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'Now Balanda Say We Lost Our Land in 1788'

Challenges to the Recognition of Yolŋu Law in Contemporary Australia

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This essay examines some of the cultural underpinnings of contemporary Yolŋu calls for the comprehensive recognition of their full political rights and legal jurisdiction over northeast Arnhem Land by Australian governments. Arnhem Land is an Aboriginal Land Trust that spans some 96,786 square kilometres in the tropical northeast of Australia's Northern Territory. It is currently home to some 11,000 indigenous Australians—including some 7000 Yolŋu (People) in northeast Arnhem Land—whose hereditary ownership of land and marine estates in the region predates European settlement in Australia from 1788 by scores of millennia.

After many of the early pastoral ventures that had been trialled in the region between 1870 and 1908 had failed financially, the Commonwealth Government zoned Arnhem Land as an Aboriginal Reserve where, ostensibly, local peoples

¹ The authors have collaborated academically since our first meeting at Galiwin'ku in northeast Arnhem Land in 1997, and have shared our common passion for music and knowledge. In writing this essay, we have pooled our shared experiences of community life in Arnhem Land, participating in the Därra' Legal Forum at the third Garma Festival of Traditional Culture at Gulkuḷa in 2001 and contributing to the Australian Indigenous Studies Program at the University of Melbourne. Gumbula brings to this collaboration his expertise as a *liya-ŋarra'mirri* (wise, learned) Yolŋu elder and legal specialist, and experiences of working as a First Class Constable for the Northern Territory Police at Galiwin'ku from 1986–92, on the Galiwin'ku Town Council from 2000–3 and in the Mala Elders Program in Darwin under the auspices of the Northern Land Council. Corn brings to the collaboration his understanding of

would remain isolated and free to pursue their traditional lifestyles unhindered. However, in practice, Anglican and Methodist missionaries established small towns throughout the region from 1908–73 and, in the vast majority of cases, became the effective administrators of local peoples on behalf of the Northern Territory Administration until these powers were ceded to more representative local governments following the abolition of the *Native Administration Ordinance Act 1940–64*. In the mid 1970s the Commonwealth Government passed the *Aboriginal Land Rights (Northern Territory) Act (ALRA)*² under which inalienable freehold title to Arnhem Land was granted to an Aboriginal Land Trust who hold the title on behalf of Aboriginal people entitled by Aboriginal tradition to use or occupy that land.

The Foundation Contested

In 1989, a largely-unknown band from a community named Yirrkala in remote northeast Arnhem Land had its debut album released by Mushroom Records. The name of this band was Yothu Yindi and its debut album was called *Homeland Movement* (1989).³ At the time, Mushroom Records was noted for its brave philanthropy in supporting a previously-unsigned trio of Yolŋu musicians from the Northern Territory whose first album was unprecedented in its juxtaposition of fairly-conventional rock songs against traditional songs of the

music as a medium through which contemporary Arnhem Landers express their ancestrally-given identities.

² Aboriginal Land Rights (Northern Territory) Act 1976 (Cth),

³ Yothu Yindi, *Homeland Movement*, (Mushroom, D19520, 1989).

manikay genre (Gudinski 1999).⁴ *Homeland Movement* (1989) had been all but forgotten by the time that Yothu Yindi found eventual chart success with an unsolicited yet extremely-popular remix of “Treaty” from its second album, *Tribal Voice* (1991: 2).⁵ However, among the numerous hidden treasures of *Homeland Movement* was the album’s closing song, “Luku-Wāṅawuy Manikay [Foundation Site Song] (1788)” (Yothu Yindi 1989: 15).

“Luku-Wāṅawuy Manikay (1788)” (Yothu Yindi 1989: 15) was composed in 1988 to mark the bicentenary of Australia’s occupation by Balanda (Anglo-Australian) governments. It was composed by Galarrwuy Yunupingu—the eldest brother of Yothu Yindi’s lead singer, Mandawuy, and current Chair of the Northern Land Council—and draws on his long experience of lobbying Australian governments for the recognition of his people’s pre-existing legal jurisdiction and property rights over their hereditary estates. The first three

⁴ *Manikay* are sacred song series that are central to the performance of public (*garma*) Yolŋu ceremonies. They are among the most important hereditary properties owned by Yolŋu groups and, along with corresponding dances and designs, constitute a lasting record of the observations made by ancestors about the ecologies of their respective homelands. *Manikay* lyrics make extensive use of the sacred names that are possessed by each Yolŋu group, and can only be interpreted at the discretion of mature leaders who are *liya-ṅarra’mirri* (learned, wise) in *rom* (law, culture, proper practice, the way). Other than this, a *manikay* series is most readily identifiable as the property of a particular Yolŋu group by the distinctive vocal pitches and melodic contours that are known as its *dāmbu* (head). A consummate knowledge of the hereditary names, songs, dances and designs of one’s group, and a demonstrated ability to direct their execution in ceremony are prerequisites for leadership in Yolŋu society. *Manikay* are conventionally performed by learned male singers who accompany themselves with *bilma* (paired sticks), and are additionally accompanied by a male *yidaki* (didjeridu) player. In ceremonial contexts, these musicians also lead the performance of corresponding dances by men, women and children. Above all, *manikay* celebrate the beauty of qualities vested in Yolŋu and their homelands by *wañarr* (ancestral progenitors), and affirm the ancestrally-given identities and values of the groups who perform them.

couplets of this song parody a sitting of parliament in which a Yolŋu leader explains to his peers that their hereditary land rights are being contested by Balanda interlopers who claim that they took possession of the entire Australian continent when their British forebears planted a Union Jack in the name of King George III at Sydney Cove in 1788.

Despite the intentional humour of “Luku-Wāŋawuy Manikay (1788)” (Yothu Yindi 1989: 15), the history of struggle for land justice behind its composition is one of great sorrow and personal loss. Galarrwuy and Mandawuy Yunupinju’s father, Mungurrawuy, was one of twelve Yolŋu leaders from Yirrkala who, in 1963, unsuccessfully petitioned the Federal House of Representatives to stop the development of a bauxite mine on their nearby hereditary lands (Milirrpum et al. 1963; Commonwealth of Australia 2001).⁶ Their ensuing legal case against the Swiss–Australian mining company, NABALCO, and the Commonwealth of Australia in the Supreme Court of the Northern Territory from 1970–1 probed the complexities of Yolŋu law and its traditional provisions for managing property rights (Williams 1986: 109–203). Galarrwuy, who had joined the newly-established Yirrkala Town Council in 1969, acted as an interpreter for his elder kin throughout these proceedings and witnessed their eventual defeat when

⁵ The unsolicited yet extremely-popular remix of “Treaty” with which Yothu Yindi found its first chart was produced by a studio in Melbourne called Filthy Lucre and released on the extended edition of *Tribal Voice* (1991: 15).

⁶ Mandawuy Yunupinju offers a very personal account of his sorrow at having witnessed the desecration of his hereditary lands and waters through the development of this mine from childhood in “Gone Is the Land” (Yothu Yindi 2000: 12).

Justice Blackburn (1971) ruled that Yolŋu proprietary interests in land could not be recognised under Australian law.

Further insult to Yolŋu dignity came with Blackburn's finding (1971: 198) that he was also unconvinced of the plaintiffs' descent from the people who had owned the contested lands when Captain Arthur Phillip took possession of Australia in the name of the British Crown on 26 January 1788. In "Luku-Wāŋawuy Manikay (1788)" (Yothu Yindi 1989: 15), Galarrwuy scathingly satirises the absurdity of this ruling to Yolŋu sensibilities. He suggests that Phillip and his First Fleet would have been hastily repelled had they not landed some 2,500 kilometres away from the Yolŋu homelands of North–East Arnhem Land, and had Yolŋu leaders at Yirrkala not waited more than 130 years to be informed of their arrival by latter day missionaries and government representatives.⁷

The remaining seven couplets of "Luku-Wāŋawuy Manikay (1788)" (Yothu Yindi 1989: 15) are a staunch affirmation of Yolŋu sovereignty over North–East Arnhem Land. In keeping with Yolŋu epistemology (Williams 1986: 42–3; Keen 1994: 103; Gondarra 2001: 15–20), they trace proprietary interests in land back to the *wāŋarr* (progenitorial ancestors) who initially shaped, named and populated the Yolŋu hereditary estates.⁸ As Yothu Yindi would again declare in

⁷ Indeed, the Commonwealth Government did not even count Yolŋu and other indigenous peoples of Australia in the census as Australian citizens until after the Referendum of 1967 had been won. Detailed discussion of this milestone event is offered by Attwood and Markus (1997).

⁸ For the purposes of this essay, sovereignty is defined as the right of the duly appointed and recognised leaders of any discrete human society to hold and exercise supreme authority and jurisdiction within their territories, and to be recognised by other sovereign states.

“Treaty” (1991: 2), the ancestral bestowal of these perpetual interests on Yolŋu was in no way extinguished by the planting of the Union Jack at Sydney Cove in 1788 and was not directly contested by any alien power until construction of the NABALCO bauxite mine started in 1962.

The Foundation Described

Yolŋu believe that they, as well as the geomorphic features and living ecologies of their hereditary estates, are the physical consubstantiations of metaphysical ancestral forces that exist eternally on a *wañarr* plane of reality (Williams 1986: 23–4; Keen 1994: 105–6; Rudder 1993: 48–50; Turner 1997: 26–30). Yolŋu rights in their hereditary properties and the social authority of Yolŋu leaders are believed to flow from this ancestral plane of existence and through the *wañarr* (progenitorial ancestors) who initially shaped, named and populated North–East Arnhem Land to their human descendants. There are more than sixty patrilineal Yolŋu *mala* (groups) who, by virtue of this ancestry, recognise each others’ ownership and legal jurisdiction over hereditary tracts of land and sea in this area, and who commonly work together to observe the rightful execution of traditional legal processes through ceremonial performance (Zorc 1996: passim; Bagshaw 1998: 155–73).

The very title of “*Ḷuku-Wañawuy Manikay (1788)*” (Yothu Yindi 1989: 15) describes a fundamental tenet of Yolŋu ownership and proprietary interests in hereditary tracts of land and sea by virtue of ancestral bestowal. *Ḷuku* can be translated from Yolŋu-Matha as “foot”, “footprint” and “step” as well as “root”, “anchor” and “foundation” (Tamisari 1998: 250–1; Corn 2002: 83–4). This term and its synonym, *djalkiri*, circumscribe all signs of ancestral activity in the physical world including the names and geomorphic features of hereditary *wāŋa* (estates), the *gurrutu* (kin) relations between people and *mala* (patrilineal groups), and *matha* (language) (Tamisari 1998: 250). As an expression of the

“foundation” of Yolŋu law and culture, *luku* “is simultaneously a way of moving through life, coming and going out of being, visiting the same camping places, sitting around a hearth which has been used by family members long gone, reproducing or re-performing everyday activities in the right way, and following the way taught and the footprints left by the ancestors” (Tamisari 1998: 251).

More specifically, however, the term *luku-wāŋawuy* refers to the “foundation sites” on *wāŋa* (estates) in North–East Arnhem Land where *waŋarr* (progenitorial ancestors) initially bestowed law and hereditary possessions on humans of their descent by embedding themselves deep into the earth. Galarrwuy’s *luku-wāŋawuy manikay* (foundation site song) of 1988 (Yothu Yindi 1989: 15) casts Phillip’s planting of the Union Jack at Sydney Cove two centuries earlier as a foundation myth on which the Commonwealth of Australia has relied to justify its claim to the continent yet affirms that contemporary Yolŋu derive their own sovereignty over North–East Arnhem Land from the legal foundations bestowed upon them by their *waŋarr* (progenitorial ancestors).

This sardonic treatment of the raising of the Union Jack as legal claim to Australia that the bicentennial celebrations in 1988 marked, fittingly mirrors Blackburn’s finding (1971) that hereditary Yolŋu proprietary interests in land were solely religious in their nature and, therefore, less than real. Galarrwuy’s parody of this foundation myth is further enhanced by the song’s setting in the revivalist folk style that became popular among Australians of British–Irish descent in the 1950s, and in which so many canonical Australian folk songs about the rampant colonial expansionism of their ancestors were composed (Smith 1997: 222–3).

Yolŋu conceptualisations of legal jurisdiction and process are encapsulated within those of *luku*, *maḡayin* and *rom* (Keen 1994: 137; Tamisari 1998: 250–1;

Gondarra 2001: 19–20). *Maḍayin* is a term that connotes great beauty and pertains to the sacred properties in language, songs, dances and designs that are owned in perpetuity and deployed in ceremony by each Yolḷu *mala* (patrilineal group) (Williams 1986: 29). In a pragmatic sense, these sacra function as title deeds, and represent the ancestrally-bestowed proprietary interests of each *mala* (patrilineal group) in the discrete tracts of land and sea that comprise their hereditary *wāḷa* (estates, homelands). Among the most important of these sacra are the sculpted and exquisitely-adorned sacred objects known as *raṅga*. As direct representations of the *waḷarr* (progenitorial ancestors) who initially shaped, named and populated the Yolḷu hereditary estates, *raṅga* are revealed only in *ḷārra'* (restricted) ceremonial contexts and symbolise the ultimate authority of each *mala* (patrilineal group) over its hereditary properties by virtue of ancestral bestowal.

Rom is most commonly described as “law” or “culture” in English (Keen 1994: 137). However, Keen (1994: 137) suggests that it can also be translated from Yolḷu-Matha as “right ... or proper practice” or, to capture something of its religious connotation, “the way”. *Rom* is formally expressed and upheld through ceremonial performances in which participating *mala* (patrilineal groups) deploy their sacred properties in language, songs, dances and designs. Following ancestral precedent, whether they be precedents for *rom* (proper practice) established by *waḷarr* (progenitorial ancestors) or introduced by forebears known in life, is a most profound Yolḷu virtue (Keen 1994: 149).

Yolḷu conventionally demonstrate this virtue through their knowledge of *rom* (proper practice) for routine everyday practices and for the deployment of their *maḍayin* (sacra) in ceremonies. Yolḷu believe that they accumulate *mārr* (inner strength, ancestral power, social harmony and spiritual well being) by diligent following *rom* (proper practice). Moreover, it is necessary for mature Yolḷu, and

men in particular, to have arduously attained consummate knowledge of their hereditary canons of names, songs, dances and designs before they can be recognised as *liya-ṅarra'mirr(i)* (wise, learned) elders with the authority to undertake social and ceremonial leadership roles.

It is by these fundamental precepts of *luku* (foundation), *maḍayin* (sacra) and *rom* (proper practice) that Yolṅu define themselves as people of law and, in their totality, the legal traditions bestowed upon Yolṅu by their *waṅarr* (progenitorial ancestors) provide for:

the protection of each patrifilial group's primary ownership rights and proprietary interests in its hereditary *wāṅa* (estates, homelands) and *maḍayin* (sacra);

the regulation of matrifilial access and succession rights to the hereditary *wāṅa* (estates, homelands) and *maḍayin* (sacra) of other *mala* (patrifilial groups);

the universalising regulation of inter-personal and inter-*mala* (patrifilial group) socio-economic relations through *gurrutu* (kinship) and *mālk* (moiety subsections, *skin* names);

the ceremonial cooperation of related *mala* (patrifilial groups) who share common *maḍayin* (sacra) at jointly-owned *reṅgitj* grounds;

the creation and renewal of diplomatic alliances between *mala* (patrifilial groups) through exchange ceremonies and marriage betrothals;

the negotiation of binding legal and political decisions by *liya-ṅarra'mirr(i)* (wise, learned) men in *ṅarra'* (restricted) ceremonial contexts, and of public assent to them in *dhuni'* (exo-restricted) and *garma* (public) ceremonial contexts (Gondarra 2001: 17);

the division of domestic and ceremonial responsibilities and labour between males and females;

the authority of elders to instil in their youths the principles of *rum'rumthun* (discipline, decorum, social etiquette);

the authority of elders to induct individuals to greater positions of social and ceremonial responsibility and eventual leadership;

the life-giving knowledge of ecology and natural resource management applied by *djambätj* (skilled) hunters;

the life-saving knowledge of illnesses and pharmacology applied by *marrŋitj* (healers);

warfare and the life-threatening knowledge of *galka* (assassins);

extensive funeral and purification ceremonies; and

the punishment and peaceful resolution of crimes through *makarraṯa* ceremonies.

The Foundation Negotiated

At present, these legal traditions are not recognised by Australian governments. The Commonwealth Government holds no formal treaty with any Indigenous people in Australia and, until 1993, maintained that the continent had been unowned (that is, terra nullius) when the British claimed possession in 1788.⁹ Contemporary Yolŋu leaders (Yothu Yindi 1989: 15, 1991: 2; Yunupinju 1998; Gondarra 2001: 15) nevertheless maintain that this was the system of law through which northeast Arnhem Land was governed, unchallenged at the time

⁹ The doctrine of terra nullius in Australia was overruled when the High Court of Australia (1992) found that the Meriam of the Torres Strait Islands hold native title over Mer (Murray Island) that predates the landing of the British First Fleet at Sydney Cove in 1788. The Commonwealth Government key principles behind this ruling were soon after enshrined in the *Native Title Act 1993 (Cth)*.

of the British First Fleet's arrival in 1788, and decades beyond the establishment of the first Methodist mission to their people at Milinjimbi in 1923.

Indeed, men of the Djapu' *mala* (patrilineal group) who killed five Japanese sailors guilty of serial rapes and an attempted murder in 1932 had acted under the legal authority of their leader, Wongu, to mete out these punishments. Police from Darwin were dispatched to investigate these killings in 1933. Their leader, Constable Albert McColl, sexually assaulted the wife of the accused Dhäkiyarr Wirrpanda and was summarily executed. At the behest of Methodist missionaries, Dhäkiyarr allowed himself to be extradited to Darwin where, in 1934, he was tried for killing the Constable in a Balanda court. He was found guilty of murder and sentenced to death but was later released on appeal (Dewar 1982; Trudgen 2000: 35–8).

Dhäkiyarr disappeared under suspicious circumstances before returning home (Trudgen 2000: 35–8) and, in 2003, his family performed a major ceremony outside the Supreme Court building in Darwin to commemorate his death, to release his spirit and to reconcile with attending members of McColl's family (Northern Land Council 2003a). Despite the largely unsympathetic attitudes of Balanda authorities in the early twentieth century towards indigenous peoples, there should now be no question that Dhäkiyarr and the other Yolŋu protagonists in these incidents were justified under Yolŋu legal jurisdiction in protecting themselves against such violent and malicious acts, and in punishing those who perpetrated them.

With pressure from Methodist missionaries mounting throughout the mid twentieth century and the gradual enfranchisement of Yolŋu leaders to the local government councils that replaced mission authorities from the mid 1960s, many of the traditional legal powers that Yolŋu leaders had exercised over

matters of crime and punishment in *makarraṭa* ceremonies came under the jurisdiction of Balanda police, courts and prisons. In 1978, the newly-established Northern Territory Government began to recruit indigenous police aides whose primary role still today is to mediate disputes, and to facilitate the activities of police, courts and correctional services in their own communities. Yolṅu police aides are sometimes able to exert considerable influence in mediating between elders and magistrates to find mutually-agreeable court solutions to matters of crime and punishment that divert Yolṅu defendants from jails. However, as there remains no formal recognition of this effective legal plurality or the traditional legal authority of Yolṅu elders by Australian governments, such considerations are left to the discretion of each presiding magistrate on a case by case basis.¹⁰

The Foundation Championed

“Luku-Wāṅawuy Manikay (1788)” (Yothu Yindi 1989: 15) was not the only staunch affirmation of Yolṅu sovereignty to which Galarrwuy Yunupinṅu contributed in 1988. Amid the year-long bicentennial celebrations of British settlement in Australia, indigenous leaders of the Northern and Central Land Councils chose Prime Minister Robert Hawke’s visit to the Barunga Festival of Sport and Culture on 12 June to present him with a statement that called on the Commonwealth Government to recognise the pre-existing sovereignty of indigenous Australians, their continuing ownership and proprietary interests in their hereditary estates, their rights to be educated in their own languages and

¹⁰ These issues are addressed in great detail by the Australian Law Reform Commission (1986).

cultures, and their pre-existing legal traditions through the negotiation of a formal Treaty or Compact.

The defeat of the Yolŋu case against the NABALCO mine in the Northern Territory Supreme Court had precipitated a federal inquiry into indigenous land rights (Woodward 1974) that led to the establishment of the Northern and Central Land Councils under the *ALRA*. However, their powers and resources under this Act extend only to pursuing indigenous claims and disputes over Crown Land, and to administering visitors' and commercial access to Aboriginal Land Trusts. Galarrwuy Yunupingu became the second and longest-serving Chair of the Northern Land Council in 1977 and—with his counterpart from the Central Land Council, Wenten Rubuntja—handed the Barunga Statement¹¹ to Prime Minister Hawke in person. Hawke's immediate response was to vow that his government would enter into a Treaty with indigenous Australians by 1990. His government's subsequent failure to honour this promise was the catalyst for Yothu Yindi's release of "Treaty" (1991: 2) in protest.

Formal calls for Australian government recognition of pre-existing indigenous legal traditions were again raised at the Därra' Legal Forum which was convened under the auspices of the Yothu Yindi Foundation on the *rengitj* ground at Guḷkuḷa from 23–4 August 2001.¹² We, the authors, both participated in a men's

¹¹ Ref to Barunga statement

¹² Galarrwuy and Mandawuy Yunupingu are the respective Chair and Secretary of the Yothu Yindi Foundation.

discussion group facilitated by Mick Dodson¹³ at this Forum on 23 August which determined that emergent government strategies to grant indigenous communities piecemeal control over discrete portfolios such as land access, marine protection and diversionary programs for substance abusers fell well short of a comprehensive approach to the formal recognition of indigenous legal traditions in a Treaty or Compact with the Commonwealth Government (Yothu Yindi Foundation 2001: 6). Under the terms of the ALRA, the Commonwealth Government granted inalienable freehold title to the Arnhem Land Aboriginal Land Trust, on behalf of Aboriginal traditional owners of the land. However, while this Act recognises the authority of Aboriginal custom and tradition within the Land Trust area, it gives no standing to the full body of Yolŋu laws pertaining to people-land relationships and can in no way be a substitute for the comprehensive traditional legal provisions under Yolŋu law described earlier in this essay.

Our group also considered whether the applicability of indigenous laws to non-indigenous people who break them should be renewed (Yothu Yindi Foundation 2001: 6) and, on the following afternoon, the Forum found as one of its four key recommendations to Australian governments that, “where legal pluralism enables justice and fairness, then the recognition of customary law should be legislated to ensure that all Australians obtain the benefit of a combined system of laws that

¹³ Dodson is a member of the Yawuru people for the Kimberley region in North–West Australia. He is a barrister who specialises in indigenous legal matters, is Chair of the Australian Institute of Aboriginal and Torres Strait Islander Studies and is Convenor of the Institute for Indigenous Australia at the Australian National University.

works to the benefit of indigenous and non-indigenous Australians alike” (Yothu Yindi Foundation 2001: 12). The enshrinement of such legal pluralism in Australia would hold benefits that far exceed the diversion of indigenous people from the criminal justice system and into community-based justice programs no matter what legislative difficulties may need to be overcome.

Elders such as the *liya-ŋarra'mirr(i)* (wise, learned) Yolŋu of northeast Arnhem Land whose leadership roles in their own communities are undermined in virtually all respects by the institutionalised absence of government recognition for their authority, would be better supported in their localised efforts to maintain socio-cultural stability and the rule of law. This strategy would also bring recognition for *liya-ŋarra'mirr(i)* Yolŋu whose arduous traditional career paths in leadership and law have been severely eroded by the increased roles of Balanda police, courts and correctional services in northeast Arnhem Land since the mid-twentieth century, and might even assist the current Yolŋu leaders in attracting their young to this calling.

As Yolŋu legal processes are formally expressed through ceremonies, the continuance of these legal traditions and of *liya-ŋarra'mirr(i)* leaders who know how to execute them is further imperative to the survival of the hereditary canons of names, songs, dances and designs that constitute the cornerstone of the Yolŋu community's fledgling participation in the global market economy. For example, how can the growing international trade in highly-valued Yolŋu art works be sustained without the consummate knowledge of *liya-ŋarra'mirr(i)*

elders who are trained in the traditional body of laws that inform and necessitate their production (Morphy 1991, 1998)?

The Northern Land Council's Mala Elders Program¹⁴, which calls on the authority and expertise of elders to assist with the rehabilitation and repatriation of long term substance abusers from remote indigenous communities who live in Darwin, has the support of both the traditional owners of Darwin in the form of the Larrakia Nation Aboriginal Corporation and the Northern Territory Government (Northern Land Council 2003b; Toyne 2003). It demonstrates how the specialised knowledge and skills of elders might benefit us all should their status as the duly appointed and authorised leaders of sovereign indigenous peoples, and should the reality of the legal plurality that their continuing presence in Australia currently engenders be one day recognised in a formal Treaty or Compact with the Commonwealth Government.

The Foundation Eternal

That Balanda say Yolŋu lost their land in 1788 is a preposterous proposition that denies their rights as an ancient political entity and as people of law with comprehensive legal jurisdiction over their hereditary territories. Nevertheless, at each turn in their recent history, Yolŋu leaders have favoured negotiation and the cultivation of mutual respect as a means of seeking formal recognition from Australian governments for their people's human rights to self-determination and freedom under the rule of law. In response, Australian governments have

¹⁴ Established in 2003

repeatedly dismissed Yolŋu calls for the comprehensive recognition of their political rights and legal jurisdiction over northeast Arnhem Land on grounds that these rights were somehow extinguished when British troops took possession of the entire continent in 1788 more than 130 years before Yolŋu leaders were first informed of this event by missionaries and government representatives in the early twentieth century.

Nevertheless, the satirisation of this history offered by Galarrwuy Yunupingu in “Luku-Wänawuy Manikay (1788)” (Yothu Yindi 1989: 15) and other songs by Yothu Yindi such as “Treaty” (Yothu Yindi 1991: 2) continue to inform audiences in Australia and internationally about the plight of contemporary Yolŋu. Moreover, recent initiatives such as the Därra’ Legal Forum (Yothu Yindi Foundation 2001) and the Mala Leaders Program (Northern Land Council 2003b) demonstrate the dedication and constructivism with which contemporary Yolŋu leaders have sought to promote their profound ancestral bonds to their hereditary estates and legal traditions, and to find pragmatic solutions to complicated legal matters involving their people. Continued investment in such dialogues may one day be rewarded with formal recognition of their rights as peoples and an Australian nation re-shaped by greater recognition of the self-evident legal and political plurality and different cultural traditions.

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