hearsay in the mouth of an anthropologist’.¹²⁸ This seeming self-censorship was an odd position to take, given Berndt’s intensive mapping exercises and given Woodward’s subsequent arguments — and Blackburn’s ultimate pronouncements — about expert evidence. Instead, Woodward confined his questioning, for the most part, to the topics of Yolngu social organisation and Yolngu ceremonial life, and whenever he skirted too close to the topic of clan-land association Ellicott, predictably, intervened. Occasionally, Berndt managed to include in his answer a surreptitious mention of the significance of country. For instance, when responding to Woodward’s final question on ritual, Berndt said that because of the interconnections between Yolngu many people had responsibilities in ceremonies and added almost as an afterthought that ‘the whole area is criss-crossed with mythological tracks’. Woodward was then led to ask what consequences that remark had ‘for our purposes’, to which Berndt replied: ‘I see land given or charters to land being given by spirit beings’. And mention of charters prompted Woodward to ask whether charters were given for specific sites and gave Berndt the opportunity to explain that: ‘It is not just the point itself but ... the whole country is in fact sacred country. It is country that was given in *wangarr* times.’ Berndt further observed that, while sacred sites may be the focal points in a particular tract of country, the surrounding country was known by the same name as the sacred site.¹²⁹

The pertinence of these remarks will become apparent shortly.

As if to pre-empt Ellicott’s argument about the lack of a system of law and culture, Woodward also asked Berndt about the nature of territorial boundaries and permission to enter another clan’s country. He had raised these issues in passing with Yolngu witnesses. In one brief exchange about specific boundaries Dadaynga told the court

128 MTS, 15/9/1970, p. 1349.
129 MTS, 8/9/1970, pp. 1048-1052.

that Yirritja territory in Rocky Bay was confined to the area bounded by Wilama Point and Garriri Creek.¹³⁰ Another reference to boundaries came with Wandjuk saying that Mawalan had pointed out ‘the dividing line between Dhuwa and Yirritja’ country.¹³¹ But perhaps the most compelling testimony about boundaries came from a series of photographs taken by solicitor Frank Purcell on the Gove Peninsula the week before the trial. The photographs were intended, it seems, as a supplement or even a substitute for the Berndt map promised in the Yolngu statement of claims. These photographs became Exhibits C, D1, D2, D3 and D4, and the first of them showed Milirrpum and Mungurrawuy standing together at Biridjimi with Milirrpum pointing east towards Yirrkala and Mungurrawuy pointing westwards in the direction of Warrimbiri. As Milirrpum explained, they were ‘dividing’ their country — that is, marking the boundary between Gumatj and Rirratjingu territory.¹³² The photo was reproduced on the front-page of the *Northern Territory News* the next day, 29 May. In the D sequence of photographs Mungurrawuy and Monyu are said to have adopted similar stances at Bukpukpuy to show the boundary between Gumatj and Galpu country.¹³³ So far as the anthropological evidence went, both Stanner and Berndt suggested that boundaries to clan territories were generally imprecise. Berndt said that while boundaries might be ‘blurred’ it was still possible to ‘argue that every piece of land can in fact be allocated’ and that ‘every feature of the countryside’ has some significance.¹³⁴ In his closing submission, Ellicott insisted that the notion of boundaries was alien to the Yolngu way of thinking and was simply ‘not relevant’ to their way of life. Like the concept of property, Ellicott suggested the idea of boundaries was borrowed from white discourse.¹³⁵ Despite all the Yolngu testimony on specific clan-land associations to the contrary, Ellicott saw fit to argue that clans did not even have relationships with ‘defined demarcated areas of land’, but rather their relationships were restricted to particular sites, for which boundaries might be ascertained. ‘I am suggesting ... that once they moved away from the sites they came into ... an indeterminate area that was not of any great relevance to them except perhaps as a track between two sites’.¹³⁶ Of all the examples he might have chosen to illustrate his position, Ellicott used the testimony Wandjuk had given on Rirudjuwi — which Berndt, Evans and Wells had each noted to be a highly dangerous place associated with Djambawal to which almost no one went — thus compounding his error and confirming his poor grasp of the actual situation.¹³⁷ Justice Blackburn eventually concluded that Yolngu did indeed ‘think of the subject land as consisting of a number of tracts of land each linked to a clan’, rather than as a string of separate sacred sites.¹³⁸

130 MTS, 26/5/1970, p. 156.
131 MTS, 9/6/1970, p. 814.
132 MTS, 28/5/1970, p. 347.
133 MTS, 1/6/1970, p. 473. Purcell was called as a witness immediately after Mungurrawuy.
134 Stanner, MTS, 8/9/1970, p. 999; Berndt, MTS, 10/9/1970, p. 1156.
135 MTS, 3/11/1970, pp. 2111, 2126, 2134.
136 *Ibid.*, pp. 2126-2127.
137 *Ibid.*, p. 2135, with reference to MTS, 9/6/1970, p. 809A. The reference here is to ‘Bolkn-gu’ or Bodngu, another name for Djambawal.
138 Blackburn 1971, p. 179.

The Solicitor-General seemed only to comprehend boundaries in a negative sense, as a means of keeping others off one’s own patch.¹³⁹ If boundaries were imprecise or ‘blurred’, as Berndt had argued, then that fact pointed to a lack of system, according to Ellicott, since a system obligated people to behave in certain ways and observe certain customs and constraints. Moreover, to Ellicott’s way of thinking a system entailed ‘a fixed pattern of life’ that could only be found in ‘a settled community living in a village’. Nomadic groups might have special relationships with other groups of people and places, but such relationships did not amount to a system of law and custom: such relationships were ‘just what happens when people are found on the face of this earth not having settled down to a sedentary way of life’.¹⁴⁰

Closely related to the notion of boundaries was that of permission to enter the country of another clan, and, like boundaries, it was a concept that was not much discussed in testimony, but talked up and distorted by the defence team. As most witnesses testified, seeking permission was expected as a courtesy or a formality, and, when sought, it was generally granted. Occasionally, permission was refused: as Dadaynga testified, Mungurrawuy, his uncle, had refused to allow him to gather wood for carving on Cape Arnhem the previous year.¹⁴¹ That same year, he had sought permission to go to Caledon Bay from a senior Djapu man, Djiriny, who granted his request. Ronald Berndt affirmed that seeking permission was redundant when entering another’s country for mundane purposes: he told the court that Yolngu ‘have their ears to the ground and are great gossips’ about people’s movements and whereabouts. He did, however, add that, when seeking access to sacred sites or to ‘taboo and prohibited areas’, gaining permission was mandatory.¹⁴²

Ellicott argued that ‘people would be very hesitant’ in approaching sacred sites, because of ‘certain taboos’ and ‘superstitions’ and because ‘there could be trouble if they go there’, but not because such sites belonged to specific clans. He said people did not venture to another clan’s sacred sites because of ‘a healthy respect based upon a fear’ of what might happen to them, and he likened the situation to that of ‘the English fleet not going into a French harbour during periods of tension’.¹⁴³ He seemed to suggest that seeking permission had nothing to do with it. He also recalled one Yolngu witness saying that permission was purely ‘the white man’s way’.¹⁴⁴ While it may be ‘a natural thing’ to borrow ‘terms which are more appropriate to our legal thought forms and our economic system’ and apply them to Yolngu ways of thinking, concepts like permission and boundaries ‘were never meant for it’.¹⁴⁵ In short, according to Ellicott, the concept of permission ‘did not erect itself in their minds or so far as our law was

139 MTS, 3/11/1970, p. 2140.

140 *Ibid.*, p. 2109.

141 MTS, 27/5/1970, p. 184. The transcript here says ‘Cape Island’, but this is later corrected to Cape Arnhem.

142 MTS, 8/9/1970, p. 1059.

143 MTS, 3/11/1970, p. 2126.

144 *Ibid.*, p. 2110.

145 *Ibid.*, p. 2112.

concerned ... as a right or as a law or custom’.¹⁴⁶

On the smaller point of permission Justice Blackburn was supportive of Ellicott’s position,¹⁴⁷ but on the larger question of system, he was satisfied that Yolngu society did have a system of law and that system was ‘recognized as obligatory upon them by the members of a community which, in principle, is definable’. Blackburn concluded that:

The evidence shows a subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence. If ever a system could be called ‘a government of laws, and not of men’, it is that shown in the evidence before me.¹⁴⁸

VI

The issue that caused Justice Blackburn most difficulty was that of the antiquity of the links between the clans and the land.¹⁴⁹ This issue came to turn upon Yolngu attitudes towards change and continuity. Before the start of the Canberra leg of the hearings, the two legal teams had struck an agreement, whereby if substantive connections between clan and country could be shown to have existed before 1934 — that is, before the mission was established at Yirrkala — then those connections would be held to have existed in 1788, the date of presumed British sovereignty.¹⁵⁰ When, in a rare departure, Woodward inquired about the antiquity of clan-land associations on the peninsula, Berndt went directly to the issue of change. He suggested that Yolngu were ‘focused on non-change’ and were ‘traditionally oriented’. This did not mean, however, that ‘changes did not occur’, since change ‘is inherent in social living’. Yolngu, he continued, took the past as their model for the present, and since the dreamtime past emphasised continuity or changelessness, Yolngu took the continuum of time to be ‘one continuing stream that did not change at all’.¹⁵¹ Woodward again asked Berndt whether in his opinion ‘it is more probable or not that the land which is presently claimed by the Gumatj and the Rirratjingu respectively was held by them in 1788?’ This time, Berndt was unequivocal: the situation that existed in 1970 or in 1946-47, when he first visited Yirrkala, had ‘existed for some hundreds of years before then and specifically before whatever date you mentioned’.¹⁵²

146 *Ibid.*, p. 2110. The evidence on permission disclosed a number of other misunderstandings on the part of counsel. During his cross-examination of Milirrpum, Ellicott asked if he ever refused Mungurrawuy permission to go to Point Dundas — or Wirrambiri, a Gumatj place. Appropriately, Milirrpum inverted his response: ‘I will ask the Gumatj and then I will go.’ Not satisfied with this response, Ellicott asked the question a number of times, until Joyce Ross the interpreter explained that Milirrpum might not have understood the question because she was speaking Gumatj and his language was Rirratjingu (MTS, 28/5/1970, p. 380.) Another remarkable example came from Nabalco’s counsel, L.J. Priestley, who seemed to think that one Yolngu word for permission was *ringgitj*. It, however, is more usually translated as ‘sacred site’ (MTS, 2/6/1970, p. 524 and 3/11/1970, p. 2109; Williams 1986, p. 172).

147 Blackburn 1971, p. 182.

148 *Ibid.*, p. 267. The quotation is attributed to John Adams, the second US President, who credits the notion to James Harrington’s 1656 treatise, *Oceana*.

149 Blackburn 1971, p. 183; cf clause 6 of the statement of claim as amended at 16/3/1970.

150 Ellicott to the Attorney-General 11/6/1970, p. 5 (NAA A432 1968/649 Part 24); Blackburn 1971, p. 153.

151 MTS, 8/9/1970, pp. 1053-1054/5.

152 *Ibid.*, p. 1056.

Counsel for the Commonwealth and Nabalco vehemently asserted that any change at all in a clan’s association with its country would nullify that association for 1788. Elliott, in his final submission, listed a number of ‘basic variables’ that might jeopardise the antiquity of any such association. These were: 1) groups becoming extinct through warfare, killings or natural causes; 2) groups dying out and entrusting their country to another group, which eventually ‘forgets that it is looking after it for that other group’; 3) groups amalgamating after a decline in the numbers of one or other group; 4) groups splitting on becoming too large; 5) groups migrating to a different territory, sometimes as a result of a feud.¹⁵³ Defence counsel further argued that a satisfactory explanation for the phenomenon on non-contiguous country was needed, because, on the face of it, change of one sort or another must have been involved.

The most telling evidence on these ‘variables’ came to light in Ronald Berndt’s cross-examination by W.O. Harris QC, whose main tack was to quiz Berndt about his own writings and those of others. No doubt it was this approach that led Berndt later to recall his time in the witness box as ‘traumatic’, since he was forced to qualify, justify or recant various of his published passages.¹⁵⁴ Berndt’s difficulty was compounded by being required to give brief and direct responses — he was denied the luxury of expansive explanations.

Harris wasted no time in asking about the phenomenon of clan extinction, to which Berndt responded that he knew of only one extinction in the Gove region — the well-known case of the Lamamirri.¹⁵⁵ Harris then quoted a passage from *Kunapipi*, in which Berndt had claimed that clans (in the plural) had become extinct, that clan populations diminished over time and that clans were occasionally ‘absorbed by more powerful groups’.¹⁵⁶ Berndt tried to justify these claims by saying that, while they held true for the larger region of north-east Arnhem Land, they did not hold for the Gove Peninsula, because its population had not fluctuated to the same degree as that of the entire region. He repeated his assertion that the Lamamirri was the ‘only one direct example’ he knew of.¹⁵⁷ At this stage Berndt did not remark on absorption, but later he conceded that he did not think he had ‘sufficient evidence to support absorption’ and that he was probably influenced by Warner into adopting this view.¹⁵⁸

Warner and his writings made several appearances in the course of Berndt’s cross-examination, the first concerning clan extinction, part of which read:

The land will continue to belong to the dead clan until in several generations the memory of it is lost and new traditions have filled the thought of the natives. The land and water holes will then belong to another group which will have been occupying it since the demise of its former owners.

Warner went on to note that younger informants were inclined to regard such land as already belonging to the trustees, while older men were inclined to acknowledge that the land continued to belong to the extinct group. In responding to these statements,

153 MTS, 3/11/1970, pp. 2102-2103.
154 Berndt 1981, ‘A long view: some personal comments on land rights’, p. 12.
155 MTS, 9/9/1970, p. 1075.
156 *Ibid.*, p. 1076; *Kunapipi* (1951), p. 3.
157 MTS, 9/9/1970, p. 1077.
158 *Ibid.*, p. 1098.

Berndt suggested that ‘perhaps possibly because Lloyd Warner did not explore this situation sufficiently, he did not get the fine distinction between trusteeship ... [and] real ownership’.¹⁵⁹ In due course Berndt told Harris that in his opinion it would take more than two generations to forget that land was held in trust, because other people or groups had rights in the knowledge to that country through ritual, for example, and because any *rangga* or sacred sites associated with that country would endure.¹⁶⁰ Berndt insisted that knowledge of a clan’s existence could not disappear entirely, since traces of its names and the names of its members and its places — especially names and places bestowed by *wangarr* — would persist in song cycles. These, he said, were the most robust of Yolngu oral traditions: ‘The myths told in story form are much more vulnerable than those that are sung and have rhythms associated with them’.¹⁶¹ Stories about the transfer of an area between clans would be preserved ‘in the memory of close clan relations’,¹⁶² while humdrum stories of the kind told to children — which he characterised as ‘folklore’ — were more prone to distortion when passed from one generation to the next than the big mythology contained in song cycles.¹⁶³ He further suggested that reports of ‘historical events that occurred some hundreds of years ago’ might be similarly unreliable, and he sought to distinguish between ‘mythological’ knowledge and ‘historical’ knowledge and, later, ‘social’ knowledge. These distinctions were to remain hazy.

For the issue of non-contiguous territory, Harris chose to focus upon a passage from the Berndts’ 1964 volume, *The World of the First Australians*. There they gave several possible historical explanations for the phenomenon: ‘a large *mada* [*matha*] may have split up; or it may have moved to another part of the region and become incorporated into another territory’.¹⁶⁴ In court, however, Berndt preferred another explanation: ‘because of the mythological wanderings of ancestral beings, little patches of sites that appear to be within a broader territory ... belong to whoever that creative being has dedicated them to’.¹⁶⁵ In his decision, Justice Blackburn observed that in favouring such an explanation, Berndt had inadvertently ‘reduce[d] to relative unimportance ... the purely historical explanation’. Wherever possible, he continued, the court preferred historical facts: to show, for instance, ‘the breaking of a link between a *mat[h]a-mala* pair and a piece of land’ would be ‘of considerable importance’. In saying this, the judge insisted he was not accusing Berndt ‘of any bias’; on the contrary, it merely threw ‘light upon what appears in his answers to be an emphasis upon one aspect rather than upon another’.¹⁶⁶

The impression Harris formed from reading Berndt’s 1955 article in *American Anthropologist* was that ‘any one language must have been at one stage at one place’, though the article made mention of two groups speaking the same language separated by

159 *Ibid.*, p. 1094; *A Black Civilization* (1958), p. 17. Berndt also told Harris that he disagreed with Warner in some matters: ‘His knowledge of the linguistic situation was rather poor. He was very strong in his religious material but weak in the social organisational field’ (MTS, p. 1091/1093).
160 MTS, 9/9/1970, pp. 1102-1104.
161 *Ibid.*, p. 1078.
162 *Ibid.*, p. 1105.
163 *Ibid.*, pp. 1100-1103.
164 Berndts 1964, p. 66.
165 MTS, 9/9/1970, p. 1115.
166 Blackburn 1971, p. 193.

intervening country, which implied that at some point the original group had split and one segment had decamped to a new area.¹⁶⁷ Harris wanted to know ‘how the group that moved got itself into a new country’. While Berndt had ‘no real empirical facts to support it’, he tried to account for the duplication of language and the movement of part of a clan to another area by giving a ‘social explanation ... that is framed in historical terms’. In the end he was forced to agree that ‘[t]here must have been some movement or other’.¹⁶⁸ Harris turned to another example of ‘growth and division’ found in Berndt’s 1964 article, ‘The Gove Dispute’. Was it the case that ‘the territory has grown or merely that one large territory has been divided into smaller parcels’? Without elaborating, Berndt suggested the latter explanation was the more likely.¹⁶⁹

After citing several more passages from both Warner and T.T. Webb, Harris put it to Berndt that it was ‘just not possible to now to say what the situation was with regard to the clans’ territories even 100 years ago’. Berndt could not agree: the passages cited affirmed for him ‘the significance of the structure and organization’ of Yolngu society, even while ‘accepting within that, mobility and variation in terms of change which we have recognized as being part of the social living’. When challenged on this, Berndt remarked that ‘everything we have been saying points to stability and continuity within a specifically recognized framework of both local group structure and the patterning of movement within it’.¹⁷⁰ Justice Blackburn understood this ‘to be the essence of what Professor Berndt was really saying’ and found that, all in all, Berndt’s testimony was consistent with that of the Yolngu witnesses and Stanner.¹⁷¹

Harris next turned to Ellicott’s thesis of movement caused by feuding and did so by quoting a passage that documented the quarrel between Rirratjingu, Galpu and Djapu over Yalangbara from Wilbur Chaseling’s book, *Yulengor*. As noted in Chapter 4, Chaseling had written that, following a dispute between the Rirratjingu and the Galpu, the Rirratjingu had left Yalangbara and moved onto Melville Bay; in a subsequent dispute with the Djapu, the Galpu had quit Yalangbara for the English Company Islands.¹⁷² The incident was raised with various Yolngu witnesses, none of whom could provide further details, let alone a definitive account, of the event. Berndt disputed neither the incident nor Chaseling’s account of it, but, then again, he was hardly given the opportunity to do so. He did insist, however, that Yalangbara was a Rirratjingu place and he was ‘willing to go along with’ Harris’s assertion that ‘the Galpu were in fact living in camps with the Rirratjingu’ for ceremonial purposes as long as ‘we understand that the word living is not used in the same sense as being possessed of land’.¹⁷³ Somewhat rattled, Berndt told Harris:

167 *Ibid.*, p. 1122; ‘Murngin (Wulamba) Social Organization’, *American Anthropologist*, 57 (1), pp. 84-101.

168 MTS, 9/9/1970, p. 1122.

169 *Ibid.*, pp. 1126-1127; ‘The Gove Dispute: The Question of Australian Aboriginal Land and the Preservation of Sacred Sites’, *Anthropological Forum* 1(2), pp. 258-295.

170 MTS, 9/9/1970, p. 1131.

171 Blackburn 1971, p. 195.

172 *Ibid.*, p. 1133; Chaseling’s *Yulengor* (1957), p. 77. In his testimony, Chaseling said he had been told the story by Mawalan in early 1937 in the presence of other Yolngu, and Burramurra had translated (MTS, 14/9/1970, p. 1297).

173 MTS, 9/9/1970, p. 1134.



(A) **Kalvanuk mala** (Dua) A.1. Liakalauomirr; A.2. Mundalpi; A.3. Barrarrngor; (B) **Biringal mala** (Yiritcha) B.1. Ritarrngor; B.2. Malarbarrtcharai; B.3. Buranadjini; B.4. Kulungngor; B.5. Mararrpa; (C) **Dingding mala** (Dua) C.1. Liakauarmirr; C.2. Guyula; C.3. Ngaladarr; C.4. Mun-nerrngor; C.5. Djarrwarrk; C.6. Lulmarango; (D) **Munjakai mala** (Yiritcha) D.1. Won-guri; D.2. Kwiyaml; D.3. Worlkarra; D.4. Wolamangu; D.5. Giki; D.6. Kwiyaml; (E) **Berrkali mala** (Yiritcha) E.1. Kapapingo; E.2. Daiorrro; E.3. Kopapingo; E.4. Mukarrganalmiri; E.5. Yitua; E.6. Maratangimiri; E.7. Dalwongor; (F) **Jiring mala** (Dua) F.1. Djumbarpingo; F.2. Durili; F.3. Djarn; F.4. Barlamomo; F.5. Darmaramiri; (G) **Murngin mala** (Yiritcha) G.1. Warumari; G.2. Korlpa; G.3. Pural-pural; G.4. Kumait; G.5. Lamumiri; G.6. Burata; (H) **Kauorr mala** (Dua) H.1. Karlpu; H.2. Worlul; H.3. Reraitchingu; (I) **Murungun mala** (Dua) I.1. Yarnnangu; I.2. Yarnnangu; I.3. Yarnnangu; I.4. Kumalungga; I.5. Malara; (J) **Wurambirrpirr mala** (Yiritcha) J.1. Balmaui; J.2. Obulkara; J.3. Kopapingo; (K) **Kukauurta mala** (Yiritcha) K.1. Gunalbingo; (L) **Murangarrpiara mala** (Dua) L.1. Djinba

Fig. 7.3: Webb’s 1933 map and accompanying legend

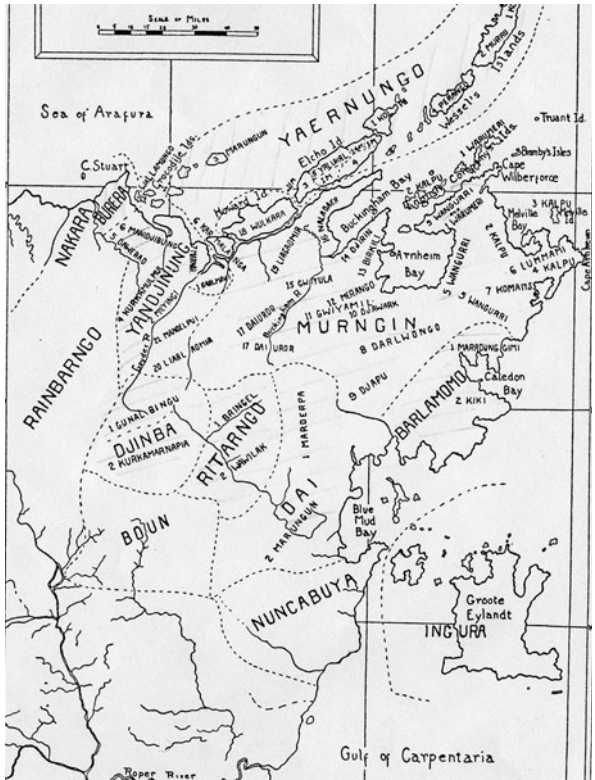


Fig 7.4 (&1.2): Warner’s map from the 1920s

I can accept movement and I can accept conflict, but in this particular case ...
I do not think there is anything that could imply the movement of a particular
matha-mala pair. You have simply sketched the situation of feuding.¹⁷⁴

Harris saved his deadliest barrage of questions until last. On the face of it, the opening question appeared deceptively naïve:

[I]f you had a map of an area with place names on it drawn in one period and then some 20 years later another map drawn without reference to the first one — drawn by a native — would you expect to find considerable changes between the two maps?¹⁷⁵

It may have been asked in seeming innocence, but it was surely calculated to unnerve Berndt, who doubtless expected to be grilled on the two mapping exercises he had conducted in 1946 and 1964. At first Berndt demurred, but then he was obliged to answer with a simple ‘No’. His response may have been consistent with the plaintiffs’ position, but, as readers will already be aware, it contradicted his own previous opinion, published in ‘The Gove Dispute’.¹⁷⁶ The inconsistency would have been noticed by all those familiar with the article — Harris included. Harris could have pressed the point further, but preferred to leave it dangle.

It was only after extracting a negative response from Berndt that Harris made it clear that he had maps other than Berndt’s in mind — maps created by Warner (published in 1937, Fig. 7.4) and Webb (published in 1933, Fig.7.3), but maps drawn neither by ‘natives’ nor 20 years apart. Berndt did ‘not think one could possibly take it [Warner’s map] as an accurate representation of what happened in 1927’ on the Gove Peninsula. Warner might have had ‘very accurate information’ for Milingimbi and surrounds ‘but as one goes out at the edges the information is not accurate’. His information did not tally with that collected by Berndt in 1946-47. Berndt was dismissive of Webb’s map for similar reasons: the map had been compiled from ‘a Milingimbi perspective’ without input from Yolngu local to the Gove Peninsula. Moreover, Berndt doubted that either Warner or Webb had visited the Gove area.¹⁷⁷

Had Berndt been in the Canberra courtroom two days earlier listening to Ellicott cross-examining Stanner, he might have been prepared for Harris’s questions. At first Ellicott focused only on Warner’s map, which Stanner insisted gave ‘highly approximate’ locations of clans, since Warner had constructed it at Milingimbi ‘about places that he ha[d] in fact not visited’. Ellicott then asked Stanner to compare Warner’s map with the map that had been appended to the Yolngu statement of claim — that is, the larger of the Berndt maps (Fig. 6.3) — which Stanner had not previously seen and which had not been admitted into evidence. Stanner was, however, familiar with the smaller of Berndt’s maps and told Ellicott that ‘it is patent, on the face of it, that there is a large difference’ in the information conveyed by the maps.¹⁷⁸ Questions ensued about Webb’s

174 *Ibid.*, p. 1135.

175 *Ibid.*, p. 1158.

176 Berndt (1964, p. 270) wrote: ‘I have preferred not to compare the two sets [of maps], since that would take me beyond the scope of the present paper; but comparison would, I am sure, reveal a number of changes.’

177 MTS 9/9/1970, pp. 1160-1165. The maps by Warner and Webb became Exhibits 7 and 8 respectively.

178 MTS, 7/9/1970, p. 934.

map, to which Stanner responded similarly to Berndt: Warner and Webb ‘were told about places at a distance and ... unvisited by either’.¹⁷⁹ Stanner could not agree with Ellicott that the maps by either Webb or Warner had ‘some degree of accuracy’ or that they could be used as an indicator of change in clan territorial holdings. On the basis of the maps by Webb and Warner, Stanner was not inclined to amend his earlier opinion — given some three months prior — that the likelihood of change was minimal.

On the issue of change, Woodward had very little to say. This may seem odd until it is remembered that the plaintiffs’ statement of claim had asserted that, according to Yolngu laws and customs, the Rirratjingu and Gumatj clans had held and exercised the same ‘said rights over’ the Gove Peninsula ‘since time immemorial’.¹⁸⁰ In other words, the plaintiffs’ case was premised if not on changelessness, then on continuity. In commenting on the anthropological evidence in his final submission, Woodward noted that ‘the basic quality of aboriginal land holding was stability’. He continued that ‘there could be no short-term changes’, because of ‘the deep spiritual connexion, the ceremonies, the *rangga*, the songs and the oral traditions’, but did concede that change ‘could and did occur over very long periods of time but this would take many generations’.¹⁸¹ In reviewing Yolngu testimony, Woodward said that it was not necessary for the plaintiffs to ‘produce evidence which has all the certainties of a map carefully prepared by a licensed surveyor’ for their case to succeed; rather, he asserted, ‘all the Court need feel is a comfortable satisfaction that the land in question belongs by aboriginal law and custom to the particular plaintiff clans who lay claim to it’.¹⁸²

Blackburn did not follow Woodward’s suggestion. Instead, he painstakingly recounted the arguments put by Ellicott and Harris, and the associated evidence, on the thorny issue of change. By doing so, he gave the arguments some credence. The judge then concluded that all the evidence pointed to the fact of ‘the system, the pattern, of aboriginal relationship to land has been an enduring one probably for centuries but that within that system or pattern there have been changes of various kinds’.¹⁸³ On the strength of this, he found that:

I can, in the last resort, do no more than express that degree of conviction which all the evidence has left upon my mind, and it is this: that I am not persuaded that the plaintiffs’ contention is more probably correct than incorrect. In other words, I am not satisfied, on the balance of probabilities, that the plaintiffs’ predecessors had in 1788 the same links to the same areas of land those which the plaintiffs now claim.¹⁸⁴

I find the whole argument about unwavering continuity difficult to accept and am amazed that counsel for both sides and the judge bought into it. That is easy enough for a lay person to say, but lawyers would see it as a necessary argument on account of the way the plaintiffs’ statement of claims had been set out. The key difficulty again lay with the clause stating that the Rirratjingu and Gumatj clans between them had held

179 *Ibid.*, p. 936.

180 Clause 6 of the Yolngu statement of claim.

181 MTS, 20/11/1970, p. 2754.

182 MTS, 23/11/1970, p. 2822.

183 Blackburn 1971, p. 195.

184 *Ibid.*, p. 198.

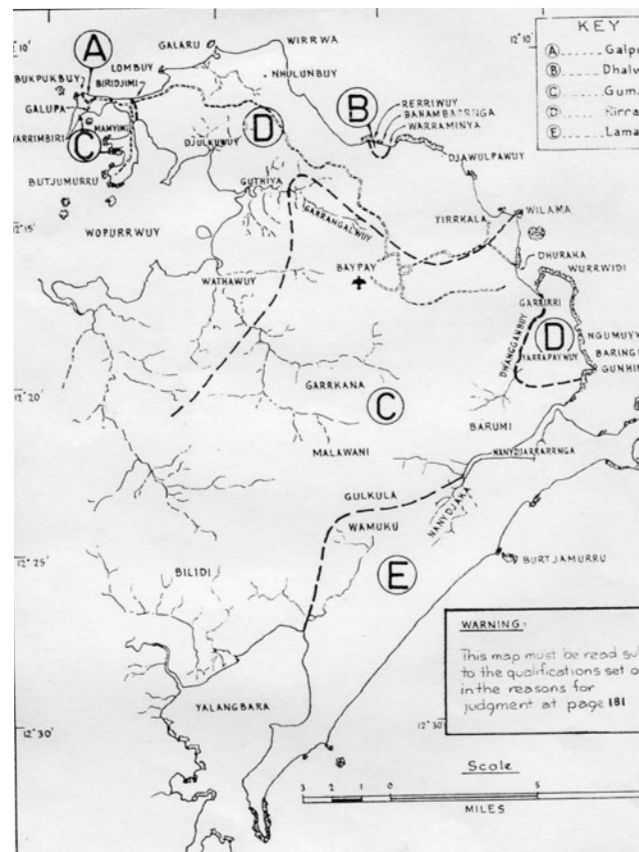


Fig. 7.5: Justice Blackburn's map of the Gove Peninsula

the entire peninsula since time immemorial. The evidence on the erstwhile holdings of the Lamamirri clan had put paid to that, since the clan had held a significant portion of the peninsula at least until 1946, according to Berndt's initial mapping exercise (see Chapter 5). Perhaps if Purcell and Woodward had had access to those maps, they might have amended their pleas. Perhaps if they had been less definite in identifying the clans or had invoked the entities cited in the bark petitions, things might have turned out differently, but, as things stood, it was the issue of Lamamirri territory that was the undoing of the Yolngu case.¹⁸⁵ Justice Blackburn could not overlook the possibility of previous transfers of, or succession in, territory had occurred and this possibility, of course, defeated the claim of 'absence of change between 1788 and 1935 in the clan linkages with land'.¹⁸⁶

As if to demonstrate his own understanding of land-clan associations, Justice Blackburn appended a map to his published decision (Fig. 7.5, over). The map, with a number of qualifications, was his summary of the Yolngu evidence for the 'period before the foundation of the Yirrkala Mission', but it was not to be taken as his finding about 'the antiquity or permanence of the attributions it depicts'. He intended 'attributions' as a 'neutral' term, which implied nothing about 'the nature of the relationship of the clans to the land'.¹⁸⁷ Furthermore, the dotted lines were not to be read as definitive boundaries between clan territories, while the place names were not to be taken as exact locations,

¹⁸⁵ Williams 1986, p. 182.

¹⁸⁶ Blackburn 1971, p. 185. For more on the notion of succession, see Williams 1986, pp. 175-6.

¹⁸⁷ Blackburn 1971, p. 181.

since the names might refer to 'tracts or areas' or to 'more precisely definable places'.¹⁸⁸ Even though Blackburn could find that Yolngu had a system of law and culture, he was not inclined to characterise their relationship with the land as proprietary in nature. He came to this conclusion by considering only western criteria of property: 'property, in its many forms, generally implies the right to use or enjoy, the right to exclude others, and the right to alienate' and the evidence, as we have seen, did not affirm such rights.¹⁸⁹ While, as he said, it was 'dangerous to attempt to express a matter so subtle and difficult by a mere aphorism', the judge found it easier 'to say that the clan belongs to the land than the land belongs to the clan'.¹⁹⁰ The issue of proprietary interest was a key consideration in determining whether native title existed, and the existence of native title in Australian law was, after all, the major question of law upon which the Milirrpum case turned. Other factors that pointed to native title included the ways Aboriginal law and custom categorised the identity of the community claiming the land and the limits of the land claimed.

Having reviewed the relevant legal precedents and historical material, Blackburn accepted the legal orthodoxy that where a colony had been founded through settlement, rather than conquest, 'all the English laws which are applicable to the colony are immediately in force there upon its foundation'.¹⁹¹ He felt bound by legal precedent to find that 'Australia came into the category of a settled or occupied colony', though, as Woodward later observed, it was hard to say 'where settlement stopped and conquest began'.¹⁹² Thus, all relevant English statutory and common law applied to the colony of New South Wales — which is generally supposed to extend to the whole continent — at foundation. For 'obvious reasons', extant English law did not 'include a rule that communal native title had to be respected'.¹⁹³ He further concluded that where native title was found to exist in other jurisdictions founded upon English law, it had been established by statute, rather than through the courts.¹⁹⁴

Somewhat ruefully, Justice Blackburn observed:

I have tried to remember that the common law has often grown by way of generalization from diverse instances, and that practice has often grown into, or helped to produce, new doctrine.

But these considerations do not alter my conviction that the plaintiffs' contention must fail for want of authority to support it. It is possible for a court of first instance to contribute to, or perhaps even to found, a body of legal doctrine.

But I cannot come to a decision of this kind on the materials before me. The most striking feature of all those materials, in my opinion, is that wherever the principles for which Mr Woodward contended have to any extent been put into practice that has been done by statute or by executive policy.¹⁹⁵

¹⁸⁸ *Ibid.*, p. 180.

¹⁸⁹ *Ibid.*, p. 272.

¹⁹⁰ *Ibid.*, pp. 270-1.

¹⁹¹ *Ibid.*, p. 201.

¹⁹² *Ibid.*, p. 242. and Woodward 1985, p. 415. The precedent had been set by the Privy Council in the case of *Cooper v Stuart* [(1889) 14 App. Cas. 286].

¹⁹³ *Ibid.*, p. 244.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*, p. 262.

Sometime after his decision was handed down on 27 April 1971, Blackburn, in a five-page private opinion that was quite widely circulated in Canberra, advocated that a system of aboriginal title be recognised and ‘integrated within the framework of Australian law’ and needed ‘to be created by legislation’. Moreover, it was a matter that could, he said, ‘only be a political decision at the highest level.’¹⁹⁶ Thus, the Yolngu grievances were once more before the government, if not the parliament, as discussed in the final section. The ball was once again in the government’s court.

196 Blackburn n.d., pp. 2 and 5 (held with Stanner Papers, Series 15, Item 19).

Epilogue
I

Dadaynga, Daymbalipu and Galarrwuy had come to the ‘cold country’ for the start of the Canberra leg of the Milirrpum case but would return to the warmth of Yirrkala with a sense of foreboding. Daymbalipu wrote to Frank Purcell, who had organised the visit, that he was ‘quite unsure about what is going to happen’; he was ‘not settling down in my mind’ and was constantly ‘thinking about the land’. He acknowledged that ‘[o]ur law is very difficult to sort out for *balanda* to understand’, but ‘the law that we use now was given to us by our *wangarr* people’ and Yolngu had used that law to make ‘a peaceful land’.¹ Other matters were playing on Dadaynga’s mind as well. He reported to Purcell that there had been only a little trouble due to ‘liquor’, but a far more troubling matter had emerged in their absence. The head of the Social Welfare Branch, Harry Giese, had sent ‘three letters ... and three maps’ to Yirrkala indicating sites Nabalco wanted for prospecting camps at Caledon Bay, Blue Mud Bay and Port Bradshaw. Dadaynga continued:

Because we have enough worrying. Also we are still in our case. Our case is not finished. They will give us more worrying. They can’t put any prospecting camp or look for minerals. Because they are taking the whole area. ... Why they [clan elders] say “No” is because we want the area to stand as it is in the past and now. We want the area that every group has been owning — by singing, story, painting ... That’s why they say “No” not to put any more prospecting camps or townships. We are the owners and we are the first Australians. That’s why we say “No”. Do not give us any more worrying.²

It seems extraordinary that Nabalco could be so cavalier as to make plans for the expansion of operations even before the case had concluded.

Further worries would soon assail the people of Yirrkala: the Walkabout group had lodged a fresh licence application, which was due to come before the Licensing Court in late October. A permit to bring alcohol onto the Arnhem Land Aboriginal Reserve had been issued in June 1970,³ and in late September, Cabinet considered competing submissions from Nixon and Wentworth on the issue. Nixon was clearly in favour of a hotel, while Wentworth warned that alcohol could ‘substantially destroy the fabric of Aboriginal life and result in the disintegration of the communities and the destruction of the individuals concerned’. According to Nixon, Yolngu ‘would not object to club licences’ being issued, but a club was not Nabalco’s preference, because only members could buy take-away bottles of alcohol, and such an arrangement would be ‘discriminating against the Aborigines’.⁴ (When Daymbalipu subsequently appeared before the Licensing Court, he said he did not know what a club was, but had been told a club licence was better for Yolngu.⁵) Nixon and Wentworth agreed that Yolngu could be educated to drink responsibly, and to this end Welfare Branch had suggested

1 Daymbalipu to Purcell, 16/9/1970 (Stanner Papers, Series 15 Item 2).
2 Dadaynga to Purcell, 24/9/1970 (Stanner Papers, Series 15 Item 2). The reference to ‘cold country’ comes from this letter.
3 NTRS 44 Box 1.
4 Nixon’s submission #538 of 21/9/1970 and Wentworth’s submission #539 of 22/9/1970 (NAA A5882 CO1047).
5 *NT News*, 22/10/1970.

a wet canteen be established close to Yirrkala. On 1 October Cabinet sided with Nixon by concluding that ‘in the particular circumstances of Nhulunbuy, it could do no other than accept that an [sic] hotel with bar facilities would have to be provided’, but added its own suggestion of approaching Walkabout, and perhaps also Nabalco, ‘to seek an arrangement under which an investment in the project would be made from the capital fund for Aboriginal enterprises’.⁶

Magistrate David McCann adjourned the licence hearing after one day, ‘pending evidence of police ability to cope with threats to [the] peace and good order’ of Nhulunbuy. A licence for the Walkabout Hotel was granted on 12 November, after the police commissioner assured the court that five police officers were already permanently stationed at Nhulunbuy and a sixth would soon take up duty.⁷ The hotel licence was granted just two weeks before the Milirrpum case concluded in Canberra and five months before Blackburn’s decision.

By the time Justice Blackburn handed down his decision on 27 April 1971, William McMahon was Prime Minister and Ralph Hunt (CP, Gwydir) the Minister for the Interior. W.C. Wentworth was still Minister in Charge of Aboriginal Affairs, but would soon be relieved of that responsibility with the creation of the Department for the Environment, Aborigines and the Arts with Peter Howson (LP, Casey) as its minister.⁸ The CAA drafted a Cabinet submission suggesting ways to handle the fallout from the Blackburn decision and it was lodged by Wentworth on 29 April.⁹ Initially, Hunt endorsed that submission (No. 76), but withdrew his support after conferring with his department and then lodged one of his own (No. 82) on 1 May.¹⁰ Stanner observed that if an action like Hunt’s had occurred in the time of Sir Robert Menzies, ‘it would have been followed by a retraction or dismissal’, but, he added wistfully, ‘these were different days’.¹¹

The Wentworth submission (No. 76) noted that there was ‘widespread and deeply emotional support among the community for the claims of the Aborigines to land’ and that most news outlets had stressed the need for legislation ‘to recognise or compensate for traditional rights of Aborigines’ to land. Rather controversially, it recommended that the government invite Nabalco and Yolngu representatives ‘to negotiate compensation ... for disturbance of their traditional way of life’.¹² Hunt’s submission (No. 82) countered that ‘the effect of the Gove judgment on public opinion is not demonstrable. It is probably not great. It has been grossly overstated in Submission 76.’ On the issue of compensation, Hunt observed that ‘it is inconceivable that the Government should make any statement ... until the right of appeal has expired’.¹³ Both submissions agreed that a ministerial committee be established to review Blackburn’s decision and to

6 Cabinet Decision 708, 1/10/1970 (NAA A5882 CO1047).

7 *NT News*, 22 & 23/10/1970 and 13/11/1970.

8 McMahon had successfully challenged Gorton and took over as Prime Minister on 10/3/1971.

9 The submission was put forward in the name of Alan Hulme, the Postmaster-General and Vice President of the Executive Council, as well.

10 Coombs 1978, p. 169.

11 Stanner Papers, Series 14 Item 5a.

12 Submission No. 76, 29/4/1971 (NAA A5908 76).

13 Submission No. 82, 1/5/1970 (NAA A5908 82).

recommend policies on Aboriginal land tenure.¹⁴ Unsurprisingly, Hunt’s submission prevailed.¹⁵

Within a day or so of Cabinet’s adjudication of these submissions, Dadaynga and Daymbalipu again found themselves in Canberra, this time accompanied by Wulamy-buma and Frank Purcell. They had come to meet the Prime Minister and deliver a hand-written, bilingual letter.

The people of Yirrkala have asked us to speak to you on their behalf. They are deeply shocked at the result of the recent court case. We cannot be satisfied with anything less than ownership of the land. The land and law, the sacred places, songs, dances and language were given to our ancestors by Djang’kawu and Barama. We are worried that without the land future generations could not maintain our culture. We have the right to say to anybody not to come to our country. We gave permission for the mining company but we did not give away the land. The Australian law has said that the land is not ours. This is not so. It might be right legally but not morally its [sic] wrong. The law must be changed. The place does not belong to white man. They only wanted [it] for the money they can make. They will destroy plants animal life and the culture of the people.

The people of Yirrkala want:

1. Title to our land.
2. A direct share of all royalties paid to Nabalco.
3. Royalties from all other businesses on the Aboriginal Reserves.
4. No other industries to be started without consent of the Yirrkala Council.
5. Land to be included in our title after [the] mining is finished.

Signed: Roy Marika, Daymbalipu Munungurr and Wally Wunungmurra.¹⁶

The letter — or petition or submission, as it was variously described in departmental correspondence files — was presented on the Thursday, and on the following Monday morning all 24 members of the Yirrkala Village Council met and resolved that ‘we are not going to appeal to the High Court and we want nothing less than the ownership of the land that was given to us by Barama and Djang’kawu’.¹⁷ Woodward would later give his reasons for not appealing: ‘I was afraid that if we went to the High Court, we would not only lose the appeal, but might also have cold water poured on Blackburn’s finding that there was a coherent system of Aboriginal law relating to land’. Furthermore, Woodward felt the judgment provided a sufficient basis for land rights legislation.¹⁸ It seems likely that Purcell gave similar advice to the delegation while they were in Canberra.

Shortly after meeting the Yolngu delegation, McMahon’s office announced the formation of the ministerial committee and, while he did ‘not wish to anticipate the recommendations’ of that committee, it was the government’s intention to ‘build effectively upon existing programmes’ and ‘to achieve a breakthrough to a new level of

14 McMahon had proposed the ministerial committee in his statement to state ministers for Aboriginal Affairs in Cairns on 23/4/ 1971, known as the ‘Cairns statement’ and drafted by Coombs.

15 Cabinet decision No. 150, 4/5/1971 (NAA A5908 76).

16 The meticulous handwriting appears to be Wulamybuma’s (NAA A1209 1971/9417).

17 Copy of minutes of Village Council meeting 10/5/1971 (NAA A1209 1971/9417).

18 Woodward 2005, p. 106.

achievement in the advancement of Aboriginal citizens’ in cooperation with the states.¹⁹ With the establishment of the ministerial committee and, more particularly, an inter-departmental committee (IDC) to service it, the old rivalries between CAA and Interior flared again. Finding a suitable form of Aboriginal tenure to reserve lands was the chief stumbling block. The confrontations on the IDC became so ‘bitter and acrimonious’ that representatives from other agencies confined ‘their participation to ensuring that the interests of their own departments were not impaired’ and that the IDC ‘simply referred the issues without advice to the ministerial committee for decision’.²⁰ In short, virtually nothing was achieved over the next 18 or so months. On Coombs’ assessment the government only managed ‘a reassertion of the status quo’.²¹

In June, Dadaynga received a telegram from the Department of Prime Minister and Cabinet. It was not the news he was expecting, but nonetheless it was welcome news — he had been awarded an MBE in the latest Queen’s birthday honours. ‘This was a great thing and most important,’ he wrote to McMahon. ‘I was so proud and a bit nervous because it is a new thing I’ve to wear. I don’t know when it will arrive, I’ll be happy to wear it when it will arrive here.’ Dadaynga finished the letter by reminding the Prime Minister that he was still awaiting a response to the five Yolngu demands presented on 6 May.²² When no response had arrived by the end of August, Yirrkala Village Council had its Darwin lawyers send a letter requesting action.²³ Even though the files are thick with draft replies and their weak excuses, it was only on 25 January 1972 — the eve of his notoriously lame Australia Day statement that triggered the Aboriginal Tent Embassy — that McMahon responded to the Yolngu demands, now nine months old. The only definite thing McMahon could say was that the government had decided to grant leases on Aboriginal reserves,²⁴ though this was scarcely news, since the previous Minister for the Interior, Peter Nixon, had announced similar leases in July 1970.²⁵ In any case, the people of Yirrkala had already determined not to take up the leases for which they had applied in 1967 and which had been suspended for the duration of the legal action.

In reply to the Prime Minister’s belated response, Dadaynga wrote that the people of Yirrkala ‘still want full and absolute title to the land which is not leasehold. ... We believe one day the Government will grant us this full title when they understand the Aboriginal ways better.’²⁶ A short time later Dadaynga, Wulamybuma and Garrawin were in Canberra for another meeting with McMahon, at which they handed him another letter, this time seeking a lease to protect the entire area from Blue Mud Bay to Arnhem Bay.²⁷ It was another opportunity to demonstrate Yolngu commitment to their land and their cause and another attempt to shame the government into action.

19 McMahon’s statement to the press, 6/5/1971 (A5882 CO1179 Part 1).

20 Coombs 1978, p. 171.

21 *Ibid.*, p. 172.

22 Dadaynga to McMahon, 16/6/1971 (A1209 1971/9417).

23 Letter from Thomson & Co, Darwin to PM&C, 30/8/1971 (NAA A1209 1971/9417).

24 McMahon to Village Council, 25/1/1972 (NAA A1209 1971/9417).

25 Nixon, statement to the press, 21/7/1970 (NAA A5882 CO1179 Part 1).

26 Dadaynga to McMahon, no date (NAA A1209 1971/9417).

27 Record of conversation, 3/2/1972 (NAA A1209 1971/9417).

Through their visits and their letters, Yolngu representatives showed an ease, a confidence and a dignity in engaging with the highest levels of white political society. It is a shame that those in high government office could not muster a similar preparedness to meet Yolngu halfway or extend even the basic courtesy of a timely reply. In the aftermath of Blackburn’s decision, Yolngu certainly commanded the moral high ground. Confronted with circumstances well beyond their knowledge and experience, the Yolngu people of Yirrkala turned first to missionaries, then bureaucrats, politicians and finally lawyers for both information and justice. They found few who listened, fewer who understood and even fewer who were prepared to help. They showed a remarkable preparedness to negotiate and to compromise in coming to terms with the reality they faced.

For his public declarations of sympathy for Aboriginal people, McMahon delivered nothing; and at the end of 1972 he was swept from office by Gough Whitlam, who wasted no time in getting down to business. Very shortly after taking office, Whitlam’s deputy, Lance Barnard, announced that no more leases would be granted for land on Aboriginal reserves.²⁸ Around the same time, Whitlam telephoned Woodward to see if he would undertake an inquiry into land rights in the Northern Territory.²⁹ The Woodward Royal Commission came into being on 8 February 1973. From it eventually flowed the Aboriginal Land Rights (Northern Territory) Act 1976, which gave secure title to Yolngu over the Gove Peninsula and to other Indigenous peoples, whether or not residing on Aboriginal reserves. In another move, the Whitlam government disbanded the Social Welfare Branch of the Northern Territory Administration in 1973.³⁰

II

It was on their first journey to the ‘cold country’ in September that Bob Ellicott, Solicitor-General and ‘steward of the national Memorial Methodist Church’, invited the three Yolngu men to attend his church and to lunch at his home. After the meal Dadaynga, Galarrwuy and Daymbalipu sat comfortably around the fire in the lounge room, ‘picked up their sticks and started singing’.³¹ Ellicott came to learn quite a deal about Yolngu ways in the course of the Gove case and came to have a deal of sympathy for their cause. His performance in court notwithstanding, by the end of the trial, he could declare himself ‘satisfied that the relationship between the [Yolngu] and the land around them is such that if they are to maintain their own culture and way of life and thereby retain self respect and dignity within the Australian community, some way should be found of preserving and recognising that relationship’.³² In November 1971 he could say that it ‘is a real relationship at the core of aboriginal life and with its roots deep in history’ and that the existence of that relationship had been ‘questioned,

28 Note of 7/12/1972 (Dexter papers, Series 20, Item 8).

29 Woodward 2005, p. 143.

30 Keen 1994, p. 31.

31 Interview with Ellicott, 17/3/2011. He had checked with Woodward before issuing the invitation to the Yolngu men.

32 Ellicott, ‘Recognition of Aboriginal Claims on Reserves in the Northern Territory’, 16/11/1971, p. 2 NAA A5882 CO1179 Part 2).

studied and confirmed in a Court and cannot now be doubted'.³³ For all this, however, the relationship did not amount to one of ownership in his opinion.³⁴

Like Blackburn, Ellicott felt the need to express his thoughts about the case in a private opinion and, like Blackburn, he advocated that the relationship between Aboriginal people living on reserves and their country be recognised in legislation. In this document he could identify the significance of the Gove case as multi-dimensional: it a) 'assists to describe the nature of the aboriginal relationship with land'; b) 'indicates that the relationship is inalienable'; c) 'shows that it is still practicable to identify tracts of land in Arnhem Land with particular clan groups'; d) 'emphasises that the land relationship is between a clan (not a whole community) and a particular area of land'; e) 'illustrates the probable composition of some communities throughout aboriginal reserves in Arnhem Land; and f) shows that the relationship between the aborigines and land is still a matter of fundamental significance at least to those living in Arnhem Land'.³⁵

Stanner remarked that the private opinions must be the work of those 'troubled in conscience' that 'the findings had not served the ends of justice'.³⁶ He further characterised the trial as a showplace for 'two disparate universes of discourse [that] could not be brought satisfyingly together'. As a result, there was 'a lively sense of profound depths being left unplumbed'.³⁷ How different things might have been had Blackburn and Ellicott followed their consciences rather than the law. Then one fluent conversation — one unfractured by irritating questions and interjections — might have ensued; then Yolngu witnesses might have been able to say what truly was in their minds and so convince the court that they owned the land.

III

In bringing this work to a close, I can do no better than to quote Stanner on his perceptions of the Gove Peninsula in 1970. In a tone reminiscent of Flinders' account, he noted that Nabalco found itself with 'a charter to the most beautiful strip of country containing the richest resource near the finest natural port and the most excellent potential town-site that could occur together in an industrialist's dream', completed by 'good deposits of essential industrial materials such as sand and limestone'. He predicted that, when the town was finally built, many of its 4,000 or so residents would clamour for recreational outlets and would want access to the 'splendid stretches of sea-coast, with fishing grounds, sailing reaches and swimming beaches' that lay nearby. He imagined that 'the sea will swarm with power-craft and the bush with campers, picnickers and barbecuists'; the region would become 'a huge public park'.³⁸

³³ *Ibid.*

³⁴ *Ibid.*, p. 3.

³⁵ *Ibid.*, pp. 8-9.

³⁶ Stanner Papers, Series 14, Item 5a.

³⁷ *Ibid.*

³⁸ Stanner 1979, pp. 272 and 274. Two months before the Yolngu writ was issued, Justice Blackburn and his wife spent four or so days in a 'luxurious camp' with friends on the Gove Peninsula (NLA MS 7363, Box 13). In 1969 Wentworth and others, including Mrs Gorton, camped at Rainbow Cliffs (Evans 1991, p.7).



Fig. 8.1: Looking from Biritjimi to Point Dundas



Fig. 8.2: The outdated sign at Wirrawirrawoi

Forty years on, the peninsula has not quite come to this, but places that were once proscribed as out of bounds are now designated recreation areas. Wirrawirrawoi is one such place: it is available to anyone who purchases a permit from the Dhimurru Aboriginal Land Management Corporation. A rusty sign can still be found dangling there with its incantation from a defunct 'Department of Aboriginal Affairs, Australian Government'. In words that could have been written by Ted Evans, it intones the stone outlines as being 'of considerable interest to the Aboriginal community' and as a Yolngu attempt 'to communicate over three or four generations' aspects of the Macassan way of life on this coast. The stone outlines, it notes, 'vividly indicate the great sense of

loss felt by the Aboriginal people on realising that the Macassans ... were disappearing from their midst'. Now at least it is recognised as Yolngu land, and Yolngu can decide who has access to it and how it is to be used. As it happened, for all the procrastination and all the surveys, only three sites were ever proclaimed as sacred on the Gove Peninsula — Nhulunbuy itself (that is, Mt Saunders), Djawulpawuy (Mt Dundas) and Wirrawirrawoi. On the slopes of Nhulunbuy a viewing platform has been erected in memory of Roy Dadaynga Marika.

Nabalco completed construction of the alumina smelter in 1972, but just five years later it sold the entire Gove project — that is, the smelter and the mining operations — to the Canadian company, Alcan, which in 2004 almost doubled the smelter's capacity to a staggering 3.8 million tons a year. Three years later Rio Tinto took over Alcan, and now Gove is operated by Rio's subsidiary, Pacific Aluminium. Not long after acquiring Alcan, Rio began making noises about how expensive Gove was to operate. After proposing various schemes to make the operation more viable financially, Rio Tinto announced at the end of November 2013 that it would close the alumina smelter on Point Dundas by March 2014. This is in spite of a 42-year agreement between Rio Tinto, the Gumatj Future Fund, the Rirratjingu Aboriginal Corporation, the Northern Land Council and the Commonwealth government (represented at the final negotiations by Prime Minister Julia Gillard and the Minister for Indigenous Affairs, Jenny Macklin). Under that agreement, traditional owners stood to receive around \$15 million a year. It is salutary to remember that, without commitment to a smelter, the Menzies government would never have permitted bauxite to be exploited on the Gove Peninsula.

The systemic failure of white authorities in the events I have described was their unwillingness or inability to listen to Yolngu — both white politics and white law failed them — but what has changed since Blackburn handed down his decision? If the 50th anniversary of the bark petitions is anything to go by, there has at least been a change in the rhetoric — one could almost say a complete reversal of earlier positions. At a special ceremony at Yirrkala, Prime Minister Kevin Rudd (who enjoyed a second term of only 11 weeks) borrowed liberally, though without acknowledgement, from earlier statements by Galarrwuy Yunipingu to say that the 1963 petitions should be acknowledged as 'two of Australia's most important founding documents', which had the status of 'the Magna Carta for the indigenous peoples of this land'.³⁹ Mr Yunipingu used the occasion to demand that Aboriginal people be given the right to control their own economic resources. 'It's the economic development, the work, the money that comes into the hands of Aboriginal people through their own country,' he said. 'We want to develop our own land.'⁴⁰ Of course, over the past 50 years there have been other and more significant developments: in the realm of the law, the Mabo and Wik decisions — which finally overturned the legal fiction of terra nullius — though in the realm of politics the legislation to give effect to those decisions has been diluted over the years to the point where it bears only the slightest resemblance to those original decisions.

39 *Sydney Morning Herald*, 11/7/2013, p. 9.

40 *The Australian*, 11/7/2013, p. 1.

IV

In finally bringing the curtain down on the dramas that have been the stuff of this thesis, I want to reflect on an anecdote told by Howard Morphy. For some reason he and Narritjin Maymuru found themselves walking along a river valley in the Snowy Mountains, where they had not previously ventured. By and by, they came to a small oval lake and rested beside it. Narritjin proceeded to interpret the mythology of the place: he proclaimed the place to be Dhuwa, since it seemed similar to a Marrakulu place in Trial Bay, associated with the ancestral figure, Ganydjalala.⁴¹ According to Morphy, Narritjin was not reinterpreting the landscape he found himself in; he was rather undergoing 'a process of discovery or revelation'.⁴² I do not wish to follow Morphy further in his analysis, but prefer to use his story in a more mundane way to suggest that we all come to know the world through experience. We make sense of the world and whatever it throws up to us through patterns that past experience has laid down for us. We always interpret the unknown via the known; we always chart the unfamiliar according to the familiar. Of course, cultural considerations influence such experience and its patterns. From this observation I do not think it is a great leap to say that societies — whether 'primitive' and/or 'preliterate' or 'sophisticated' and/or 'literate' — adopt similar means when contemplating the broader world that lies beyond their direct experience. In this way, it is as if a society or a people is already inhabiting two kinds of space — the real world of everyday experience and the expanded world of the imagination. As Roy Wagner suggests, it may be through stories or through geography that we envisage the wider universe that lies beyond our lived experience.⁴³ Stories, however, are more fluid or pliable than gridlines; they yield more readily to the human form. Wagner opens his discussion with the tantalising question: 'What has the shape of the earth to do with the shape of the story?' For him, the answer has to do with the ways that myth folds space and that space folds myth; less metaphysically, I would say that the stories we tell about the earth depends on how close our contact with that earth is. Those remote to the earth will prefer to see the world through neat grids, while those who live in direct contact will tell stories that fit the lived world and shape that world. The method we adopt will depend on the fit with our specific known world and with our journeyings within that known world. Without wishing to expand further, we have almost circled back to the relative worlds of Geertz's geographer and pilgrim.

If this thesis has accomplished little else, I am satisfied that it has shown the verity that all societies make maps, whether by grid or myth. Further, I trust that I have left the reader in no doubt as to how deep Yolngu knowledge of country runs. By extension, I hope that I have laid the groundwork for making a case for the suitability of maps as an intercultural means of communication. If the thesis has done nothing more, I hope it has provided Yolngu with a glimpse of how they and their ancestors have been represented in the archives.

41 Morphy 1995, p. 184.

42 *Ibid.*, p.186.

43 Wagner 2001, pp. 71-72. As with the previous work by Morphy, I do not intend to pursue the analysis Wagner adopts here any further.

Appendix 1: Annotations to Mawalan's drawing of Melville Bay, 14 June 1947

1. Yurayuraroi
2. Bundarammurra. both of these places are dhuwa moiety, and they are associated with Wuyal.
3. Radia.
4. A creek called Gan-guringuru, the end of the country associated with Wuyal.
5. Waragboi, and from this point is the Shark Dreaming.
6. Bululdjang.
7. Gurugboi.
8. Galwaidjalgbri.
9. Badiwi.
10. Galaldja Creek, with Water Dreaming here.
11. Birabi.
12. Bunbalamanwi (2 sites).
13. An island called Ngalangalwi. There are pots, a Macassan house and a tamarind tree on that island.
14. Balaganga, a big boat like a canoe or even larger.
15. Ngagu, a Macassan canoe.
16. Midjia, an Aboriginal word for boat.
17. Midi, a place with Water Dreaming living here.
18. A sandbank in the mangroves, close to 12.
19. Balalwolwi.
20. Walgboi. It is here that the Baiini were living. It is Yirritja country.
21. Mubanmurung, Dhuwa country.
22. Bunbadji, also Dhuwa, but there are Macassan camp pots lying around there.
23. Bunindjing. There is Djambawal and here he drops his milig. There are Garei rocks here, that is Macassan King Rocks.
24. Binyarang Creek.
25. Migmurang.
26. Bubalamawoi Rocks. There is mokuy Paddle Man, the paddle maker. The rocks were originally paddles.
27. Meiyalmuru.
28. Gubanwi-inboi Creek. There is Water Dreaming here.
29. Damarawoi, a big creek.
30. Banaldji. There are pots and a house here. A Dhuwa island. Also a whistling tree (a) and a tamarind tree (b).
31. Rugula.
32. Malarangeiwi.
33. Wrumboilngin Island. There are pots and Djambawal's home is the creek.
34. Djanammurang.
35. Djanamiri or Djana-yanami.
36. Wudwudjang Creek, Dhuwa.
37. Gudiang.
38. Djulguwoi.

39. Yiamnboi.
- 40.Gandurlbauwoi. Two Turtle Men put their turtle spears down.
41. Garang-garangboi.
42. Ngararunga, Dhuwa.
43. Manyami. This leads to the causeway. Yirritja country associated with Baiini.
44. Burwa, Yirritja. Macassan pots here.
- 45.Butjumuru, the slipway; whistling tree here.
46. A tamarind tree.
47. Gaubulwi.
48. A wharf.
49. Gunyangara. Two tamarind trees here.
50. Lalila.
51. Gauwulnguruwoi. Yirritja and associated with Baiini.
52. Another part of the causeway.
53. Gulgboi or Gurlgboi.
54. An anchorage for boats, Galupa.
55. A concrete landing where the mission boat, Larrpan, was repaired.
56. Tamarind tree.
57. Same as 53.
58. Galgarungau-nga. Dhuwa island; Water Dreaming here.
59. Wonyugbi island. Torres Strait Pigeon Dreaming; Dhuwa.
60. Ganingara island with tamarind trees and Macassan pots. Dhuwa.
61. Dalbaiyalbawoi, pots and tamarind; Dhuwa.
62. Same as 54.
63. A sand point, an entrance to the bay, Ngalilya.
64. Ngarawialwoi.
65. Djanbilgboi. 63-65 are Yirritja places.
66. Dabulunggulwoi. A couple of Yirritja islands.
67. Gularangara. The female mokuy Murandilnga lives here; helps to take spirits to Bralgu.
68. Whistling tree.
69. Bugbugboi. Associated with *bugbug*, the long-tailed pheasant.
70. Macassan track that they walk along.
71. Airforce track.
72. A road.
73. Ngugungugu.

Appendix 2: Comparison of Place Names between 1946 and 1964 maps

1946 Place Names	1964 Place Names	Known in English as
(G)125. Binyaulrana	(B) 70. Bindjarnga: associated with the Lightning snake and stringray <i>wangarr</i> .	
126. Nagara	71. Ngagara: here the Baiini looked for trepang.	
127. Galgila	72. Galgiula: Baiini cooking trepang.	
	73. Wurawurawoi: Baiini drying tre-pang; wangarr north wind blowing.	Wirrwawirrawoi Macassan Beach
128. Garananbi	74. Garanbwi: here Macassans built houses, a main camp.	Garahan
130. Numoiwi, beach	113. Numoiwoi: Wudeiana see wild cherry fruit and begin to run.	Turtle Beach
131. Baranura, beach	114. Bareingura: <i>mogu</i> dancing along the cliffs; going to 117 for big rituals.	Little Bondi
132. Nelguwi, beach	115. Ngalguwoi: coconuts drifting in from Badu (<i>Yirritja</i> Land of the Dead).	
133. Nadjag-wuruna, beach	116. Ngeindjaguruna: coconuts drift in.	
	(C) 117. Wudeiana: <i>Dhuwa</i> spirits on ceremonial ground.	
	118. Baladeiwi: <i>mokuy</i> make strings of red berries and throw them into the sea.	
135. Dalana	119. Dangalangawoi: Name of <i>mokuy</i> , who dance with Wudeiana here, facing Bralgu (<i>Dhuwa</i> Land of the Dead). Morning Star ceremony.	Rocky Point
	120. Wuruwiri: feathered ball representing Morning Star; <i>mokuy</i> throw balls into sky.	Rocky Point
137. Garil or Garin	121. Garari: Rocky Bay Creek. 122. End of <i>Yirritja</i> coastline.	Rocky Bay Creek
139. Djin-gaulwoi, paper bark swamp	123 b. Djinggawi: Fresh water here; named for a Baiini knife. 124. Duraga: Baiini built houses here.	
146. Runa-murinya, a place for catching turtle	125. Runumirinja: Name of Baiini boat wrecked here. Now a rock.	
144. Gunoinbi	126. Gununboi: Baiini searched for trepang. 127. Malinmiri: Baiini looked into mirror here. 128. Minamara: Baiini ate oysters here.	
148. Gurma	129. Gulmawoi: <i>Dhuwa mokuy</i> Bululu lives here. 130. Bidbudnani: Cliff point; Baiini live here.	Miles Island
150. Wilama, king fish dream-ing place	131. Wilama: Baiini anchored here. Made knives here, but iron broke, so thrown away to 132. 132. Ngadurawi: Knob of iron.	Wilton Point

(H)1. c. where the major Ab-original camps were in 1946	133. Widdimuru: place of jungle wallaby, <i>Dhuwa</i> , play from 133 to 134. 134. Yirrkala mission point.	
2. Yamina	138. Jamuna: important site for <i>wangarr</i> seagull, <i>djerag</i> .	
3. Gandubaulwa	139. Gandrulbaui: Turtle Hunter Mururuma’s turtle stick, now used in rituals. 140. Gurugula: red ochre and white clay from here used by <i>djerag</i> . 141. Maiawungari: Fisherman <i>mokuy</i> .	
4. looks like swamp	136 a. Swamp. 137 a. Road to Rocky Bay. Wharf planned near 124. 137b. Gominco camp.	
5. Ibalina	142. Ibalana: alternative name for Fisherman. 143. Djaldjanunboi: canoe made by Djuruwil, <i>mokoy</i> Canoe Maker.	
6. billabong	135. Jirgalang (Yirrkala): ‘spring water’.	
7. Djururawi — long reef. A is island; it’s the djurwir bird canoe (possibly seagull).	144. Djuruwil: reef visible from Yirrkala, bearing the Canoe Maker’s name. 145. Djaldjalbilnga: alternate name for Canoe Maker	
8. Djararindi	146. Djararinja: close to large hills; associated with Canoe Maker.	
9. Djalubaurinya — open rock — white paint dreaming 10. Djambuwal himself — while 9 is his dreaming	148. Djalwulbawoi: an important sacred site of Djambawal.	
Hill with tank	149. Jilgaba Hill: the major site of Djambuwal. Smooth round rocks here are <i>mililg</i> , Thunder man ‘eyes’ ... here also are long rocks representing the long yam, which itself symbolises the stick or bolt that he throws to the ground. This is classified as a dangerous place .	Mt Dundas
11. Green back turtle dreaming place, Djarlboiyi. 12. Buldjimara — their canoe metamorphosed into stone.	150. Various rocks (Junguldja, Marban, Buldjimara.) 150 b Marban Rock: refers to Green Turtle Man; extremely important in Rirratjingu mythology.	
13. Reinbaurwi	147. Reinbarwi: a small rock in the water, symbolising Djambuwal or his thunder bolt.	
14. Dubilaulwi	152. Dabilau: Associated with the Fisherman, who walked around here using his pronged spear. 153. Dabilau: same associations as 152. 154. Waiabau: the female turtle woman. She made a nest here, now a water well, and then laid eggs.	

15. Gabungaidjina	155. Gabungaidjinja: ‘bringing water down’ the cliff from 154, where water is always available. This is said to be a good resting camp.	
16. Bulbaniwi	156. Bobani: this is where Mururuma’s canoe ... was broken up on the rocks by a heavy sea.	
17. Bulurui	157. Buluruwoi: the Fisherman put his name here.	
18. Maing-gurauwi — ‘free white stones’ here.	158. Maingurawi: associated with the <i>wangarr</i> land seagull, <i>gagaral</i> or <i>galgara</i> . This bird is connected with Mururuma and his sons and wives: they cooked him once.	
19. Gulbadji	159. Gulbadji: name associated with the seagull.	
20. Waraminya	160. Waraminja: a long beach, also associated with ‘seagull’.	
21. Manila or Manala — rocks — fish and turtle plenty here. Macassan name here is Manulwa (they didn’t land or live here). 22. Nirawi 23. Minaluwi	151. The famous Muruwiri Rocks, the spirit of Mururuma.	
	161. Rerawi cliffs, associated with the <i>minala</i> fresh water tortoise. This is a Dhalwangu place, although the beach is Rirratjingu.	
24. Gurinala	162. Gurinjala, on the beach, <i>Dhuwa</i> : associated with the Fisherman.	
25. Banimbanga	163. Barngabarnga, <i>Dhuwa</i> : ‘water running’, made by the rain <i>wangarr</i> .	Rainbow Cliffs
26. Bagarauli rocks		
27. Djung-galuwi — reef for dugong	164. Djunggului: referring to the noise made by a <i>Yirritja</i> moiety barramundi, similar to the Banaidja.	
28. Wulawoi — goes to x	165. Wuluwoi: seaweed for turtles found here. Two Turtle Hunters, associated with Mururuma, looked for turtles at this <i>Dhuwa</i> place especially associated with them.	
29. Bugalangei	166. Bugulangawi: the Fisherman coming to this place, looked round for food.	
30. Durungaroi — reef — fish collecting		
31. Budalilaba	167. Buruliliba: with a creek, where the Fisherman walked about.	
32. Guminia	168. Gumania. Same associations as 167.	Buffalo Creek

33. Galaladamid	169. Galaldani [here Berndt lists Wuyal’s various names]	
Hill with tank	170. See 169. Nhulunbuy: a sacred place of Wuyal.	Mt Saunders
34. Malmaru	171. Marmuru, <i>Yirritja</i> : one name of the Gumatj <i>wangarr</i> dog man, whose spirit form is now a sandhill.	
35. Mamudjana	172. Marmudjana, <i>Yirritja</i> : one name of the Gumatj <i>wangarr</i> dog woman: now a sandhill, her spirit form.	
	173. Wirawarwi: <i>Dhuwa</i> moiety.	Cape Wirrawoy
36. Ngeidaulwi	175. Ngaindjawi, ‘fishing net’. <i>Wangarr</i> water, flowing strngly, pushed away a fish trap put there by <i>Dhuwa</i> moiety <i>mokuy</i> Madili; this became a reef.	
37. Wirawar — billabong	177. Gainguruwi: <i>Dhuwa</i> Lightning Snake is flashing here; symbolised by broken tree; also refers to <i>rakai</i> swamp nearby.	Wirrawa
38. Guningroir — reef	174. Gurninguwi reef, referring to ‘pieces of rock’. <i>Wangarr</i> water from Arnhem Bay and ‘South East’ river down through Galaru river and out to sea — then flowed past Bremer Island to 174, breaking the rock into pieces.	
	176. Waidjumi: Wuyal danced along here when he came down from 170 to 169. 178. Wiriewi: Small green birds circled Wuyal’s head here. From here to 179 is called Djanarawi, meaning backwards and forwards, referring to the birds.	
39. Dalbami	180. Dalbami: Wuyal, dancing; he danced all along this beach from x to x. [179-175].	
40. Galaru	181. Galaru: Wuyal threw his spears after dancing.	East Woody Beach
41. Damadjina — rock all along there — white stones, lots of oysters	182. Damadjinja: Wuyal’s long dilly bag. Around 182 are Djuwan, his wives, associated with spirit babies; b is a sandbank, representing the paperbark on to which the wild honey is poured; c is Wuyal’s dilly bag into which he put the honey he collected.	East Woody Island
42. Galurung		
43. Lumboi	183. Lumboi: ‘a stream of bees all flying together’. Wuyal followed them.	Crocodile Creek
44. Damanuming beach		
45. Dimbagaulwoi — reef	184. Dimbugaui reef: Wuyal hung his bag of honey on a tree, which is now in the sea. This is a good fishing place.	

46. Bal-galng	185. Banggananimiwoi: the bees came from 183, with Wuyal following; they flew a little further on to a, then turned back to this place looking for flowers.	
	186. Barabula: Wuyal walked along the beach at low tide, singing about this and naming the place.	
	187. Durumboi: Wuyal saw the <i>guminda</i> night bird, and named this place after it.	
47. Bi-igboi		
48. Djirang — reef	188. Djirangboi: a rock on the coast — a boil which Wuyal carried in his bag and put here. To cause someone to have boils it is enough to call his or her name at this site.	
49. Gulug-goi	189. Guluguwoi: here Wuyal put part of his <i>mali</i> , his spirit: it is now a paperbark tree.	
50. Wadjalbangu Island		
51. Barag-blanu		
	(E) 190. Lumboi: Same name and meaning as 183.	Crocodile Creek
	191. Wareidjaba, <i>Dhuwa</i> : ‘All together’, referring to the spears, spearthrower, stone axe and boomerang left here by Wuyal. They are all rocks now.	
	192. Biridjimi: Wuyal stopped abruptly as he saw the <i>Yirritja</i> place (at 189).	Wallaby Beach
52. Gulgoi or Gulboi — goes to x — and see 60	193. Gulgnura: <i>Yirritja wangarr</i> dog continued journey from 171 and 172.	
53. Bug-bugboi	194.Bugbugboi: the long-tailed pheasant, which calls out before rain.	
54. Gulanara, 2 islands	198. Gulangira island: associated with female <i>mokuy</i> , Guldana. 199. Daidbulunggungara rocks: one of Goldana’s names; her spirit is here.	
55. Yanbilboi	195. Djanbilgboi: associated with <i>Yirritja</i> dog.	
56. Wangalbanda	196. Wangibanda: <i>Yirritja</i> , associated with <i>wangarr</i> dog.	Wargapanda Point
	200. Galubau: Baiini cooked trepang here.	Mission jetty
57. Ngarial	208. Ngalila: Baiini cooking here. Good place to cook.	
	197. Warinbiri: <i>wangarr</i> dog swimming.	Point Dundas
58. Galuga — Macassans living there — tamarind trees	202. Galuba: named after Macassan leader.	Macassan Rocks
59. Same name as 58		

60. Gurlgoi — same as 52 — means big country — it’s the country from 52 to 60.	203. Gurulgboi: from x to x Baiini and Macassan camps here; prepared trepang.	
61. Manyimi	204. Manjumi: Baiini prepared trepang here.	Causeway to Drim-mie Head
62. Gulmalamaru	205. Gwoimalangmuru: Baiini warming themselves. 206. Dalbarumuru: Baiini and Macas-sans prepared trepang.	
63. Gaulunaru-i	207. Galwunaruwoi: Baiini copulated here. Now a well.	Drimmie Head (from 205 to 213)
64. Wunyungara — Macassan residential area; the proper Macassan name is Gumyung-ara; tamarind trees	209. Gungjangara: large Macassan settlement.	
65. Galwuboi or Garlboi — small jetty	210. Galwuboi: Macassans prepared trepang here. 211. Budjumuru: large Macassan settle-ment.	RAAF jetty
66. No name is recorded for this one	201. Murilnga island: <i>wangarr</i> white pigeon made nest here.	
67. Bulugaru — getting into Melville Bay		
68. Slipway — same name as 65		
69. Spring at a		
70. Banaldji — tamarind trees here; large Macassan town called Baramuda	256. Banaldji: Dhuwa island associated with Djambuwal.	
71. Mangroves		
72. Burowa: 1 Macassan and 2 [Yolngu] died here. A big storm came in and knocked down all the houses at this place ... Burwa ... the Macas-san name was Libagandria...	212. Burwa: large Macassan camp; same cyclone story, c.1906.	
73. Ngarunga	213. Ngararunga: Mururuma hunting turtle here. (Same name as 264, site for ELDO.) 214. Gandubai: Mururuma’s club.	
74. Buliwi		
75. Causeway	See 204, above.	
76. Here’s where they got soil for the airstrip		
77. Garan-garangbi — a spring here	215. Garanggarangwoi: great feast after Mururuma caught turtle.	

78. Wandilbauli		
79. Djulgwawoi	216. Djulguwoi: conch shell, <i>djulga</i> crawled in mud; Mururuma named place for shell.	
80. Imanboi	(F) 217. Imanboi: mark made in mud by conch shell.	
81. Gudi-e a whirl	218. Gudia cliffs, white clay: Mururuma made oven, cooked turtle; charcoal now rocks.	‘Pantless Point’ (Griffin’s name)
82. Wudwudja	219. Wudwudja: <i>wangarr</i> brothers, Wul-waidj and Djirirjbannga, caught turtle here.	
83. Warambulawi	220. Warambulawi: old <i>Dhuwa mokuy</i> of same name blows <i>yidaki</i> here.	
84. Djamareimanawi	221. Djamirijanami: Warambulawi made dilly bag here. 222. Rulgula: Warambulawi walking along.	
85. Malarngi	224. Malaluwarangai: 2 brothers (see 219) named this place. 225. Djanangura: as 224.	
86. Damarang	227. Damara: Djambuwal was here.	
87. Urumbri or Urumbarmi — rocky island; a Macassan word; trepanging here	223.Wurumbrulngi island: ‘clouds gath-ering together’, made by Djambuwal.	Knoll Island
88. Mindjiri-arū — mangrove island	226. Mindjarimurung, sandbank in mangroves; 2 turtle hunters stung by sandflies, <i>mindjari</i> .	
	229. Watawoi creek 230. Ralima: rain from Djambuwal.	Latram River
89. Gulaninboi	231. Gulbawangingboi: rain from Djam-buwal.	
90. Ngedmaru	232. Migumuru: brothers landed here; where they jumped ashore now rocks.	
91. Binyaru	233. Binjara: brothers cooked turtle here.	
92. Bunbaidji	234. Bunbaidji: water spout made by Djambuwal urinating. From here he threw 4 <i>milig</i> .	
93. Bunindji reef — a thunder stone here	235. Bunudjiwi: the 4 <i>milig</i> became rocks.	
94. Mubanaru	236. Mubanguru: <i>Yirritja</i> , refers to bark of tree used as a dye.	
95. Walboi	237. Walgboi: ‘foetus place’, Baiini women gave birth here, planting rice, <i>ngarial</i> .	
96. Gudaria	238. Gudaria: <i>Dhuwa</i> , refers to cold rain made by Djambuwal.	
97. Badarwulrii	239. Badarulwi: rain falling from Djam-buwal.	

98. Midi beach	240. Miduwi: continuous rain from Djambuwal. 240 a. Miduwi cliffs.	
99. Ngalangalwi — mangrove island		
100. Bunbulamaii	241. Bunbulamawi: name of <i>mokuy</i> , similar to one in 220; at first a man, later a bird.	
101. Yangunbi		
102. Warugwi		
103. Buwldja or Buraruldja (102 and 103 good camping places)		
104. Yang-unboi — lily swamp		
105. Wardjin		
106. Muminbala or Numinbla		
107. Galwu-djagni — on man-grove river		
108. Biribingu	242. Biribi mangroves (2 islands): spring water from ‘SE river (Z); <i>wangarr</i> water from 174.	
109. Badiwi on the river	246. Badiwoi: a hooked or pronged spear belonging to wangarr shark, Manar.	
110. Bulunggini		
111. Murnga		
112. Galildja — or Galaldja	243. Galidja: mouth of ‘SE’ River; sand-bank and mangrove island.	
113. Darmi		
114. Gwoidjulmi	244. Gawulldjalgboi: spear of Manar. 245. Daguwoi: sacred place of Manar.	
115. Gaigila		
116. Ganggulmi River		
117. Radia		
118. Radia — dugong and stingray landing place		
119. Macassan living place; tamarind tree		
120. Macassan living and working place — Ganingyara		
121. Dalbaiga or Dalbaingar		
122. Darlgunga		
123. Wad-daulwi — paper-bark swamp		

124. Riridjuwi — paperbark swamp	228. Rirudjuwi: rocky hills made by Djambuwal. This is a very important site; no one goes near it.	
125. Ralima — fresh water swamp		
126. Ralima — fresh water creek		
127. Nulug-groi		
128. Ngagala		
129. Marwal		
130. Malaraulni		
131. Bilwdja or Bilwoidja		
132/3. Airstrip		
134 ?		
135 ?		
136. OB station		
137. Another army camp		
138. 83 rd squadron camp		
139. Another army camp		
140. ?		
141. Pump house		
... (other RAAF infrastruc-ture) ...		
150. The seagull Djarag made all the hills and the billabongs and the swamps around here — this was his home. He moved out to Bremer Island. 150 is a hill with no name.	See 149, above.	Mt Dundas
151. Hill and big tank on main road [no name]	See 169-170, above.	Mt Saunders
152. ?		
153-216 Place names for Dam-balya (Bremer Island) but not copied from Berndt list.	265- 316 (pp. 283-4) not copied.	Bremer Island

Appendix 3: Table adapted from original draft table of land/clan associations compiled during the Milirrpum trial

Place Name	Rirratjin-gu	Gumatj	Lama-mirri	Galpu	Dhal-wangu	Ngay-mil	Total
Baringura B114	1 (W)						1
Barnambarrnga C163		1 (Ma)			6		7
Barumi A63		1 (W)					1
Baypaymi		2					2
Biridjimi E192	3	1 (Mi)					4
Bukpukpuy E194		1 (Mo)		7			8
Butjumurru D211		9	1 (W)		1 (L)	1 (L)	12
Dalywoi Bay cf B37		2	3				5
Dhambaliya D265etc	5	2	1 (Mu)	1 (Mi)			9
Dhangganbuy		1 (W)					1
Dhuraka C124	1 (D)	3	1 (Mu)				5
Djawulpawuy C148	4						4
Galaru C181	4						4
Galupa D202		4					4
Garanhan B74		2	1 (Mo)				3
Garrangal		2					2
Gulkula A84		3					3
Gulungungura E193						1 (Mu)	1
Gunhingingura B75a	1 (W)						1
Gunypinya	5	1 (W)					6
Guthiya	3						3
Lumboi C183, C190	4						4
Manydjarrarrnga		1 (Mi)	2				3
Nandyjaka		1 (Ma)	2				3
North River	1 (Mi)			1 (Mi)		1 (Mi)	3
Ngumuywuy	1 (W)						1
Nhulunbuy C169	6			1 (D)			7
Reerriwuy D161					3		3
Wamuku A103		2	2	1 (L)	1 (Mu)	1 (L)	7
Wagarapunda D196	1 (D)	1 (Mi)					2
Warraminya D160	2						2
Warrimbiri D197		7					7
Wathawuy F229	6	1 (W)				1 (D)	8
Wilama C131		1 (W)					1
Wirrawa	6						6
Wurruwidi C120	3			1 (Mu)		1 (Mu)	5
Yangumbi	2					3	5
Yalangbara	5	1 (Mu)		1 (Mi)		1 (Mi)	8
Yarrapayuy	1 (Ma)						1
Yirrkala C134	5						5
TOTAL	70	50	13	13	11	10	167

D=Dadaynga; L=Laatjannga; Ma=Matjidi; Mi=Milirrpum; Mo= Monyu; Mu=Mungurrawuy; W=Wandjuk Source:NAA A432 1969/649 Attachment 4.

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