

‘Who’s in and who’s out?’: an analysis of the lived experiences of native title and the lifeworld of the people in the Pilbara, Western Australia



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## Abstract

This thesis explores the impact of the Native Title Act (Cth) (1993), particularly, s223, on Aboriginal people of the Pilbara region in Western Australia, some 1,280km north of Perth. I argue that since the introduction of the native title industry, particularly the establishment of the local Native Title Representative Body, notions of stasis and the expectation of a legally conceived concept of 'tradition' have been projected on to Aboriginal people, which caused their lifeworld to develop a cleft. This split within their lifeworld was precipitated by the process of 'connection research' and the perceived requirements developed within the native title industry. I argue the native title cleft seamlessly intersects with that of Aboriginal everyday life.

The role of the in-house anthropologist within Native Title Representative Bodies is unpacked based on my own experience as an in-house anthropologist working and living in the community in the Pilbara. My own lived experience and the relationships I have built with the Aboriginal community of the Pilbara are contrasted with those which prevail between the Aboriginal community and anthropologists working in native title. The methodology used by native title anthropologists, as well as what is deemed to be necessary evidence in a native title claim is analysed and contextualised through the experience of Kariyarra people.

I look at the decision by Olney J, based on the words of Barker J from the Mabo 2 decision, which has influenced the way in which cultural change is perceived within the native title industry. Further, I show that while the concept of the 'traditional' has been embedded into the fabric of the native title industry, oral histories, a 'traditional' aspect of Aboriginal cultures, must be validated by historical documents written after colonisation, by colonisers or early anthropologists. These documents are presented as evidence of Aboriginality, connection, and continuity. The emphasis on this type of evidence has impacted the way in which the Aboriginal community of the Pilbara conceives Aboriginality and how they reckon group membership. The ability to obtain and possess these documents and responses to the information contained within them changed the way in which Aboriginal people interact with each other in the social dimension as well as social structures and systems of authority and hierarchy.

These overarching aspects of the native title industry are examined and analysed through the phrase, 'who's in and who's out?' which has become the epicentre of the conception of membership to native title claims and native title holding groups. I employ the concept of 'agency' to understand the way in which Aboriginal people of the Pilbara have adapted to the native title industry and their response to the imposition of 'tradition' as conceived by the native title industry. Finally, I also explore loss of agency resulting from the continuous institutionalised violence perpetrated against Aboriginal people since colonisation and conflict that has emerged in relation to identity and connection to country.

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# Table of Contents

STATEMENT OF ORIGINALITY.....	II
ABSTRACT .....	III
ACKNOWLEDGEMENTS .....	V
TABLE OF CONTENTS.....	VIII
LIST OF MAPS .....	X
LIST OF DIAGRAMS .....	XI
LIST OF PLATES .....	XII
ABBREVIATIONS .....	XIV
<b>CHAPTER 1: INTRODUCTION .....</b>	<b>1</b>
1.1 ANTHROPOLOGY AND NATIVE TITLE: “WHO’S IN AND WHO’S OUT” .....	1
1.2 INSPIRATION FOR MY RESEARCH AND FIELDWORK ENTRY.....	5
1.3 THE PEOPLE OF THE PILBARA.....	10
1.4 LANGUAGE GROUPS AND KIN-GROUPS: SOME BASIC DEFINITIONS.....	12
1.5 THESIS OUTLINE .....	17
<b>CHAPTER 2: THE PROBLEM OF EVIDENCE AND AUTHORITY .....</b>	<b>21</b>
2.1 ANTHROPOLOGY, EVIDENCE AND THE NATIVE TITLE ACT (CTH) (1993).....	21
2.2 APICAL ANCESTORS: THE GENEALOGICAL PUZZLE .....	28
2.3 THE LACK OF EVIDENCE: ORAL HISTORIES .....	32
2.4 WHO’S IN?: THE RULES OF MEMBERSHIP .....	34
2.5 “DOUBLE DIPPIN”: PRIMARY AND SECONDARY IDENTITIES.....	42
2.6 CONCLUSION .....	48
<b>CHAPTER 3: NATIVE TITLE, CHANGE, AND THE SELECTION AND APPROPRIATION OF TRADITION .....</b>	<b>51</b>
3.1 A ‘SIMPLER LIFE’: A PRISTINE CULTURE .....	51
3.2 THE STASIS: REPRESENTATIONS OF ‘TRADITION’ AND ‘CONTINUITY’ .....	53
3.3 TRADITION IN THE PILBARA.....	57
3.4 ‘TRADITION’ AND ‘CHANGE’ IN TENSION.....	62
3.5 CHANGE: THE DIRTY WORD IN NATIVE TITLE ANTHROPOLOGY .....	65
3.6 CULTURAL ADAPTATION .....	68
3.7 CONCLUSION .....	73
<b>CHAPTER 4: THE KARIYARRA NATIVE TITLE CLAIM: AN ETHNOGRAPHIC PORTRAIT .....</b>	<b>75</b>
THE AFTERMATH: WHAT HAS CHANGED .....	102
<b>CHAPTER 5: THE LAW AND THE LORE: AN ETHNOGRAPHY .....</b>	<b>107</b>
5.1 INTRODUCTION .....	107
5.2 STATUS HIERARCHY: THE ROLE OF THE ELDERS, LAW-MEN AND LAW-WOMEN.....	119
5.3 “EVERYONE KNOWS ABOUT THE MEN’S BUSINESS”: MEN’S LAW .....	126
5.4 HIDING IN PLAIN SIGHT: WOMEN’S LAW .....	135
5.5 LIFE CYCLE: CONCEPTION, PUBERTY, INITIATION, AND DEATH.....	143

5.6 “THEY BRING DESERT LAW”: THE LEGACY OF THE PILBARA STRIKE .....	150
5.7 CONCLUSION .....	154
<b>CHAPTER 6: KINSHIP IN THE PILBARA, A HISTORY .....</b>	<b>156</b>
6.1 INTRODUCTION .....	156
6.2 THE EARLY DAYS: WOMEN’S BUSINESS .....	158
6.3 RESEARCH IN THE PILBARA: A TALE OF KINSHIP IN THE PILBARA.....	162
6.4 A. R. RADCLIFFE-BROWN: THE ‘KARIERA SYSTEM’ .....	175
6.4.1 SYSTEM OF RELATEDNESS .....	176
6.4.2 THE SEGMENTS OF THE ‘TRIBE’ .....	180
6.4.3 “WE ARE FAMILY”: THE SOCIAL STRUCTURES .....	183
6.4.4 THE SECTIONS: THE SKIN NAMES.....	186
6.4.5 MARRIAGE IN THE PILBARA .....	189
6.4.6 GENEALOGICAL RELATIONSHIPS .....	192
6.5 THE TINDALE EFFECT .....	194
6.6 CONCLUSION .....	199
<b>CHAPTER 7: PERCEPTIONS OF IDENTITY .....</b>	<b>201</b>
7.1 “I’M A BLACKFELLA” .....	201
7.2 PAN ABORIGINALITY: THE HISTORICAL CATEGORISATION OF ABORIGINAL PEOPLE IN AUSTRALIA .....	205
7.3 THE CONTEXT OF ABORIGINAL IDENTITIES.....	209
7.4 A HABITUS CLIVÉ: THE FRACTURE OF SELF .....	213
7.5 THE SOCIO-CULTURAL BASIS OF IDENTITY IN THE PILBARA: “I AM MARLPA.” .....	215
7.6 DOUBTING THE COSMO-ONTOLOGICAL .....	217
7.7 WHO’S IN AND WHO’S OUT: THE GENEALOGICAL CONUNDRUM.....	220
7.8 CONCLUSION .....	222
<b>CHAPTER 8: CONCLUSION .....</b>	<b>224</b>
<b>REFERENCES CITED .....</b>	<b>233</b>
LEGISLATION CITED.....	260
NATIVE TITLE CLAIMS AND DETERMINATIONS CITED .....	261

## List of Maps

Map 1: National Native Title Tribunal map of the geospatial region of the Pilbara depicting all determined and active native title claims (NNTT, 2024).....	11
Map 2: The map published by Tindale featuring neatly bounded ‘tribal’ groups (Tindale, 1940).....	14
Map 3: Radcliffe-Brown’s “Map of the Kariera Tribe” which depicts the kin estates or “local groups”, all of which have a defined territory (Radcliffe-Brown, 1913: 144).....	89
Map 4: Detail showing the overlap of the Wong-goo-tt-oo claim over the Ngarluma/Indjibarndi claim and the Yaburara & Mardudhunera people claim (NNTT, 2004).....	134
Map 5: Map published by Tindale in 1940 showing static boundaries of ‘tribes’ (Tindale, 1940).....	195

## List of Diagrams

Diagram 1: Three generational diagram showing the four grandparents which could mean that Ego has four different potential <i>ngurra</i> relationships. ....	44
Diagram 2: Three generational diagram of Sally Mack, tracing her kin-group through her F, Mack Pontroy to his F, Pontroy, a Nyjamal man. ....	85
Diagram 3: Three generational diagram of Dulcie Cox through her M, Windi, and her MM, Wimiringu who was married to One Arm Dick, a Kariyarra man. ....	92
Diagram 4: Two generational diagram showing Samuel Edgar Lockyer and his siblings, his mother, Sylvia Hall, a Kariyarra woman daughter of On Arm Dick. Sylvia Hall married Samuel Lockyer, a Ngarluma man.....	94
Diagram 5: Daisy and her children as related by the Dhu and Derschow kin-group.....	219

## List of Plates

Plate 1: Some of the members of the Snowball kin-group before a funeral in Port Hedland, 23 June 2018.....	9
Plate 2: Kurtiri and I on the banks of the De Grey River in 2011. ....	16
Plate 3: The Ngarluma women at the Yule River meeting in 2018, Lorice is on the far-right bottom corner. ....	35
Plate 4: Tootsi at her home in South Hedland with her granddaughter in 2018. ....	38
Plate 5: The Tindale genealogy where Lorice’s ancestor, Woodbrook Mary is listed simply as FB (Tindale, 1952-1954). ....	42
Plate 6: Law time at Wirilimura law-grounds in Banyjima country.....	52
Plate 7: Dot painting by Yindjibarndi artist Maudie Jerrold from Yinjaai-Barni Art. The painting is titled “Fireworks (No 1)”, and it is priced at AUD\$810.00 at the Roebourne gallery (image curtesy of the artist).....	60
Plate 8: Petroglyphs at Murujuga, on the Burrup Peninsula on Yaburra country. This type of art is what <i>marlpa</i> themselves consider to be the art which belongs on the country..	61
Plate 9: Cyril Lockyer, a Kuruma elder in South Hedland after his dialysis treatment in 2018.	64
Plate 10: Radcliffe-Brown’s depiction of the family tree including Dougal, Diana’s ancestor and his brothers and sister (1915-1951b). ....	82
Plate 11: Wilrimara and Mindiangu’s family as recorded by Radcliffe-Brown was also recorded by Tindale almost 50 years later (Tindale, 1952-1954). ....	91
Plate 12: Snapshot of the top left-hand corner of Tindale Genealogy sheet 172 depicting Fanny who Tindale labelled as “Naluma” (1952-1954). ....	95
Plate 13: The children of Wilrimara and Mindiangu as recorded by Tindale, with the notable exception of One Arm Dick (1952-1954). ....	99
Plate 14: Tindale genealogy sheet 52, depicting Jinapi and his wife Kitty, and their children (Tindale, 1952-1954). ....	100
Plate 15: Tindale genealogy sheet 59, depicting the family of Katie <i>Njuri</i> and Yankee Williams (Tindale, 1952-1954). ....	102
Plate 16: The process of making damper at Yandeyarra in 2011. ....	107
Plate 17: Mathew Sampi in the vicinity of Yaleen Station while explaining the concept of the Dreaming and displaying a grinding stone he found in 2011.....	110

Plate 18: Mathew Sampi, Red Alexander and Leanne Evans in the vicinity of Yaleen Station in 2011. ....	112
Plate 19: Cyril Lockyer at the old camp in Yaleen Station where he grew up in 2010. ....	116
Plate 20: Kurtiri and Jeffrey discussing Ngarla law at Kurtiri’s house in South Hedland in 2018. ....	130
Plate 21: Ngarluma law-man Wilfred Hicks in Roebourne in 2018. ....	133
Plate 22: Doris Eaton speaking at the Yule River Meeting in 2018. ....	136
Plate 23: Carving of the songline of the Seven Sisters at the place of its beginning along the Pilbara coast. The location must remain undisclosed as this is women’s business. The circles represent the position of corresponding stars in the night sky. ....	138
Plate 24: The Ngarla section system as described by Curr (1886). ....	164
Plate 25: The Ngarluma section system as described by Curr (1886). ....	167
Plate 26: The section system of the Fortescue, Ashburton and upper portions of the Gascoyne, Murchison and Sanford rivers (Mathews, 1910:130). ....	169
Plate 27: The section system from Roebourne through to Broome (Mathews, 1910:128). .	170
Plate 28: The section system from the Eastern Pilbara as described by Bates (1913). ....	172
Plate 29: The section system from the Western Pilbara as described by Bates (1913). ....	173
Plate 30: The section system from the Ashburton region as described by Bates (1913). ....	175
Plate 31: Radcliffe-Brown’s Kariera System of typology (Radcliffe-Brown, 1912b: 152-153). ....	178
Plate 32: Radcliffe-Brown’s map depicting the distribution of kin groups in Kariyarra country (Brown, 1913:144). ....	180
Plate 33: Sketch of the distribution of language groups in the Pilbara (Radcliffe-Brown, 1912b:145). ....	182
Plate 34: Diagram showing the section pairings and their offspring (Brown, 1913:148). ....	186
Plate 35: This diagram depicts the binary, dialectical, intergenerational and cyclical nature of the system rather than any lean towards the patri or matri sides (Brown, 1913:148). ....	188
Plate 36: Letter to the Editor by Radcliffe-Brown in 1937 discussing the impacts of colonialism and outlining the eminent danger of extinction (Radcliffe-Brown, 1937a). ....	193
Plate 37: The Tindale genealogy sheet depicting the Lockyer ancestors (Tindale, 1952-1954: sheet 172, Roebourne). ....	198
Plate 38: Image of a <i>marlpa</i> child at Mallina Station in 1912, believed to be a member of the Lockyer-Clifton kin-group (courtesy of V. Lockyer). ....	203

## Abbreviations

AHWA	Aboriginal History Western Australia
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
CEO	Chief Executive Officer
CERD	Committee on Elimination of Racial Discrimination
CLO	Claimant Liaison Officer
DAS	Department of Aboriginal Sites
DIA	Department of Indigenous Affairs
DLGSC	Department of Local Government, Sport and Cultural Industries
NA	Native Affairs
NAC	Ngarluma Aboriginal Corporation
NNTT	National Native Title Tribunal
NTA	Native Title Act (Cth) (1993)
NTRB	Native Title Representative Body
PBC	Prescribed Body Corporate
PNTS	Pilbara Native Title Service

SA	South Australia
Qld	Queensland, Australia
WA	Western Australia
YMAC	Yamatji Marlpa Aboriginal Corporation

Part One:

Native Title

Meets

Anthropology

# Chapter 1: Introduction

## 1.1 Anthropology and native title: “Who’s in and who’s out”

My first experience of being asked “who’s in and who’s out?” came shortly after I started working in Yamatji Marlpa Aboriginal Corporation’s (YMAC) Karratha office as a Heritage Anthropologist. I was assisting a Claim Anthropologist in a community meeting in Tom Price (Western Australia) where she was to inform the Banyjima native title community who had been found to have a blood connection to a known Banyjima ancestor and who had not, and consequently, who would be included in the claim. My role in the process began in the office a week earlier where I had been asked to print all the genealogies in A3 sized paper and to join them together with sticky tape. Armed with piles of rolled genealogies, I drove for 5 hours to Tom Price. On the day of the community meeting, I was asked to tape up the genealogies to the wall of the hall so that the community could view them. I remember unrolling the genealogies one by one and wrapping them around the hall wall as groups of people vied for the best position behind me to see which genealogy was being set up. A short lady with a vizzor on reached out and tapped me on the shoulder and asked me, “who’s in and who’s out?” to which I responded that I didn’t know, “No, you white fellas never know!” I felt embarrassed because I thought she was referring to my lack of experience. In time, I came to understand that she was referring to me as a YMAC employee. At this point, the concept of an anthropologist telling a group of Aboriginal people who they are and whether they are deemed to have sufficient evidence to prove their identity and connection to country did not enter my mind. That came later.

During my tenure as a native title anthropologist in the Pilbara, and later during my fieldwork, the question of “who’s in and who’s out?” became a call to attention from the native title community. It is one which Aboriginal people in the Pilbara, who are involved or were involved in native title, use to describe the process of identification of claimants and membership to prescribed body corporates (PBCs). The question is fraught with conflict and trauma but, nevertheless, the people of the Pilbara have been asking it consistently over the last three

decades. It often leaves me feeling unsettled, which led me to explore the politics behind this question through formal post-graduate research.

I was also unsettled by the way that the day-to-day business of native title dictates the activities of most of the people who claim a connection with country in the Pilbara. The notices for either directors' meetings, working group meetings or community meetings are mailed out by the native title representative body (NTRB) or PBCs and advertised in the newspapers weekly. This means that the people of the Pilbara are constantly on the lookout for new meetings coming up because missing a meeting could impact their status within the claim or determination area. Thus, the lives of the native title community are held hostage by weekly meetings which are usually advertised for a 9am start but take into consideration that most Aboriginal attendees will arrive on "*marlpa* time<sup>1</sup>", that is at least one hour after the advertised time.

The board of directors and working group meetings will usually include representatives from each of the apical ancestors<sup>2</sup> in a native title claim or determined area. This means that one person is selected by a kin-group or family as their representative or negotiator and this person is then responsible for the wellbeing of the kin-group or family. This type of responsibility has, in the past been a role undertaken by an elder, however in the Pilbara this is no longer the case. These roles are now filled by younger members of the community who have undertaken tertiary levels of Western education. This change in the decision-making process within kin-groups has altered the way in which the Aboriginal people of the Pilbara interact with each other, that is, their understandings and enactment of social structure, hierarchy and authority, in short, how culture is performed.

The board and working group meetings often deal with questions of membership, known as 'membership disputes', and particularly, with which kin-group has rights over a specific tract of land. This is a result of the requirements of native title industry and the mining and resource industry's interest on exploration and mining, and it includes the right to carry out cultural

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<sup>1</sup> Also known as 'the people's time'.

<sup>2</sup> Typically, in native title claims, the claim group is described as descendants of one or more the apical ancestors listed in the claim group description. The apical ancestor is the apex of the genealogical tree, and those people should be documented as being alive at or around the time of sovereignty.

heritage surveys or to be involved in mining and exploration monitoring activities. These activities bring with them remuneration for the individual involved. And while some areas are never disputed as belonging to specific kin-groups, there are areas which are consistently the source of discord<sup>3</sup>. These areas are claimed by more than one kin-group or family, and competition over them has been ongoing for decades leading, in some cases, to physical violence.

The native title 'connection research' process contributes considerably to the discord which has been the topic of some anthropological discourse (Babidge, 2010; Vincent, 2017). It is a legal process that takes place from early on in a claim and involves mostly non-Aboriginal anthropologists and lawyers 'telling' a potential claimant who they are and whether they can claim native title. This process is in opposition to Aboriginal modes of knowledge transmission that centre on oral histories. Instead focusing on written historical records which were compiled during and after colonisation, and which consequently depict a culture in crisis rather than the perceived pre-colonisation ideals.

The type of evidence required for native title and to obtain membership to a PBC is also problematic in that it is not geared towards Aboriginal self-determination, but, rather, it is based on the interpretations of the requirements of the Native Title Act (Cth) (1993) (NTA). The interpreted requirements have been derived from legal precedent which lean towards valuing the perceptions of colonisers and settlers rather than the oral tradition which casts a shadow over their credibility and compromises their objectivity thus problematising their use. The work of early anthropologists is also favoured; however, these works began well after colonisation.

The Aboriginal people of the Pilbara attend their scheduled meetings carrying folders full of historical documents, as well as genealogies and copies of historical Native Affairs (NA) documents documenting their family history as far back as possible. The folders serve the purpose of defending their position within claim groups or the PBCs and as proof of their right

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<sup>3</sup> The area of Port Hedland and the area surrounding Whim Creek are some examples of areas which have always been contested.

to speak for country. I argue that historical evidence has become a type of currency in the Pilbara where the elders' knowledge has been devalued while these documents hold power and status. The uncertainty of whether people can prove their connection to country has produced a change in the Aboriginal lifeworld and authority systems which underpins all aspects of social and spiritual life in the Pilbara. The devaluing of oral histories and the knowledge contained within them in the connection research process has slowly dismantled the bonds which had existed among language groups, kin-groups and even within families.

Kinship and authority systems among the language groups of the Pilbara have been altered in response to the requirements of the native title industry's processes, resulting in years of animosity and conflict which continue today. Relationships which endured since before colonisation have been weakened and replaced by strategic political negotiations managed by younger people who have attained a tertiary level of education based on the perceived rejection of laws and customs pertaining to respect, authority, and hierarchy.

This has also elevated the position of anthropologists as people who have the power to both adjudicate these disputes and decide who can be and who cannot be identified as the 'traditional' people of the country thereby stripping Aboriginal people of their right to self-determine according to their laws and culture. My thesis contextualises the 'actors' within the native title industry in the Pilbara and unpacks the impact that they have on the Pilbara native title community. These social actors include the Claim Anthropologist, who is employed by the local NTRB to conduct ethnographic and desktop research for each of the claims assigned to them and who oversees transmission of all the data collected to the Consultant Anthropologist. The Lawyers, who are employed by the NTRB and instructs the anthropologists through briefs based on legal requirements and interpretations of the NTA. The Consultant Anthropologist, who is the author of the connection report and who receives a brief from the Lawyers and data from the Claim Anthropologists. These consultants also conduct some ethnographic fieldwork; however, the length of time is always limited to a few weeks. The lawyers are placed at the top of the social hierarchy created by the native title industry, with the role of determining the type of work which is to be carried out in each claim. Although, the lawyers themselves make these determinations based on legal precedence and the legal framework of the NTA. Outside of the NTRB-centric management of claims is the court which

is presided by a judge whose job it is to make a determination through interpretation of evidence presented and based on legal precedent. Using this model, the role of the claimants is below that of anthropologists who simply action the instructions provided by the legal team. And below claimants are those who have not been accepted into claims and who are continuously attempting to prove their Aboriginality and connection to country.

The role of the legal framework of native title is not seen as the problem by the native title industry, but rather as a goal which will bring an end to the discord and provide Aboriginal people with restitution or compensation for the dispossession imposed by colonisation. My thesis critiques this perspective. Law is an instrument of social control and is anything but neutral or a-political. The application of the law is directly influenced by culture and politics, and in the case of the NTA, the cultural attitudes towards Aboriginal people in Australia have not been positive (Geertz, 1973). Critical Marxist and feminist perspectives challenge the notion of law as an autonomous entity, arguing that it fundamentally operates as a tool for entrenching patriarchal power structures and perpetuating systemic inequalities.

This thesis is a critique and challenge to the foundationalism of the NTA and a rejection of the perceived 'truth' presented by the historical evidence on which it relies. I draw on the sources created by and used by the native title industry to explore the validity of the NTA and its requirements is not fixed but it is fluid and contested, shaped by specific contexts and power dynamics. Thus, the decisions handed down by the courts are not a reflection of the reality of the lifeworld of claimants, but rather interpretations of a flawed legal framework which relies on inaccurate evidence that imposes control over Aboriginal people.

## **1.2 Inspiration for my research and fieldwork entry**

My return to the Pilbara to conduct fieldwork for my post-graduate candidature was driven by the idea that the need to determine 'who's in and who's out' during native title 'connection' research caused a rupture within the fabric of the lifeworld, authority systems and relational behaviour of the Aboriginal community. In my time as an in-house anthropologist, I also came to question the methodology applied to native title research, in particular genealogical research, and the adversarial nature of the process.

While working with Prof. J. Weiner, who was the consultant anthropologist of the Kariyarra claim and was assisting with the selection of 'apical' ancestors and the determination of membership rules for the Kariyarra native title claim, I understood that there was power politics at play in the way in which the claim group was identified. I also understood that anthropological evidence, as well as some historical documents had been ignored, resulting in the exclusion of kin-groups from the claim and the inclusion of other family groups who are rejected by the Kariyarra people. Prof. Weiner discussed my concerns with the legal team, who were unwilling to allow for the elders to rectify situation that originated over a decade earlier. Since then, those who were not accepted had formed other links to the NTRB or had established themselves as Kariyarra within the non-Aboriginal community, thus they had taken on new roles in the community due to the native title connection report process. Because of the politics involved and the perceptions of what constitutes 'good' evidence in native title, those concerns were taken under advisement and the claimant conflict escalated. Consequently, Prof. Weiner resigned as a consultant for the Kariyarra claim and shortly thereafter, I also left my position.

The experience highlighted the impact that native title research was having on the Pilbara native title community and inspired my desire to unpack how connection research is carried out and why anthropologists have the power to decide "who's in and who's out?" The type of research which has been identified as necessary to the native title process is based on legal precedent and has resulted in the co-option of the discipline of anthropology, which has shifted its focus from the core value of participant observation to the search for historical documentation and arbitrary interviews to satisfy the Western legal framing of Aboriginal 'normative society' and identity which plagues the industry. From my own intersectional feminist perspective, and using an anthropological decolonising framework, I have unpacked the imponderabilia of the everyday life of *marlpa* and included their lived experience of native title in my thesis. I have sought to provide a record of the ongoing impacts of colonisation and the systemic erasure of their credibility through the institutionalised discrimination imposed on them through native title.

The fieldwork for my doctoral candidature was conducted between 2011 and 2018, this is because my candidature began as a part-time Master of Philosophy which I upgraded to a part-time Doctor of Philosophy in 2016. The upgrade came about because of the realisation that the data I had begun collecting was broader than I first thought. My fieldwork was conceived, at first, as including my former employer and thus I contacted the then Director of Research, Ms. Olivia Norris and provided her with my research and thesis plans. Unfortunately, Ms. Norris declined to assist, and she then travelled from Perth to Sydney to speak to my supervisor, who at the time was Dr. Gaynor Macdonald, to request that my project not go ahead explaining that YMAC would not assist or facilitate my project. While I discussed this matter with Dr. Macdonald, we decided that my project could go ahead without the assistance of YMAC and that contacting the PBCs would be a better approach to obtain access to the native title community. I began this process by e-mailing all the PBCs in the Pilbara and establishing a dialogue concerning my project and intention to conduct fieldwork. Fortunately, these dialogues were positive. During this time, I also made a preliminary scoping trip where I met with the chief executive officers (CEOs) of the PBCs and other relevant staff to discuss my project and requirements. My research was welcomed, and the only assistance I needed was to be granted permission to contact their members and be allowed to sit in on community and/or working group meetings because I was already familiar with the community. During this time, I also contacted the elders of the kin-groups that I had built relationships with and consulted them on how I may best carry out my research. The elders were all supportive and even enthusiastic to discuss their experience of native title and they contributed to my plans significantly.

During the preliminary meetings, some of the CEOs invited Aboriginal members of the community to sit in and participate in the discussions. As we talked, many members expressed concerns that native title had caused conflicts and rifts within the Aboriginal community. The focus of the complaints was the way connection research was carried out, particularly the research into apical ancestors and the determination of “who’s in and who’s out”. I was eager to learn more about these experiences and to build my understanding of the native process from the perspective of claimants.

The basis of the relationship between anthropologist and interlocutor is one of trust and kinship. These relationships are reinforced through the granting of a section-name to anthropologists thereby incorporating them into the society. This incorporation comes with duties and roles which are enacted through ritual, but most importantly, through regular contact which leads to the strengthening and maintenance of the kinship bonds. However, there has been a high turnover of researchers in the area, particularly those within the native title industry. Aboriginal people perceive it as a lack of commitment among anthropologists since once their contract is finished, they do not return, and the kinship ties built with them are left to wane and eventually disappear. When I returned to Pilbara, community members expressed their relief at having a familiar face conducting research. I am committed to not breaking these ties and continue to maintain my kinship relationships through regular phone calls and contact on social media as well as visits to the Pilbara. Beyond the break in the bonds, the community representatives expressed frustration at the lack of agency of Aboriginal people within the native title context where they feel that there should be a reciprocal relationship between them, as members of a kin-group, and the NTRB who they expected to be more transparent in relation to connection research and its findings.

I began my fieldwork proper by moving to Roebourne in May 2011 where I was able to secure accommodation with Mr. Cyril Lockyer, who had kindly offered me a room to stay. Because of the part-time nature of my candidature and my work and family commitments, I arranged for four blocks of eight weeks of fieldwork which were carried out between May 2011 and June 2018. The elders whom I had kept in contact with over the years, advised me that I would be welcome to “camp out”<sup>4</sup> at their homes, or stop<sup>5</sup> with the younger people. I accepted Cyril’s offer as my first host and throughout my fieldwork I moved around depending on the invitations I received from members of the community. As part of living in the Aboriginal community I attended community and working group meetings, and, also, participated in activities during law time. In a few instances I was not able to be present in the meetings that my hosts had with members of the resource industry, but I attended most community

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<sup>4</sup> A term used to describe the act of sleeping over at someone’s house as a guest for a length of time.

<sup>5</sup> A term used to describe the act of sleeping over at someone’s house as a guest in a very temporary basis.

meetings except those held by YMAC. I also conducted many interviews with members of the community and was able to participate in hunting and gathering trips “out bush”.



Plate 1: Some of the members of the Snowball kin-group before a funeral in Port Hedland, 23 June 2018.

The people of the Pilbara assert their ownership over all research materials collected, whether tangible or intangible since colonisation, and this includes ethnographic material such as the notes and genealogies compiled by early researchers and those who came after. Therefore, one of the primary preoccupations of the people with whom I lived and those whom I interviewed was that the information shared with me would be published but they would never see it and they would lose agency over it and their lifeworld. This brings to mind Margaret Mead who stated that in anthropology, there are no ‘subjects’ of study, but rather ‘informants’ (Myers, 1991). In my case, I believe that *marlpa* have been and continue to be my teachers. With this perspective and considering the decolonisation of anthropological practice, I assured the community that all the information collected would be returned to them and it would also be stored securely, in accordance with the ethics regulations of the University of Sydney. I have

also collaborated with them throughout the writing process, and they have been able to ascertain how the data collected has been used. A copy of the thesis will also be provided to each of the people with whom I worked with in the hope that they may find this thesis of value.

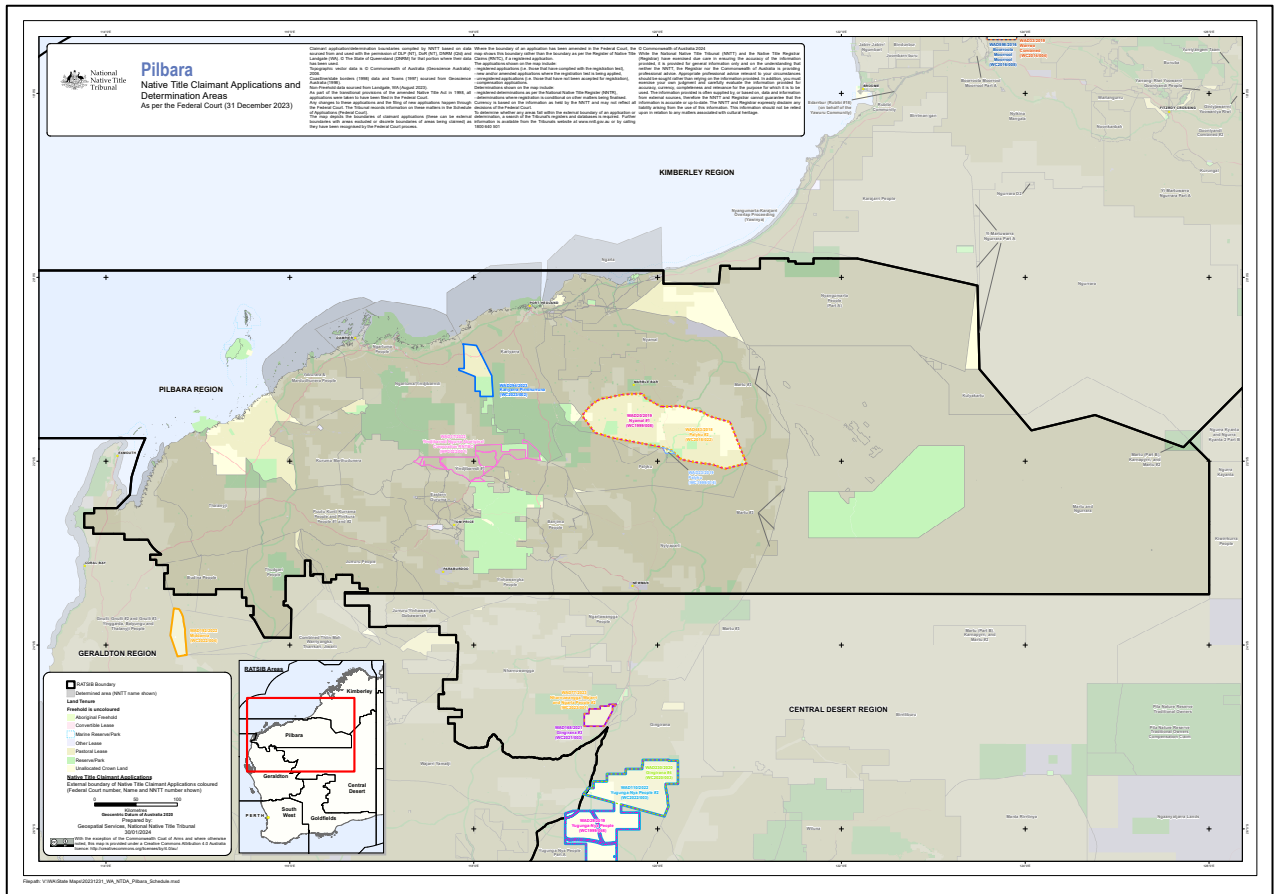
### 1.3 The people of the Pilbara

The Aboriginal community of the Pilbara is diverse, comprising nineteen different groups. All these language groups have had their native title recognised on the country they claimed connection to, but the claims process was lengthy, strenuous, and in some cases, it took decades. There are twenty-one native title holding groups where native title has been recognised in the Pilbara and three active pending claims. Some of these native title groups are not considered to be linguistically and culturally related but through governmental processes and for the delineation of geospatial data, they have been included into the region of the Pilbara. For instance, Martu people are not considered to be either linguistically or culturally associated with *marlpa*, although they do have a close kinship with Nyiyaparli and Palyku people. Consequently, I did not contact the Martu PBCs. Similarly, Thudgari and Budina people are considered to belong to the Gascoyne cultural block, so they were not approached either.

For the purposes of this thesis, the phrase “the people of the Pilbara” refers to those language groups who acknowledge each other as kin and who share a linguistic and cultural link demonstrated and acknowledged by themselves. These people are comprised of Kuruma people, Marthudunera people, Yaburara people, Thalanyji people, Jurruru people, Ngarluma people, Yindjibarndi people, Kariyarra people, Banyjima people, Yinhawangka people, Palyku people, Nyjamal people, Ngarla people, Nyangumarta people and Nyiyaparli people. These peoples collectively refer to themselves as *marlpa*<sup>6</sup>, a word which is uniformly used in the Pilbara to denote a person who belongs to the Pilbara region and who, within the Aboriginal lifeworld, has a demonstrated connection to the Dreaming, the country, and the people. These groups are also delineated in ceremonial and ritual contexts as they share certain components

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<sup>6</sup> There are variations to the spelling of this word, however I have used the most common.



Map 1: National Native Title Tribunal map of the geospatial region of the Pilbara depicting all determined and active native title claims (NNTT, 2024).

of men’s and women’s business due to the common cosmological system realised thus in their lived experience. Marriage does not imbue a person with the right to be referred to as *marlpa*, nor does being of Aboriginal descent, as such, within the native title community in the Pilbara, there are those who are not considered *marlpa* but who are Aboriginal people. The reason for this is the perceived lack of connection between country and people which is a cause of discord. The term ‘Aboriginal’ then includes those people who have been excluded by the community or those who are excluded from native title claims for various reasons, but who still claim to be descended from Aboriginal ancestors and who have claimed a connection to country which is not recognised by the *marlpa*. I have used the term Aboriginal as an inclusive term which allows for those Aboriginal people who are not seen as *marlpa* to be included.

#### 1.4 Language groups and kin-groups: some basic definitions

Aboriginal people of the Pilbara often refer to themselves as being part of a 'tribe' or 'clan' in English. This use of these terms is based on a colloquial understanding of terms derived from English since colonisation and does not accurately indicate the structural configuration of the groups in the Pilbara (Rumsey, 2007). However, these terms have in the past been applied by early anthropologists in their research and were adopted by governmental bodies much in the way in which 'First Nations' has been adopted as a term for Aboriginal people despite its inaccurate depiction of their social structures.

The word 'tribe' derives from the Latin *tribus* which is originated from the ancient Roman voting units and administrative divisions created for political purposes (Cornell, 1995). The first use of the word where it is applied to lines of descent was in the thirteenth century when applied to early Israelites in biblical texts (Murray, 1926). However, during the sixteenth century, the era of colonisation, the term 'tribe' began to be associated with the concept 'primitive', meaning the separation between European society and those who were being colonised (Yapp, 1983). Yapp stated:

It was only with the sixteenth-century expansion of Europe into the Americas and Africa that the association of tribes with a more primitive order of mankind began, and only with the Enlightenment of the eighteenth century that this was formalised into that concept of progress which set tribal people outside the pale of civil society. It was then supposed that the natural course of human development was a progression to higher levels of social, economic and political organisation, which could be equated with civilisation; and that those people who remained grouped in tribes represented an earlier, lower form of life, left behind by the march of history and destined to be redeemed and refashioned by the intervention of superior forces. The epithet most commonly found in association with the word 'tribe' was 'savage' (1983: 154).

The term was first applied to Australian Aboriginal people by Lewis Henry Morgan through his general schema for the evolution of human society, which was in turn based on the formation

of the Hellenistic state proposed by Grote (1794-1871 (1888)). Within the schema devised by Morgan, the word 'tribe' takes on the form of a concept which refers to a political unit made up of kinship units, *phratries*. Each of these units is then composed of 'clans', *gens*, which are in turn made up of family units all sharing a common ancestor (Morgan, 1877). The schema was also part of a wider evolutionist perspective typical of the time, with other scholars also agreeing that kinship ties formed the basis of pre-state societies, with Maine stating:

The history of political ideas begins, in fact, with the assumption that kinship in blood is the sole possible ground of community in political functions (1861:106).

The concept of 'tribe' then embodies the progression from barbarism to civilisation and it represents the belief in a social organisation based on egalitarian kinship which could then progress to a civilisation structured by hierarchical and territorial administration. The underlying meaning of the term 'tribe' then stands in direct contrast with the concept of 'state' (Sahlins, 1968).

The colonisation of Australia and Morgan's influence within the field of anthropology assisted in solidifying the term 'tribe' and consequently 'clan', as institutionalised terms used as administrative categories. However, in contrast to the implicit meaning assigned to the term 'tribe' by early anthropologists, my experience of the Pilbara social structure is different. During law time, the main common characteristic which unites most of the attendees is descent from an ancestor who speaks a specific language. This was observed during the many instances where I was invited to attend law time with my hosts, and where, while there were several members who claimed descent from ancestors who spoke a different language, they attended as guests. Consequently, the celebration of law time demonstrates the commonality which extends to the cosmological beliefs which are embodied through the rituals practiced during this gathering. This leads to the conclusion that language, kinship, and cosmological beliefs are the main factors which bound groups together in the Pilbara. Therefore, I refer to the different groups as language groups throughout this thesis.



Map 2: The map published by Tindale featuring neatly bounded 'tribal' groups (Tindale, 1940).

I have also omitted the use of the term 'clan' in this thesis, based on the Aboriginal conception of territoriality of the language groups, which flows from the Dreaming and is materialised in the landscape and geological features. While Bates (1912, 1913) and Radcliffe-Brown (1913; 1915-1951a, 1930a, 1930b, 1931) provided the approximate estimated locations to the territories of each of the language groups in the Pilbara, Tindale (1953) was the first to use static lines to specifically delineate boundaries (see Map 2). However, despite the delineation of these territories, the language groups practice a high level of exogamy and thus develop several kinship ties that facilitate a high level of mobility. Both, before and after colonisation, people travelled and continue to do so within and beyond the language group boundaries

(Myers, 1991; Rumsey, 2007; Warner, 1969). Although mobility and residence within the boundaries of the territory are not necessary to assert ownership, this point is at odds with the concept of a 'tribe'. The main problem presented by Tindale's map is that it homogenises the language group's territory as being communally owned by the whole, where in fact the whole is divided into smaller sub-groups as described by Radcliffe-Brown (1913; 1915-1951a, 1930a, 1930b, 1931).

Radcliffe-Brown (1913; 1915-1951a, 1930a, 1930b, 1931) described the subgroups as being 'clans' and later 'hordes' which had also been discussed by Durkheim (2013 [1893]; 2001) who saw the 'tribe' was an aggregate of the 'clans' or 'hordes'. This segmentation of what was seen as a kinship society is the basis for the classification of exogamous family groups who hold known tracts of land in the Pilbara as being classified as 'clans' or 'hordes'. However, due to exogamy, individuals can hold rights to more than one tract of land and kinship can be extended beyond the boundaries of a tract within a language group territory. Thus, the membership to those family groups is not just consanguineal, but also social, based on the section system. Therefore, the term kin-group is used throughout this thesis instead of 'clan' or 'horde'.

Similarly, I observed that members of language groups are, in their majority multilingual, or at least able to understand more than one Aboriginal language, although Ngarluma language has become the most spoken language in the west and Nyjamal the most common in the east. The popularity of Ngarluma and Nyjamal is due to the location of major towns where Aboriginal people have settled. The language of the country where a town is located has directly influenced residence. Similar observations have been made in other regions of Australia where Aboriginal people are multilingual and speak one or more of the local languages despite their language group membership (Laycock, 1979; Sutton, 1978). Aboriginal people of the Pilbara often speak about their mother's country or their father's country and express their connection to those kin-group territories through kinship with the ancestors. Kurtiri<sup>7</sup> explained, "Well the language was written on the country. That been there since the earth was soft. By *Marrngun*<sup>8</sup>.

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<sup>7</sup> 'Kurtiri' is the Aboriginal name of Charlie Coppin, the highest-ranking law-man on Ngarla country.

<sup>8</sup> The name given to the ancestral beings by Ngarla *marlpa*.

The language was put there, so the names are in the language. Everything in that country is named in the language of the ancestors.” This is the reason for the name of the language being applied to the territories. Similarly, Kurtiri speaks of Ngarla law being sung in the Ngarla language as this is the language in which it was passed down by the creator beings, which also accounts for the need to speak the language of the country on which you stand. The learning of languages, particularly that of the country on which *marlpa* live is an expression of respect for *marlpa* of that country and their ancestors.



Plate 2: Kurtiri and I on the banks of the De Grey River in 2011.

Although Kurtiri expressed his knowledge of the Ngarla language as something which was “written” on to the country, he also stated that his country is not the whole of Ngarla country. In other words, it cannot be described as the clearly bounded territory in Tindale’s map (1940). Rather, Kurtiri describes his country as being within Ngarla territory and having inherited his country from his father (F) and his father’s father (FF). He also described himself as having a claim to an area of Nyjamal territory from where his mother (M) was from, and his mother’s

mother (MM). Willie Jumbo<sup>9</sup> described his country as “it’s what you call a clan. It’s my *ngurrara*<sup>10</sup>, no one can go there if they don’t get permission from me or family, that where my *yinta*<sup>11</sup> is. In the old days, the old people use to camp all over, follow the season, move their camp.<sup>12</sup>” The appropriation of or claim to another kin-group’s country is seen as a severe transgression of the law, and while *marlpa* will often make reference to the consequences of this transgression in the past, they also hold a belief that there are consequences to doing so now and more specifically, doing so within the context of native title (see further, Chapter 4).

## 1.5 Thesis Outline

This thesis considers a broad set of cultural changes and adaptations experienced and enacted by the Aboriginal native title community of the Pilbara because of their engagement with the native title industry. I document changes in their lifeworld, authority systems and relational behaviour with an emphasis on the experiential dimension and conflict that has emerged in relation to identity and connection to country.

The discomfort experienced by non-Aboriginal people with the events of colonisation inflicted on Aboriginal people is the basis for what is perceived to be a position of historical inequality through the institutionalisation of colonial frameworks (Bolles, 2023; Yu, 1996). This historical inequality is exemplified by the dearth of records about issues of importance for Aboriginal people of the Pilbara, that have emerged because of colonisation, such as conflict among kin, the impact of resource competition on kin relatedness, and the dismissal of their oral tradition. The focus of my thesis directly addresses these gaps in the available literature while also drawing on the knowledge of Pilbara women, which has thus far been absent from anthropological discourse.

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<sup>9</sup> Nyjamal law-man.

<sup>10</sup> *Ngurrara* translates as “my country” in Nyjamal language but the concept is much more than the environment and it links the people to the ancestors and language.

<sup>11</sup> *Yinta* is “permanent pool” in Nyjamal language. Permanent pools in the Pilbara often contain songlines which form part of the cosmological beliefs of the Nyjamal people.

<sup>12</sup> This may be indicative of the kind of assemblage Radcliffe-Brown referred to as “the local group” Radcliffe-Brown, A. R. (1913). Three Tribes of Western Australia. *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, 43(Jan-Jun), pp. 143-194. , Radcliffe-Brown, A. R. (1940). On social structure. *Journal of the Royal Anthropological Institute*, 70, pp. 1-12.

In Part One, I provide a contextual backdrop for the thesis through the problematisation of native title connection research. My discussion on the adversarial nature of the NTA coupled with the experience of Kariyarra people provides an insight into core issues which have developed because of engagement with the native title industry.

I introduce the requirements of the NTA and contextualise s223, which is the basis of the need for anthropological input into the native title process (in Chapter 2). I show that the impact of cases such as *Mabo v Queensland (No. 2)* [1992] HCA 23; (1992) 175 CLR 1<sup>13</sup> and *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58; 214 CLR 22<sup>14</sup> coupled with the legal proceedings which followed, is mistrust of the acceptance of the oral traditions without their substantiation through historical records. This has manifested in the unofficial requirement for written historical documents which have been used as concrete proof of Aboriginality and Aboriginal cultural practice. This is problematic considering the movement to decolonise history, as a discipline and a methodology, which focuses on the critical study of empire, power and political contestation. Decolonisation theory has emphasised the value of oral tradition as a primary source (Behm et al., 2020).

I discuss the role of in-house anthropologists in the Pilbara, drawing on my experience and that of Aboriginal people to critique anthropological practice and its submission to the native title industry (Chapter 3). The focus of my analysis and critique is the way in which the concept of change has been dealt with in the native title context. There is no sufficient appreciation of concepts such as adaptation to the changing historical conditions in the native title industry which has become a profitable business based on what it deems to be 'traditional'. This is framed in terms of Western rather than Aboriginal understanding.

I solidify the discussion of the adversarial nature of the NTA through an ethnographic portrait of Kariyarra *marlpa* (Chapter 4). I start with my experience working as an in-house anthropologist working for YMAC on the Kariyarra native title claim. I contributed to a part of their native title journey, which spans two decades of interaction with YMAC and the

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<sup>13</sup> Referred to as 'Mabo No. 2 case' throughout this thesis.

<sup>14</sup> Referred to as 'Yorta Yorta case' throughout this thesis.

involvement of several different anthropologists. I document the perspectives and recollections of several Kariyarra *marlpa* about their experiences with the claim. I critique the way in which the native title industry has interacted with Kariyarra *marlpa* and examine their heavily documented history of colonisation. I explore the treatment they received throughout their native title application process, the final determination and conflicts that have emerged among them as a consequence of the native title determination. The impact of native title research processes is demonstrated through a contrast between the historical evidence authored by Radcliffe-Brown and Tindale, and the oral tradition, as well as the way in which the language group has managed the impacts of native title research through cultural expression. The addition of family groups to their claim by the NTRB is critiqued using ethnography as well as the historical documents on which the native title industry relies. The ethnography is framed in terms of the Kariyarra lifeworld, authority systems and relational behaviour during and after the determination process.

In Part Two, I provide an ethnographic portrait of the Pilbara native title community which conceptualises the gaps in the literature and provides a contextual basis for the changes and adaptations in the lifeworld, authority systems and relational behaviour of the native title community. Based on the insights provided by the empirical evidence, the study of kinship in the Pilbara is scrutinised through the Aboriginal lifeworld and how identity is conceived.

In the context of the requirement of the NTA, the distinction between law and lore is based on the conceptions of the Pilbara people which I interpret in Chapter 5 using post-colonial intersectional feminist theory (Beauvoir et al., 2010; Coward, 1983; Crenshaw, 1995; Gale, 1974; Ghisleni et al., 2016; Rothenberg, 1998; Weisberger, 2023). The use of feminist perspectives has facilitated the examination of the role of women during the colonial times and their present-day involvement in the native title process. I also problematise the focus on connection research carried out with men based on the importance of ritual and the narrow understanding of Aboriginal law as being primarily men's business.

In Chapter 6 I examine the history of anthropological research into kinship in the Pilbara using Radcliffe-Brown's work as an entry point into the past and the present. Exploration of the historical context of kinship discourse was necessary because of the impact of Radcliffe-

Brown's work not just within the field of anthropology, but also within the native title industry. The link between anthropological discourse on kinship and the native title industry is examined through an analysis of the types of evidence which have historically become 'acceptable' in supporting a group's native title claim. I also discuss Tindale's work in the Pilbara because, more so than Radcliffe-Brown, his work has become synonymous with native title research and the acquisition of copies of his genealogies is regarded as proof of connection and Aboriginality in the Pilbara. In doing so, I contrast Radcliffe-Brown's genealogies with those created by Tindale and use ethnography to test their accuracy.

In Chapter 7 I discuss identity through the concept of *habitus clivé* (Bourdieu, 1977, 2007) and the fracture of the self. The conceptualisation of the dual cleft in the Aboriginal lifeworld facilitates the discussion of identity and the inclusion of the native title dimension. Identity as imposed by the native title process, can be unpacked and seen as a loss of agency inflicted by the NTRB and is a consequence of the way in which descent was reckoned by anthropologists working within the native title industry. Here, the use of historical documents and their importance within the native title industry is used to delve into secondary identities. Secondary identities are those which are derived through descent from parents and consequently grandparents who belong to different language groups and may result in an individual identifying with four different language groups. These identities have been excluded from the rigid native title construction of Aboriginal identity and have consequently incited conflict among the native title community of the Pilbara.

## Chapter 2: The Problem of Evidence and Authority

### 2.1 Anthropology, evidence and the Native Title Act (Cth) (1993)

The NTA is a complex piece of legislation which requires interpretation and translation. As such the legal profession has formed a field of expertise to deal with it. Similarly, the research and provision of evidence for a native title claim requires the assistance of anthropologists and other professionals depending on the claim. Consequently, a sub-field has been created within these professions which specialises in native title (see Bagshaw, 2001, 2003; Bauman, 2010; Bauman & Macdonald, 2011a; Finlayson, 2001; Maddock, 1998; McGrath, 2012; Morton, 2001; Trigger, 2009, 2020). Together with the board members and working group members, as well as the staff required to pull together a native title claim, this group of people make up the social-economic field which I refer to as, 'the native title industry'. It is also possible to include within this term, any other person who derives financial benefit from the native title process. This then includes the mining and resource industry, and claimants themselves who get paid for attending meetings and carrying out cultural heritage surveys as well as being in receipt of royalties as compensation for the use and/or destruction of country and cultural heritage sites. Indeed, the native title industry is vast and depends upon the bureaucratic processes and the legal parameters set by a problematic piece of legislation which has been interpreted and re-interpreted over time.

The NTA brought with it a number of measures: the establishment of NTRBs, the determination of areas where native title may have been extinguished due to colonisation, the right to negotiate, Future Acts negotiations and contracts, the identification of native title holding groups and the creation of National Native Title Tribunal (NNTT) (Malezer, 2009). While the establishment of NTRBs might seem like a helpful tool to assist in the process (Ritter, 2004a), it also assumes that Aboriginal people require 'help' to proceed thereby reinforcing colonial attitudes towards Aboriginal people. This assumption is entrenched in the native title process through financial measures and paternalistic attitudes: it is the NTRB that receives grants from the government to fund claims, rather than members of the claim group. Furthermore, it limits the ability of claimants to exercise their autonomy through their cultural practice by

withholding information and maintaining a secretive veil around the connection report and genealogies. Thus, the creation of the NTRBs is one of the vehicles through which agency has been withheld from Aboriginal people by the Australian Government perpetuating systemic inequalities.

To understand how the NTA was developed, it is necessary to track back to 1982, when Koiki Mabo, on behalf of the Meriam people brought a legal challenge to the High Court of Australia based on his inherent proprietary title to parcels of land on Mer Island which he firmly believed had not been extinguished by British sovereignty (Brennan, 1992; Keon-Cohen, 2000). The case of Mabo No. 2 (1992) brought to the forefront the validity of the mode of acquisition of Australia by the crown and also the maintenance of the inherent title based on laws and customs pre-dating British sovereignty (Lavery, 2020). Justice Brennan (1992) condemned what he described as an 'enlarged' notion of *terra nullius* in his judgement which treated Indigenous peoples in Australia as 'backward'. However, his decision also included a discussion about the degree of Christianisation which Meriam people had undergone prior to sovereignty<sup>15</sup> through contact with the London Missionary Society and stated that they were by then Christian, 'civilised' and cultivators. This assessment of what constitutes 'civilisation' was an attempt to highlight the 'advancement' of Meriam culture using comparative systems of knowledge relative to Western development. In this case, as is the case throughout history, contact with Christianity is seen as an advancement and the use of agriculture is seen as a step forward in cultural evolution which implies that hunting and gathering societies are less 'civilised' or behind in the evolutionary progression. This implication is derived from Aristotle's theory of development which depicts cultural development as linear and stopping once it has reached 'civilisation' (Edel, 2017) and it forms the basis for the outdated concept of cultural evolution. In the case of Mabo No. 2, because this 'change' within Meriam culture took place prior to the date of sovereignty, it was not considered to be a departure from 'traditional' laws and culture but rather a step forward in the cultural evolutionary ladder and thus a 'natural' step rather than change. Indeed, in the case of Meriam people, Christianity is an expression of

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<sup>15</sup> In the case of Mer Island, sovereignty was determined to be in 1879.

their native title where *Mabo*<sup>16</sup> is seen as having the same principles of Christianity which has made synchronism possible.

Brennan also stated:

When a clan or group has continued to acknowledge the laws and (so far as practicable) to observe the customs based on the traditions of that clan or group, whereby their traditional connection with the land has been substantially maintained, the traditional community title of that clan or group can be said to remain in existence (Brennan, 1992: par 59-60).

This statement by Brennan J became the basis for the concept of native title and the NTA, which recognises that the laws and customs of Indigenous peoples in Australia have continued despite colonisation. However, there are further issues which also affect the basis of the NTA itself:

1. The NTA is based on the outcome of a case brought forward by a group of people who are of Melanesian descent rather than a language group belonging to the cultural block of people of the mainland of Australia and Tasmania, colloquially referred to as 'Aboriginal cultures'. There are marked differences in the beliefs and practices of these two cultural blocks, not least of which is the conception of ownership of land and land use.
2. Mer Island is an island on the Torres Strait; therefore, it has a definite boundary which can be easily identified, and it has remained more-or-less static<sup>17</sup> since colonisation (Beckett, 1995).
3. There have been very few non-Mer islanders who have visited or settled on Mer Island since colonisation. This allows for the conclusion that considering a lack of a permanent coloniser presence on the island there has been limited exposure to Western cultures. Change includes management and resolution of land disputes through an Island Court since the annexation of the island by Queensland (Bartlett, 1993).

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<sup>16</sup> The creation being of Mer Island.

<sup>17</sup> The change in the boundaries of Mer Island due to coastal erosion or rising sea levels would still leave a definite which can be said to constitute a boundary of ownership.

4. Melanesian cultures have practiced agriculture since before sovereignty (Beckett, 1995; Keesing & Tonkinson, 1982).
5. Melanesian cultures have resided in small groupings of permanent structures which have been described as 'villages' since before sovereignty (Keesing & Tonkinson, 1982).

The decision handed down by Brennan J is then based on the evidence pertaining to a different cultural block which constitutes what is termed as 'Torres Strait Islanders' within the Australian legal system. It stands to reason then, that a legislation based on such evidence can and should only be applied to Melanesian cultures. Instead, the NTA was created based on the decision by Brennan J and applied Australia wide to both Aboriginal and Torres Strait Islander peoples thereby homogenising them under yet another legislation. This created ambiguities within the NTA which have been inherited from the wording used by Brennan J to refer to the people of Mer (Boge, 2001).

Specifically, there is an ambiguity in the qualification 'so far as practicable'; Brennan J left his statement open for interpretation, an action which has proved problematic when extrapolating the wording on to Aboriginal cultures. The degree of 'practicability' for the practice of any tradition within a culture which has encountered another, cannot be measured and it is therefore left to the discretion of the sitting judge (Ritter, 2008). This ambiguity has caused an anthropological anxiety within the native title industry where 'practicable' was interpreted as 'change' and where 'change' has become a metaphorical dirty word. Brennan J reinforced his position on change through his statement:

However, when the tide of history has washed away any real acknowledgement of traditional law and any real observance of traditional customs, the foundation of native title has disappeared (Brennan, 1992: par 59-60).

This statement (2004a, 2004b) has become the shield behind which the legal system hides when denying native title in areas considered to be 'too Western' for native title to be recognised on the Australian mainland. It is a dramatic effort on behalf of Brennan J to forewarn the existence of what he considers the 'loss' of 'tradition', which provides a narrow sense of what is traditional. The re-reading and interpretation of Brennan J's decision have had

an impact on common law jurisprudence and on Indigenous Australians and how they perceive themselves.

As a consequence of the ambiguity of the 'loss' of 'tradition', the question of Indigenous identity has and continues to dominate the native title context, even when it is not openly discussed. This question becomes more prominent, particularly when applied to Aboriginal cultures on the mainland, and according to the 1999 Committee on Elimination of Racial Discrimination (CERD), fundamentally discriminatory, with the requirement for claimants to prove that they hold a connection to country (Malezer, 2009). Furthermore, Brennan J expressed in his decision that the removal of people from their country had indeed extinguished native title basing his assessment on the evidence provided to him about the people of Mer Island, therefore excluding any and all victims of the stolen generation and anyone who may have chosen not to reside on that specific tract of land, from any future native title challenges as well as those who have returned to their country and attempted to 'revive' their connection (Sutton, 2003).

Section 223 of the NTA is based on Brennan J's decision and contains some of his wording:

The expression **native title** or **native title rights and interests** means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

- a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
- b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
- c) the rights and interests are recognised by the common law of Australia ("Native Title Act Cth," 1993: s223).

This section of the NTA has become the focal point for the native title industry, where there seems to be a continuous cycle of interpretation and re-interpretation based on precedents. The role of an anthropologist within the native title industry is tied to this section, however, is

not described in the NTA. There seems to be a communal sense that anthropological contributions to Land Rights cases and indeed, Mabo No. 2 are negligible, however this is not the case and Prof. Jeremy Beckett's input into Mabo No. 2 was significant (see Burke, 2011a).

The involvement of anthropologists in the process of native title has been left for the legal field to interpret as being that of a cultural translator between the claimants and the members of the legal profession (Merlan, 1998; Niblett, 1992). Burke (2011b) eloquently discusses the hierarchy of the 'fields' in a critique of the position of the social sciences and therefore anthropology under the legal field based on Bourdieu's *Homo Academicus* (1988), where Bourdieu ascribes higher capital to the law than to anthropology. This is by no means a justification for the co-option of anthropology by the native title industry, however it does provide a contextual basis.

In its wording, the NTA is brief and to the point. It simply places the onus of proof on claimants to demonstrate that their group holds native title rights and interests, as defined by the Act, and that those rights and interests are possessed under traditional laws 'acknowledged' and traditional customs 'observed'. Of particular concern is the use of the term 'traditional' and the expectation of 'proof' of Aboriginality as embodied by what the court accepts to be evidence beyond a reasonable doubt. In legal terms, to provide proof beyond a reasonable doubt does not mean to prove something beyond certainty, but rather to provide credence to the claim (Gillies, 1991; Schauer, 2022). However, in terms of the understanding of any type of 'proof' which relates to a culture other than one's own, the judge must have a substantial understanding of that culture to provide an accurate and objective decision. It is not possible to gauge the level of knowledge which any judge in Australia may have about Aboriginal cultures, or of the oral histories.

The impact of native title decisions can be seen when examining what can only be described as a landmark case for native title, *Yorta Yorta Aboriginal Community vs State of Victoria and Others*, as it undoubtedly has had an impact on Aboriginal people at large, not just those who were part of the case. The decision handed down by Olney J himself in 1998 has become a foundational precedent within the native title industry. Olney J (1998) concluded that the oral histories of Yorta Yorta people should be considered to have less weight than written historical

evidence recorded after sovereignty. He argued, while plainly exposing his bias, that the oral histories cannot all be verified because they were passed down through generations spanning a period of more than two hundred years. The inherent assumption in his bias is that Yorta Yorta people would not act honestly in their testimony but provide instead, a testimony which suited their claim. His conclusion thereby reinforced entrenched racist and colonial attitudes towards Aboriginal people. The implicit assumption is that the historical documents are in fact accurate and that the fact they are written assures their accuracy and lack of bias. However, in Olney J's findings the context of the historical documents was not considered in the same light as was the potential bias in the oral histories (Atkinson, 2001; Buchan, 2004; Olney, 1998; Young, 2001).

Indeed, save for the records written by Curr (1886) (see further, Chapter 6), the historical documents in evidence in the Yorta Yorta claim are comprised of the observations and notes of European settlers and convicts who were, for the first time, exposed to a culture other than their own. Their lifeworld and ideologies most certainly influenced their depictions, particularly when considering the sentiment towards Aboriginal people and the socio-cultural views towards people of colour at the time. More troubling and problematic was Olney J's declaration that the written historical records of a Western pastoralist who resided in the claim area in the 1840s and Curr's account of the Yorta Yorta people were indeed the most reliable sources concerning traditional laws and customs of an Aboriginal society (Olney, 1998). Olney J's finding relegated the oral tradition of the Yorta Yorta people to a marginal, if not insignificant role in court proceedings (Buchan, 2004; Olney, 1998). The decision handed down is inherently ethnocentric in its configuration and it methodically ignores the difference in forms of human existence. The later finding by the High Court which upheld Olney J's treatment of the oral tradition, reinforced the creation of a legal precedent where it is devalued and robbed of its epistemological and logical frame (Ascione, 2016). The simple act of dismissing the oral histories as inaccurate and potentially dishonest demonstrated a parochialism which has impacted all subsequent claims and the claimant's ability to exercise their autonomy and promote their own values and interests.

Olney J's assessment of the evidence noted that there were no historical documents dating to the 1870s which discussed the laws and customs of Yorta Yorta people. The absence of a

written record was declared to be a lack of evidence by Olney J, or a break in the continuity of the connection and indeed, the habitation of Yorta Yorta people in the area (Olney, 1998). Olney J again relied on Curr's evidence and declared that the practice of culture depicted by Curr demonstrated this break in the 1870s (Olney, 1998). The last nail in the coffin of the Yorta Yorta quest for native title came from one of the historical documents presented dating to 1881 where Yorta Yorta people had applied to the governor for assistance with obtaining land to farm. This particular action, according to Olney J firmly demonstrated that 'traditional' practices and customs were no longer being carried out and, to him, it constituted the extinguishment of native title (Olney, 1998). Where this action, anthropologically, can be seen as a cultural adaptation and an attempt by Yorta Yorta people to exercise their autonomy and adapt to their new socio-cultural environment 90 years after first contact, in the court of Australia, it demonstrated a departure from the 'traditional'.

## **2.2 Apical ancestors: the genealogical puzzle**

Evidence compiled for native title claims has been termed 'proof of continuity and connection' and in a form consistent with Western legal ideas of what constitutes 'concrete evidence'. This proof has historically been provided to the courts for assessment through written anthropological and historical reports including genealogies which provide comparative evidence pertaining to the current customs and traditions of the claimant group with those recorded to have been practiced by their ancestors at the time of sovereignty (Finlayson et al., 1999a; McGrath, 2012; Palmer, 2018). However problematic the idea of a comparison assessment which identifies the degrees of change and adaptation of a culture to the domination by another may be, these reports also contain a list of 'apical ancestors', and it is expected that the current applicant group is descended from them.

The apical ancestor list is a requirement of Form 1, which is used to register a native title claim with the NNTT. This list of ancestors describes the claim group as comprising the descendants of those apical ancestors who are 'known and acknowledged' people belonging to the tract of land being claimed. The term 'apical' simply means 'apex', or at the top of the genealogical chart (Palmer, 2018). In native title terminology, they are the earliest recorded ancestors of the current claimants. To be declared an 'apical ancestor', the individual must have been

recorded as being a person of that country on or around the time of sovereignty. This means oral accounts do not cement apical ancestor status.

The use of genealogies can be, theoretically, said to assist with the understanding of kinship, marriage, totemic affiliations and relatedness (Palmer, 2018), however this has not been the case in the majority of the native title claims in the Pilbara. Genealogical research in the Pilbara has been instead used to assist with the determination of claim groups. The process used by the NTRB in the Pilbara was to speak to selected people and determine which families are acknowledged as belonging to that language group. This has proved problematic because in many cases, there have been several types of politics involved in this process. There are many Aboriginal people who have at any given time been employed by the NTRB, as such, they have developed relationships with staff and have become 'trusted' advisors. And while seeking advice from these people is not problematic, the use of only their advice in the determination of who is the rightful owner of a particular tract of land could cause conflict due to inherent bias, the identity politics as well as personal affiliations and discord. In my experience, the influence of specific staff members on the management of a native title claim has had disastrous effects. During my tenure at YMAC, the regional manager, the deputy regional manager and all the claimant liaison officers were claimants on active native title claims. They all had access to legal briefs, research notes, historical documents and mailing lists despite multiple disputes relating to the membership of their claims.

Politics aside, the use of genealogies is problematic when referring to Aboriginal cultures, although some anthropologists have claimed that "at the heart of every good native title claim lies a robust genealogy" (Palmer, 2018:207) and aspects of genealogical research have formed part of the anthropological toolkit since its birth as a discipline (Finlayson et al., 1999a; Palmer, 2018). The compilation of genealogies in the Pilbara involved countless interviews with the people who have been identified as being members of a language group, desktop research to obtain legal documents which may assist in establishing the connection of those people to the 'apical ancestor', and research through the historical documents produced by early ethnographers, colonists and government officials. Importance is placed on the historical documents produced by early ethnographers in the form of genealogical charts designed for the study of kinship and relatedness such as those produced by Radcliffe-Brown and Tindale.

Genealogical diagrams are habitually used in the study of kinship, however when the compilation of kinship diagrams changes from the demonstration of relatedness and kinship to proof of ancestry, the historical narrative which is grounded on speculative facts based on politics and written historical records becomes clear (Bevir, 2008). The epistemic and theoretical frameworks of genealogical research are lost through their use within the native title industry, as are the philosophical groundings of the discipline. Comte (1875), Hegel (2018; 2021), Marx (1968) and Spencer (1996; 1969) are some of the theorists who contributed to the development of genealogy and its philosophical grounding, and their work reflects the conception of human life and society as being only understood as products of historical processes (Hoy, 1994). This theoretical framework is indeed applicable to Western cultures where the written record has been the basis of the transmission of knowledge for centuries, however it is deeply problematic when applied to Aboriginal cultures where history is transmitted orally.

There is an assumption in the requirement of proof of descent from an apical ancestor that all Aboriginal people who made up a specific language group at the time of sovereignty were sighted and recorded by someone. This assumption rests on the anecdotal evidence of early colonial accounts which are unreliable and fragmented due to bias or lack of cultural understanding (Smith et al., 2008). Of more relevance is that this history does not present anthropologists with a comprehensive list of all members of a specific language group and their specific relationship to country:

Indigenous genealogies encompass complex layers of connection within and between human, environment and spirit realms. The collective genealogies that underpin Indigenous identity thus reach far beyond ancestral lineage to include our creation stories, relationships with land, water, plants, animals and cycles of nature, protocols for ethical behaviour and imaginings of future descendants alongside memories of past ancestors. At the same time, the evolving context of Indigenous genealogies means that they are inherently dynamic and fluid; genealogy does not exist as a self-reinforcing body of knowledge in sequential time waiting to be 'passed on' in a linear fashion or 'discovered' in archives and registries. The dispossession and trauma wrought by historical

colonization and enduring colonialism has also impacted our genealogical legacies, creating holes and tears in the waves that once bound us tight (Mahuika & Kukutai, 2021: 1).

For *marlpa* who engage in the native title industry, copies of Tindale's genealogies are seen as prized possessions because these written records facilitate their ability to prove 'Aboriginality' and connection to country and grant membership to native title claims or PBCs. These actions of seeking the documents and owning copies of their connection to apical ancestors are a form of agency. However, the identity of *marlpa* is thus dependent not just on the possibility of a remote ancestor having been recorded but also on whether someone was able to identify and interpret the documents correctly.

Radcliffe-Brown saw Australia as a valuable field for research because he believed that there was one type of kinship system throughout, which he divided into multiple variants. Due to the evolutionary influence of the time, Radcliffe-Brown was not the only anthropologist to believe in the eventual demise of Aboriginal cultures (Howitt, 1891; Maine, 1861; Morgan, 1964 [1877]; Sahlins, 1968; Smith, 1913; Spencer & Gillen, 1899; Stocking, 1968), and as a consequence of this belief, anthropological research into Aboriginal Australia produced a robust body of work on kinship, and also genealogies.

The native title industry has requisitioned the genealogies which accompanied Radcliffe-Brown's research and used them in their search for 'evidence' of connection to country and to identify apical ancestors for native title claims. The search for apical ancestors to current claimants and the creation of new genealogies is accepted by the courts as proof of connection to the country and the continuity of what they term Aboriginal cultural practice. This collection of documents is inaccessible to most people in the Pilbara thus making copies of the documents highly desirable and akin to currency. Upon meeting someone new in the Pilbara during my fieldwork, I was consistently asked if I had copies of genealogies and whether I would be willing to share<sup>18</sup>. A similar problem arises with the collection of genealogies held by the South Australian Museum belonging to Tindale.

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<sup>18</sup> I discuss my practices around sharing genealogies further below in section 2.6.

### 2.3 The lack of evidence: oral histories

The three Ramirez girls, as they are affectionately referred to, are three Ngarluma women who are all fluent in this language (among others), they all take part in *wamulu*<sup>19</sup>, and everyone within the Aboriginal community knows and acknowledges them as being Ngarluma<sup>20</sup>. However, they have never been included in Ngarluma native title claims or accepted as members of the Ngarluma Aboriginal Corporation<sup>21</sup> (NAC). I first met the trio when I was working for YMAC where they came looking for help compiling a family tree and obtaining proof of connection. At the time, I explained to them that I would be limited by my role because the Ngarluma claim had been determined and the genealogies were in the hands of the NAC and I had no brief to carry out research for them from the legal team. In short, there was nothing I could do for them. Upon my return to the Pilbara, I ran into them at the Yule River meeting, and they were quick to recount their numerous attempts at recognition by the NAC since I had last seen them. They have spent years in the State Library of Western Australia, the State Records Office, and spoken to countless anthropologists, historians, researchers, and lawyers but have been unable to find any mention of their FMM, *Karibangu*, or their FME. Indeed, the Ramirez girls have gone to the extreme of taking legal action against the NAC to obtain recognition of their identity as Ngarluma women. This was not successful because they have no historical documents which can corroborate their connection to Ngarluma country despite the oral tradition proving otherwise. Indeed this is a debate which has been taken up, primarily among anthropologists and historians and it concerns the epistemology as well as the authorship of oral traditions and is currently being openly debated by historians in an attempt to decolonise their discipline (Behm et al., 2020; Cruikshank, 1994).

The term oral tradition refers to both a process of transmission and the material, that is, subject-matter (Chowdhury, 2014; Cruikshank, 1994; Gardini, 2012; Palmer, 2018). The oral histories have often been neglected by the histories of the colonisers and considered a

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<sup>19</sup> The first stage of make initiation in the Ngarluma language.

<sup>20</sup> The Ramirez girls also have kinship ties in Broome where there are some Aboriginal families with Spanish last names.

<sup>21</sup> The PBC for the Ngarluma native title holding group.

“marginal method” of the discipline of history (Gardini, 2012: 108). In anthropology, the oral histories have often been recorded in ethnography, however in Australia the oral history of Aboriginal people is often considered to be mythological rather than accurate accounts of the people. As such, the oral histories of Aboriginal people in native title processes are often dismissed as potentially inaccurate based on legal precedent. However the transmission of the oral histories is an essential ritual of Aboriginal cultures, and it includes the accounts of ancestors during colonial times, as well as the stories derived from cosmological beliefs. These processes can be observed in the Pilbara during all types of activities where older people sit in conversation and younger people sit down around them, listen, and take in the information. It is a ritual of informal enculturation which begins at birth and is part of the “imponderabilia of everyday life” and rituals in the Pilbara (Malinowski, 1922: 16). A more formal process takes place during ‘law time’ where the men seclude themselves in specific places within the law ground to impart knowledge to initiates while the women do the same in their designated area. With the application of the oral tradition to the socio-political arena of native title claims, what becomes problematic is the status of memory, that is, its accuracy and veracity<sup>22</sup>, and its relationship to historical factuality of which it is a memory. The process of obtaining a testimonial for the purposes of evidence in court requires a well prepared interview and a set of questions appropriate and conducive to the engagement of the historical element (Chowdhury, 2014). The critique of the use of the oral tradition for legal purposes pertains to the personal and the cultural bias which may be present in the recollection.

In anthropology, we are trained in identifying bias, isolating cultural processes, and extracting the subjective meanings of the lived experience. The person giving an oral account must be presented as all evidence is - in relation to a specific context – so that their perspective and cultural bias are understood more accurately (Thomson et al., 1994). The fact is that while anthropologists can carry out this type of interview, a legal professional is not trained in these methods, and the combative nature of a court room is not conducive to the evaluation of the subjective meaning of the oral tradition. This type of process is regularly carried out by anthropologists during production of the connection report while in court claimants are

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<sup>22</sup> One also must factor in the context of elicitation and the correlative motivation of the person giving the testimonial. On memory and oral traditions, see Rubin, 1995; for a problematic perspective, see Nunn, 2018.

regularly subjected to the provision of evidence cross-examination by hostile legal practitioners. In this case, it is likely that the subjective meaning of the oral tradition may be misunderstood because when dealing with memories, there is always a possibility of confabulation. In light of this, the major criticism of the oral tradition is based on the claim of the possibility of fabricated evidence in order to re-write the past, which is usually designated as 'the history wars' in academia and currently being debated through the processes of decolonisation of the social sciences (Brock, 2004). This ideology was exemplified during the Yorta Yorta evidentiary hearing and reflected in Olney J's verdict.

In the case of the Ramirez girls, in June 2018 I was unable to find any historical documentary evidence for the oral histories which they have related to me over the years. However, we did set out on a fact-finding trip from South Hedland to Roebourne, Wickham and then on to Karratha Station where we met with several members of the Ngarluma, Kuruma and Yindjibarndi communities. There we obtained a wealth of oral accounts about Elsie Ramirez (FM) which confirmed what the Ramirez girls already knew – that their family is Ngarluma, that they spoke Ngarluma, and that they lived in Roebourne. Furthermore, this confirmation did not only come from Ngarluma elders but also from Yindjibarndi and Kuruma elders and community members at large. In any other setting this would be sufficient for them to assert their identity as Ngarluma women, however it is not sufficient for the native title context or for them to be accepted by NAC, much less for them to have a valid voice in relation to what happens within their country.

#### **2.4 Who's in?: the rules of membership**

As most of the Pilbara Aboriginal community sat having lunch during the Yule River meeting in 2019, the level of noise dropped when Tim walked in assisted by his daughter Lorice. There was a flurry of movement as the young Ngarluma women gathered chairs, food, and made tea then placed everything in a shady spot away from the main stage and speakers and near where the initiated men were sitting. They led Tim and Lorice to that area. Law-men and women from all over the Pilbara lined up and waited their turn to greet Tim, shake his hand and pay their

respects. Most men referred to him as *nyambali*<sup>23</sup>, and most greeted Tim in Ngarluma and addressed him according to their position to him in the section system. The youngest of the children kept away and teenagers all gathered in Tim's vicinity and sat on the floor to quietly finish their lunch and listen to the conversations.



Plate 3: The Ngarluma women at the Yule River meeting in 2018, Lorice is on the far-right bottom corner.

This level of respect and admiration for Tim surprised me because earlier in my fieldwork, I had spent a lot of time with both Tim and Lorice and had learned of their trouble at being recognised as Ngarluma people and how they had been through the courts and had to research and compile their own connection and continuity evidence. Lorice told me of the months she had spent compiling all the documents needed and attempting to get a copy of the genealogies which were compiled by the consultant anthropologist who had prepared the report for the Ngarluma Indjibarndi<sup>24</sup> claim where her kin-group was listed, and her family tree was featured showing her apical ancestor. Lorice then had to personally present her kin-group's connection

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<sup>23</sup> 'boss' in the Ngarluma language.

<sup>24</sup> To this day, Lorice has been unable to access those genealogies as they are held by the NAC in-house anthropologist, himself also a Ngarluma man, and who will not share the information with anyone other than his own family group.

evidence to the NAC on several occasions and had been rejected as a member on the basis that her genealogical information could not be verified through the historical record.

This is problematic as Lorice's family is well known throughout the Pilbara and her father is a well-respected law-man. However, the oral histories, and, indeed, Tim's participation in men's business and the level of respect he is accorded is not sufficient to meet the requirements set out by the NAC which are based on those used in the native title process. The evidence required to prove Lorice's identity as a Ngarluma woman is direct descent from one of the apical ancestors entered into evidence and accepted by the court during the Ngarluma Indjibarndi claim process. Lorice had no recourse other than to file a lawsuit and present her evidence to the courts in Perth during an action brought by those who had been rejected by the NAC.

Surprised by the events at the Yule River meeting, I turned to my companion Doris<sup>25</sup> who is well informed about the politics in the Pilbara community. I asked her why Tim was receiving so much attention. She laughed and said that the only people who show him disrespect are the young ones who are involved in native title. She said that in a bush meeting Tim would always command respect, but in native title meetings no one wanted to know him because they know he is a law-man and holds most of the knowledge for men's business in Ngarluma. Doris said that to acknowledge Tim's position among Ngarluma people would give his family too much power and influence in negotiations with mining companies and this would take it away from the young ones who are in charge. "It's all about the money!" she said with a wave of her hand and quickly dismissed the subject. Discussions about money in the Pilbara are fraught with conflict and always carry with them a level of discomfort. Doris' dismissal of the topic of the Ngarluma financial interests brings forth the conflict between 'black fella way' and 'white fella way'. However, there is an implication here that Tim's status as a law-man needs to be diminished so the younger people within NAC can continue to hold the power of negotiation. The problem with the treatment of Tim within the native title context is not related to money, but rather to political power.

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<sup>25</sup> A Njyamal law-woman and elder who is the highest-ranking law-woman in the Pilbara. Doris has also served as Chairperson for the Pilbara at YMAC in the past.

The NAC, one of the oldest corporations of its kind in the Pilbara, was formed because of the Ngarluma Indjibarndi determination. The language groups split after determination and formed their own PBCs. A conflict arose during the compilation of genealogies and the selection of apical ancestors from whom the Ngarluma people are descended. The Ngarluma and Yindjibarndi people are closely related through both consanguineal bonds and kinship, and for this reason, the genealogies are not separated, but rather they were compiled together. When the language groups split to form their independent PBCs, the apical ancestors for the Ngarluma people were selected from the genealogies by a handful of Ngarluma people who may not have had the knowledge of all the Ngarluma people. Consequently, the rest of the apical ancestors were labelled as 'Yindjibarndi' and not relevant to the NAC.

Speaking to sisters Pansy and Violet in Roebourne, the Ngarluma elders both agreed that to be a Ngarluma person you must have a Ngarluma parent, and the family should also take part in *wamulu*<sup>26</sup>. Pansy said that all Ngarluma people know each other and that they are all related because it is the 'black fella way'. This statement or one of its many versions, is common in the Pilbara and it refers to the kinship system that underpins Aboriginal culture, as well as highlighting the distinction between the 'black fella' and 'white fella' systems. However, this is not reflected in the rules of membership for the NAC. These rules require that potential members be descended from at least one of the apical ancestors listed in the Ngarluma Indjibarndi determination, and that ancestor should be a known Ngarluma person. But access to the list of ancestors is denied to anyone other than some board members of the corporation and the in-house anthropologist, Dr. Andrew Dowding who is also the son of one of the board members. The majority of Ngarluma people have never seen or known the names of those ancestors deemed to be Ngarluma or the people captured within the genealogies. Indeed, the contents of both the connection report and the genealogies remain a mystery to most.

Violet believes that all the apical ancestors in the Ngarluma genealogies must have been related even though the exact connection is not known to her because they lived too long ago, and she was only told as far back as her grandmother. The knowledge of kinship and family

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<sup>26</sup> The first stage of male initiation in the Ngarluma language.

relations is imparted by the MM and FM onto the grandchildren, and both Pansy and Violet recall listening to their grandmothers telling them about family. Both sisters lament that there is conflict among the Ngarluma people and recall a time when everyone was family, and the elders were respected but both avoided any mention of Tim and his family's quest for recognition. The avoidance of this topic leads to the conclusion that the topic is uncomfortable and outside the parameters of their worldview. Neither sister is a board member of the NAC because they believe that they 'are too old to deal with the "white fella stuff"'. This avoidance of any incursion into the inner workings of the NAC means these issues have been deferred to the younger generations who have had a Western education, specifically tertiary studies, and who have become the representatives of their kin-groups within the native title community.



Plate 4: Tootsi at her home in South Hedland with her granddaughter in 2018.

Tootsi<sup>27</sup> discussed Tim's position with me over a cup of tea while sitting at her dining table which is piled high with court documents and genealogical research for both Ngarluma and Kariyarra people. She clarified that she has great respect for Tim and his mob and that she would never show him any disrespect because he is family. She commented that the NAC is controlled by the board made up of a group of people who are not elders and some of whom spent a long time away from country being educated in the 'white fella' way to be able to act as negotiators between mining companies, anthropologists, and lawyers. Herself a board member, Tootsi was quick to add, "not like us who grew up here". She explained that the board oversees membership of the NAC and that it is based on the genealogies created for the Ngarluma Indjibarndi claim by Dr. Mark Robinson. Tootsi has never seen those genealogies despite being on the board. Tootsi lamented that no one knows 'who's in and who's out' in those genealogies, and so they must rely on what each person knows. For those involved in the native title process, this knowledge is a combination of their oral histories and research with historical documents.

When the NAC receives an application for membership, the matter is placed before the board and the members vote on whether to accept or decline the application. The acceptance or denial of a new member into the NAC is therefore not based on the examination of genealogies or the connection report; rather, it is an individual decision among the representatives of the kin-groups. This is problematic because the appointment of non-elders as representatives has created a new category within the social structures of the Pilbara, where value and trust are placed upon those people who have had Western education and are able to speak on behalf of the group. This grants them the representative status within the group as well as status and recognition among the wider Pilbara and, indeed, the Australian community at large. These representatives are imbued with negotiating and decision-making powers as well as direct access to the elders and their knowledge without having to spend time learning the culture to the same degree as those who have stayed behind living with and learning from the elders and learning the law and lore. As part of my fieldwork, I prioritised research with elders and law-

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<sup>27</sup> Tootsi Clifton is a Ngarluma law-woman with secondary rights on Kariyarra country, specifically her kin-country includes Mallina Station and the surrounding area.

men and women in order to assess the changes which have taken place as a result of their engagement with the native title industry.

These changes in the power structures of the age and knowledge-based hierarchy, authority, and transmission of knowledge can also be seen through the emphasis placed on the content of the connection report and genealogies compiled for native title, as opposed to the knowledge of elders and the oral histories. The emphasis has changed from oral histories to historical records and the importance of the oral histories is evaluated through Western frameworks of legitimacy where they are confirmed, corrected or contradicted (Palmer, 2018). It is widely accepted by native title anthropologists that historical documents have the potential to incite conflict among claimants or between claimants and anthropologists (Babidge, 2011; Bagshaw, 2003; Bauman, 2010; Division, 2022; Finlayson et al., 1999a; Morton, 2001; Palmer, 2018; Sutton, 2003; Trigger, 2009; Weiner, 2007b). However, it is interesting to note that the disagreement between claimants and anthropologists is often attributed to the perception of the value of the historical documents by the claimants (Palmer, 2018), rather than the dismissal of the oral tradition.

While Palmer (2018) is correct in his attribution of value to the historical documents by *marlpa*, the preferential use of the documents over the oral histories as well as their use to correct or contradict the oral histories is problematic. With the devaluation of the oral tradition comes a challenge to the knowledge of the elders because their power resides in the oral tradition. Once this becomes irrelevant then the role itself also becomes irrelevant. My discussion with Doris at the Yule River brought forth a lot of questions and issues relating to the ways the new contexts people are required to navigate have sparked changes in the expression of culture. There is a clear divide between the way in which Tim is treated by Ngarluma people in a native title setting and the reverence and respect he is given outside that context. Overall, Tim's position within the Ngarluma community is diminished because engagement with the native title processes, specifically, the process of researching connection and continuity, has caused the power structure of Aboriginal social hierarchies to change.

The requirement to prove one's group membership has produced an anxiety within the Aboriginal community reflected in their constant search for 'proof of connection'. This term is

employed by all members of the native title community, and it is displayed on Tootsi's dining table. Completely covered in paperwork, her table is barely usable for its intended purpose. During my visits I was able to identify Tindale's genealogies among her paperwork, as well as copies of fliers for community meetings, and copies of birth, death, and marriage certificates. She also has a collection of self-built genealogies for both her Ngarluma kin-group and her Kariyarra kin-group. Similarly, when I first visited Lorice at her home, she led me into her dining room where there were three discernible piles of paperwork all relating to native title and genealogies. At the time, Lorice had been searching for a connection between her FMM and people she knew she was related to through blood. She was searching for a new way to prove to the NAC that she and her family are Ngarluma and that her kin territory is an area referred to as Woodbrook, and which has been identified by the NAC as a place with tourist potential.

During our conversation about her legal troubles, she showed me her prized possession, a complete copy-set of Tindale's genealogies for the Pilbara. These, Lorice treated reverently, and she spoke about the people recorded within them with fluency and detail and was able to recall the page numbers and reference numbers where specific people were listed. Lorice spoke about her FMM as being the daughter of a woman called 'Woodbrook Mary' and about whom she had very little information. She asked if I would help her locate her within the Tindale genealogies or to see if I could find something out about her. That night, I poured over the Tindale genealogies and close to midnight I found the notation that Lorice had been searching for. We both laughed and celebrated the find and Lorice exclaimed: "No one can reject our application now!".

From an anthropological perspective this small discovery of Lorice's FMM in a Tindale genealogy sheet amounted to very little ethnographic information as all that was recorded was her name, country, and marriage to FMF. However, for Lorice this find meant that all the years of fighting to be recognised by the board of NAC were over and it also provided the kin-group with the peace of mind of having their claim supported by Tindale. The find also recalled the years that Lorice has poured over the Tindale genealogies without being able to identify the name of her ancestor. It would have been close to impossible for untrained eyes to spot the small notation, which reads: "FB of Harding River, Naluma, belonged to horde of Naluma

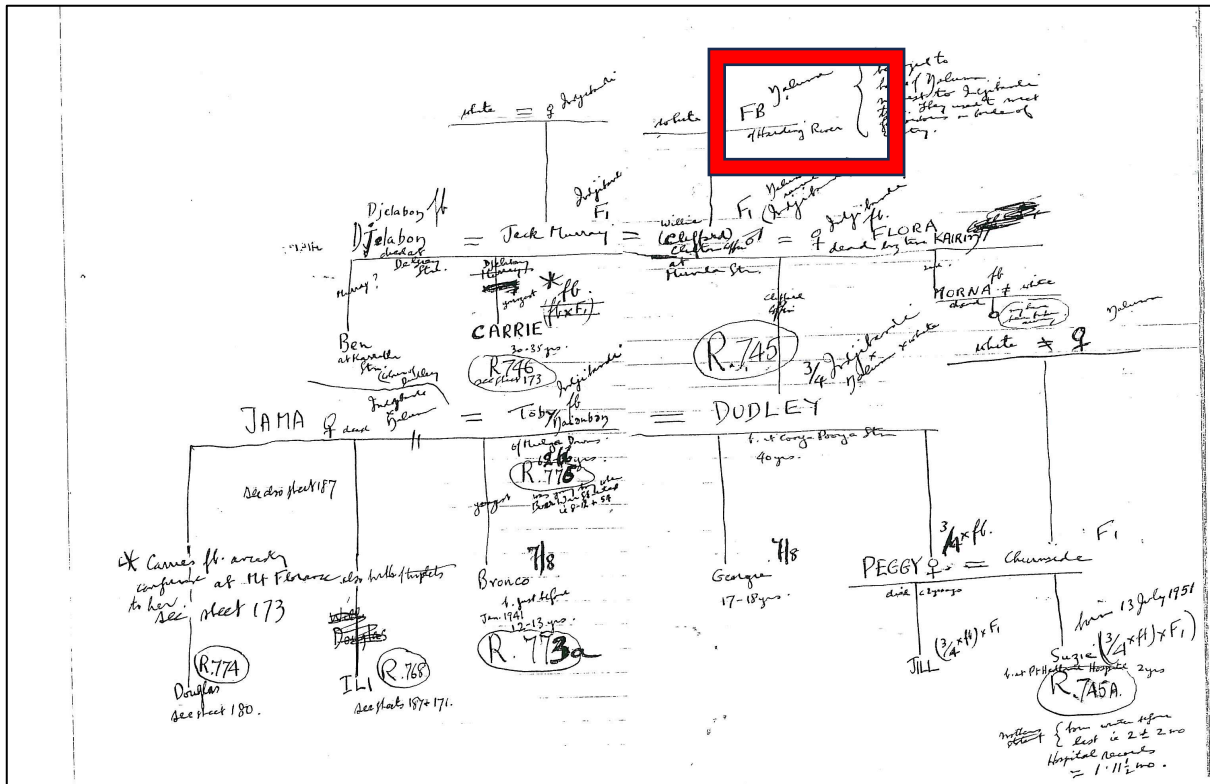


Plate 5: The Tindale genealogy where Lorice’s ancestor, Woodbrook Mary is listed simply as FB (Tindale, 1952-1954).

nearest to Indjibandi tribe.”(Tindale, 1952-1954: genealogy sheet 178), and identify it as Woodbrook Mary. Indeed, to identify her I relied on my own genealogical knowledge of the Ngarluma people over the last 15 years of working in the Pilbara and of my knowledge of Lorice’s family, as well as the location of Woodbrook and the Harding River. This highlights the need for the oral histories within native title research, as well as a collaborative relationship between claimants and anthropologists. Without the knowledge imparted by Lorice through her oral histories, I would not have been able to locate Woodbrook Mary in the historical documents.

## 2.5 “Double dippin”: primary and secondary identities

Changes in authority systems and the role of secondary identities in kinship and land tenure relationships are a product of the native title process. For instance, anyone with proof of descent from an apical ancestor can now hold equal control or power within the claim area regardless of their level of knowledge or whether they hold primary or secondary rights within

the language group. In doing so, claimants can select the most convenient claim or determination and become members if there is sufficient historical documentation of their descent. It also prevents Aboriginal people from exercising their right over more than one country as once a person is a member of a particular claim, they are not able to apply for membership in another claim.

One day at Yandeyarra, “No. 2”<sup>28</sup>, elaborated about how identity is reckoned in the Pilbara:

If you have been brought up Ngarla then your father is Ngarla too. But your father’s mother may have been Nyjamal, that means that you have rights in that country, and you are a Nyjamal too. But you are Ngarla first. Same happens with your mother, she may not be Ngarla, she could be Banyjima, then you are a Ngarla, Banyjima and Nyjamal person. You have rights and you have responsibilities in that country. You always have to look after country. The country is in your blood.

The *ngurra* (country) is determined according to consanguine relationships and is inherited through the four grandparents. Similarly, Tootsi explained:

You got four grandparents. And they all have their main country, like mine is Ngarluma, so my grandkids have inherited my Ngarluma *ngurra*. They won’t have the Kariyarra *ngurra*, but they have the Ngarluma, the main one.

This then provides an individual with the possibility of four different *ngurra*, and within those four possibilities, one will be a primary *ngurra* and the other three will be secondary. The primary *ngurra* is the one which is passed on to the children and through which the grandchildren will be able to maintain the *marlpa* relationship. This cycle of *ngurra* also reflects the cyclical nature of the kinship system where the sections of a MM will be the same as those of a grandchild. These relationships contribute to the problematic nature of native title, when individuals are slotted into a native title claim group based on cognatic descent. Although,

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<sup>28</sup> This is a moniker given to Steven Stewart because he used to be the second in-charge law-man at the Yandeyarra law-ground. He is now the most senior law man at Yandeyarra Community and the *nyambali* (boss) of the law-ground.

historically, people were accepted into native title claims based on their primary *ngurra* relationship, and this was designated as being their ‘identity’, in which case Tootsi would be a Ngarluma woman and her secondary *ngurra* relationship in Kariyarra country would be ignored or seen as simply being a ‘connection’ without any entailments concerning her consubstantial identity with country. However, as the *ngurra* relationship is cosmo-ontologically significant, and Tootsi has duties and obligations on both countries, then she could be a member to both Ngarluma and Kariyarra native title claims. But this is frowned upon in the Pilbara by those within the native title industry and even *marlpa* themselves. It is condemned as ‘double dippin’”.

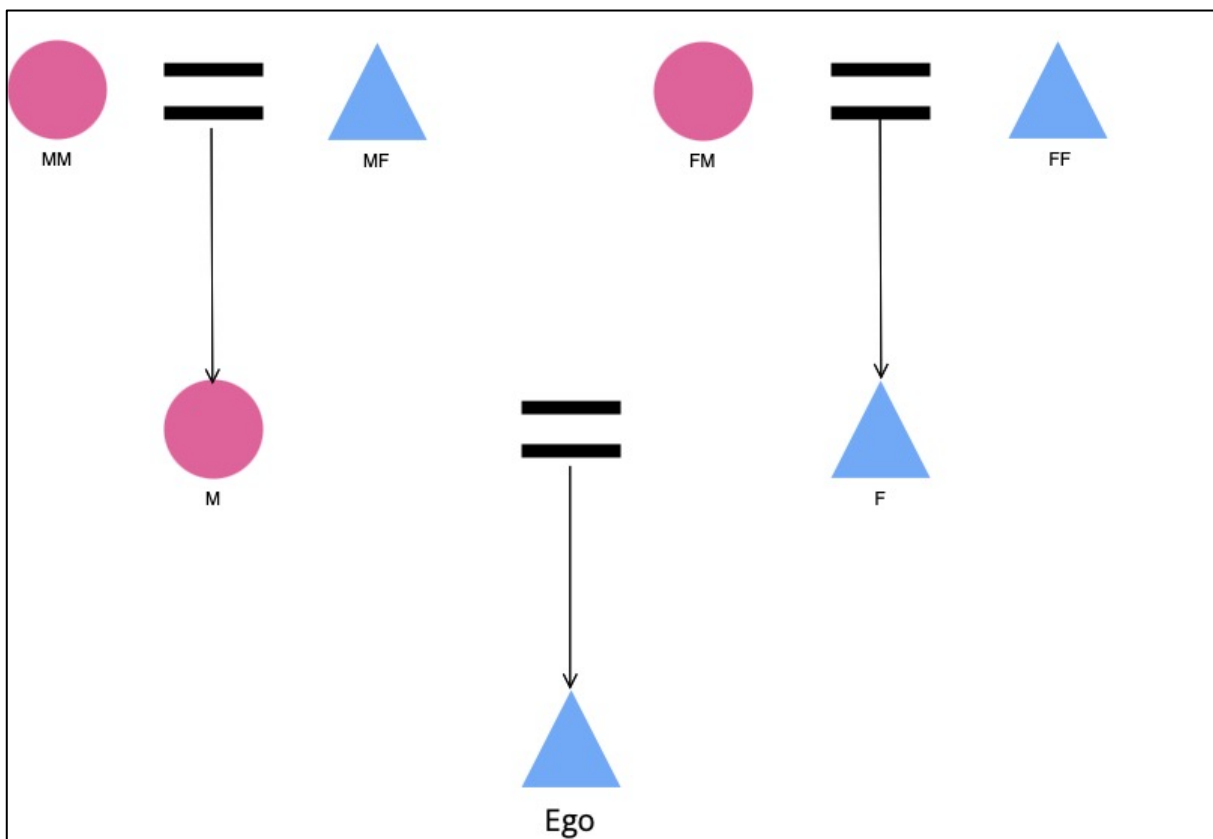


Diagram 1: Three generational diagram showing the four grandparents which could mean that Ego has four different potential *ngurra* relationships.

I was sitting on the floor next to Alec Tucker, a Banyjima elder and law man, at Mingullatharndo Aboriginal Community near Roebourne while he was explaining the concept of ‘double dippin’ to me:

It's not a bad thing. White fellas don't understand the law and they think we cheat. Look at the Parker's. Everyone say they double dippin', but they right. They both Banyjima and Nyiyaparli. The country there for both. It's right, but native title made it bad. So now the young ones say its double dippin'. They are thinking like the white fella.

Alec continued:

A person has more than one language in em'. The Parker's have both Banyjima and Nyiyaparli. They have blood from both. We follow the father but there's no one to look after country on Nyiyaparli side so they split, and some go Banyjima and some go Nyiyaparli. It's right. They right. But the money make things wrong, no one want to share, native title made everyone greedy.

The native title industry has not aligned with the way that identity and country are reckoned in the Pilbara, and the reports from other regions indicate that it not just a Pilbara issue. The denial and subsequent disconnection from secondary identities and countries is a significant fracture caused by native title research and the normative concept of Aboriginal identity. "Double dippin'" is generally frowned upon by the community at large because in the Pilbara membership to a claim group or a PBC implies access to mining royalties, and while some people may have access to those royalties through one language group affiliation only, access to more than one is condemned as "greedy" and "selfish". It is the case then that people who have more than one or several secondary identities are faced with having to renounce the right to speak for those countries.

However, some families have responded agentively and have selected half of the family to identify with one country and the other half to identify with the other country. In doing so they have incurred the disapproval of the community. It has been the only way in which they have been able to maintain what they value: presence and voice within both countries to which they claim connection. This practice is by no means condoned, as Wilfred stated: "You can't pick and choose where you belong. You don't just follow one side or the other, you know who you are because you know who your parents are and who their parents are. You know your main country and you know what your place is."

Natalie Parker, a Nyiyaparli woman has often come under attack from other members of the Nyiyaparli community because of her membership to the Nyiyaparli native title holding group, while some of her siblings are members of the Banyjima native title holding group. Natalie's F was Horace Parker, a Banyjima man and her M was Olive Long, a Nyiyaparli woman. Natalie is one of twelve children to those parents, who have in some cases joined the Banyjima native title group and in other cases joined the Nyiyaparli native title group. According to Natalie, she is following the maternal line which she stated as follows: her M was Olive Long, daughter of Ngathapa Lucy, daughter of Wanipa Fannie, daughter of Kitjiempa. Natalie's MMMM is one of the apical ancestors in the Nyiyaparli native title determination. Natalie's paternal line is Banyjima: her F was Horace Parker, son of Whitehead, daughter of Butha, daughter of Bob Tucker. Natalie's FMMF is one of the apical ancestors in the Banyjima native title determination. Natalie asserts rights on both Banyjima and Nyiyaparli *pakarrpa*<sup>29</sup>, however her primary *pakarrpa* is Nyiyaparli. Natalie acknowledges her Banyjima *pakarrpa* and maintains her relationship with the country, however, if one of her kin who maintains a primary Banyjima *pakarrpa* relationship is present, then Natalie defers to them. But this deferral does not diminish her relationship with *pakarrpa*, rather it is an affirmation of her relationship with two different areas.

There is also general confusion within NTRBs concerning the very structure of kinship relatedness. Aboriginal understandings of identity and connection to country point to a more intricate matrix of relatedness (Dousset, 2011; Gardner, 2008; Glaskin, 2012; Sahlins, 2011) than is captured in genealogies mapping apical ancestors and descent. While the presence of consanguineal bonds is important, the experiential link to country where the kinship ties are grown and developed via responsibility and continuity of action and presence is also necessary for the expression of kinship in the Pilbara. For native title purposes and within the industry, the response to this was the adoption of the concept of 'cognatic descent' as the main descriptor of Aboriginal kinship (Sutton, 1998, 2003).

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<sup>29</sup> The Nyiyaparli term for 'country', and equivalent to the Ngarluma term '*ngurra*'.

The concept of 'cognatic descent' is not explicitly discussed with native title claimants at the time that it is applied to them by in-house or consultant anthropologists. Diana<sup>30</sup> was discussing descent with me one day at her house in Port Hedland:

You hear about cognatic descent. You hear it all the time. Anthropologists, and you know we have had a lot of them, all talked about it as if we know what it means, but exactly what it means, I don't know. I just know that we have cognatic descent in Kariyarra mobs.

A similar conversation took place with Cyril<sup>31</sup> at the South Hedland nursing home:

I don't know what they mean about that cognatic stuff. I never asked, I just assumed they know how we pass things down you know? I remember they told us at a community meeting that cognatic descent was how we identify Kuruma people.

Jinny<sup>32</sup> spoke about cognatic descent one day after we left a funeral in Port Hedland:

The anthropologists all reckon we have cognatic descent. I don't agree, we can't pick and choose which way we go. We have to follow what the old people say, they are wrong, we don't get to pick.

As the daughter of a Kariyarra woman, Jinny and all her siblings identify as Kariyarra, and they also all acknowledge their secondary identity as Palyku which comes from their father. They are active in their involvement in their father's country and have had many problems attempting to have their voices heard because they are not members of the Palyku native title determination group. Even though some of *marlpa* are familiar with the term, and may even apply it to themselves, they are not clear about its meaning. Further, it is also conceivable that even within the native title industry, some of the anthropologists working on claims are not

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<sup>30</sup> Diana Robinson is a Kariyarra elder belonging to the Marapikurrinya kin-group which claims their kin-country as Port Hedland and its surrounding area, extending west through to Mundabullangana Station and east to the Ngarla boundary.

<sup>31</sup> Cyril Lockyer, a Kuruma elder.

<sup>32</sup> Jinny is a Kariyarra woman.

able to properly grasp the concept without a good grounding in kinship theory and its application.

## 2.6 Conclusion

The need to conform and adapt to new circumstances to obtain native title has led *marlpa* to adopt new practices which are new to their culture, but which must be maintained for native title to be recognised. For instance, the ability to obtain historical documents and to trace ancestry through Tindale and Radcliffe-Brown allows *marlpa* to feel and be confirmed in their Aboriginality and their connection to country. However, this connection to country can only be secured through the continuity of ritual and the observance of cultural practices which is at times pushed to the side to conform to the requirements of native title process and the demands it makes on their daily lives.

A further contradiction is revealed where Aboriginal people are required to prove their continued connection to country through a known apical ancestor. Tracing descent over many generations back to an apical ancestor is not a traditional Aboriginal practice. This genealogical information is available in connection reports prepared by anthropologists, which combine oral histories with historical data, yet the NTRB has labelled these reports confidential and will not release the connection reports to *marlpa*. This has produced a sense of frustration and mistrust towards the local NTRB and the anthropologists who prepared the reports, because Aboriginal people want to be engaged in collaborative relationships with researchers. And while this lack of collaboration is deeply resented, the work of early anthropologists is heavily coveted for the safety which they believe it affords them within native title industry.

While I am mindful of ethical practices and confidentiality of research data, my own practice differs to that of some native title anthropologists and the local NTRB. To ensure I know 'who' owns data that is shared with me, I always record the name of the person I collect genealogical information from, and note down the date of collection, and put both into the data set. That way I know whether the data has come from oral histories or from historical records. I will always share information that directly pertains to a person who asks me for access to my research records. In the case of genealogies, I share the section of the chart that pertains to

their ancestors only, and not the full data set. Sharing a full data set would not only be unethical in that it could spark further conflict between people, but it would also not align with university requirements to keep research data confidential. If the NTRB could consider partial sharing of connection reports, which I model in my practice, much of the conflict, uncertainty, and mistrust currently circulating could be resolved.

In the years following the Kariyarra native title determination, I received numerous phone calls from members of different kin groups asking for assistance in the form of ethnographic evidence which I might have collected over the years about their kin country. The most frequently requested assistance is in relation to the PBC requirement for 'substantiated proof' of their connection to kin country.

The term 'substantiated proof' is used when discussing the need for historical evidence which connects them, and their accepted apical ancestor to the country which they claim is their kin country. Oral histories are not sufficient in cases like this because of mistrust among Kariyarra people and the chaos which has been inflicted upon them by inserting family groups who are not recognised by the community into the native title determination (see further, Chapters 4 and 7). The board of directors of the PBC also require proof of the same kind which is used in connection reports, and which is accepted by the Australian courts of law. It is for the acquisition of this type of evidence that knowledge of Western types of research, legal processes and negotiation tactics are of more value post-determination than Aboriginal knowledge. This need for assistance navigating the post-determination minefield has relegated the elders to the metaphorical 'back seat' as they do not have the knowledge of the systems or language skills that younger generations have, particularly those who have received tertiary education.

Doris stated:

Some of the young ones don't want to learn culture, they think it's old fashioned. Some of them are in kangaroo marriages the wrong way, and they been told! We told them, but they don't care!

This sentiment is echoed throughout the Pilbara with elders lamenting the loss of the attention of younger generations. At the same time, young people with university degrees are highly valued for their knowledge, resulting in an inversion of Aboriginal hierarchies of knowledge and value. This preference for Western education is an adaptation to the native title industry and one which came about because of the lessons learned through the native title process. This is a conscious change on the part of the native title community of the Pilbara which signifies agency in the choices that are made. Those choices mean that people's practices have changed - and is evidence of the vibrancy of contemporary practices, some of which are 'new'.

In the Pilbara, the social hierarchy has always been knowledge based, with the law-men and law-women at the top. This hierarchy has now been re-defined and the necessary knowledge for the survival of the normative societies is that which is associated with negotiation, knowledge of the legal system and cultural heritage management. Thus, this has shifted the hierarchy placing those who have the necessary knowledge at the top, while the law-men and law-women and elders play a supporting role in this new order.

## Chapter 3: Native title, change, and the selection and appropriation of tradition

### 3.1 A 'simpler life': a pristine culture

Conceptualising continuity and change has, at times been a challenge for the discipline of anthropology. The second half of the twentieth century, particularly from the 1960s onwards, saw a rising optimism in the anthropological study of Aboriginal cultures as the former beliefs of sociocultural evolutionism fell away and reconstructionist anthropology ceased to be a focus in academia (Byrne, 1996; Wolfe, 1999). Wolfe states that “in before-and-after mode, that a stadial, sequential and monolithic evolutionism went in at one end of the process, whilst a set of revitalised, atomistic and synchronic models emerged at the other” (Wolfe, 1999: 44). This change in the attitudes of anthropologists is reflected in the wider political significance of the discipline’s contribution, except for its contribution to native title.

The association of anthropology to colonialism and the evolutionist narrative can be seen through the theoretical grounds of the distorted conceptualisation about cultural difference, history, and change which can be found in the seeds planted during the Enlightenment. Wolfe characterises these attitudes as having a temporal syntax where they are underpinned by the sequence presented by the “Great Chain of Being” (Wolfe, 1999: 44). This chain refers to the stages of cultural evolution which hold pastoralism as superior to hunter-gatherers, however this does not refer to the hierarchical order, but rather to the state of being of a culture which has progressed from one stage to another. These attitudes to Indigenous peoples in Australia brought with them an assignation of cultures as being snapshots of the past where the concept of ‘noble savage’ was born.

Rousseau (1755) described the influence of ‘civilisation’ upon humanity as a type of corruption and saw value in the prior ‘natural’ state of ‘savage life’. Many scholars since have expressed the idea that a ‘simpler life’, one with less distractions lived in less populated areas is more desirable than that spent within the perceived corruption of ‘civilisation’ (see Beckett, 1992;

Boas, 1899, 1901, 1904; Ellingson, 2001; Kolig, 1989; Lovejoy & Boas, 1973; Malinowski, 1930). This idea not only took hold in various disciplines including anthropology throughout the eighteenth and nineteenth centuries, but it has presently found a new resurgence within native title despite the abandonment of evolutionism. Native title applicants are required to perform culture in an idealised ‘natural state’, that is, as if it had developed in isolation and apart from the violence of colonisation. This idealisation is present in the implications and language used such as the term ‘traditional’, particularly when it is objectified and paired with ‘law’ and ‘custom’ (Burke, 2011b).



Plate 6: Law time at Wirilimura law-grounds in Banyjima country.

Aboriginal people living in regional areas are seen to be more ‘traditional’ and thus in Rousseau’s formulation, more ‘natural’, than those who live in cities or towns. When applied to native title, tradition takes on the requirement of being a practice which was in place prior to colonisation, or it is minimally changed since colonisation. It implies that cultural practice should remain unchanged for it to be termed ‘traditional’ thereby negating the process of cultural adaptation thus creating an academic conundrum where evolutionism requires change for the ‘advancement’ of culture, but native title requires stasis for a positive determination.

This categorisation into degrees of authenticity reinforces the British imperial identity of Australia and attempts to establish a more cohesive Australian identity through clear delineation of the 'other' (Barcham, 2007). However, these distinctions are problematic as they gloss over the events which led to settlement in cities and towns and why languages in some areas have become extinct. They remain wilfully blind to the impacts of colonisation. These distinctions also apply a value hierarchy to certain qualities and aspects of Aboriginal culture where some people are seen to be 'more' Aboriginal than others and therefore more valuable as people who might assist in the quest for native title.

### **3.2 The stasis: representations of 'tradition' and 'continuity'**

In 1930, Malinowski (1930:406) lamented the metaphorical 'bursting of the bubble' within the discipline of anthropology as it moved from what he saw as "a romantic, leisurely existence in its 'antiquarian fool's paradise'", by which he meant the study of the past through material culture, into the study of the minutia which builds everyday life. This lamentation is applicable in the native title context where anthropology seems to have regressed to that described by Malinowski where people are not studied in their full reality in immersive fieldwork, but rather, through examination of material artifacts, in this context, historical documents.

The native title industry examines historical documents to find a baseline for the measure of 'tradition' and 'continuity'. Comparing contemporary practices with historical depictions is a restrictive approach, but one that is necessary because the NTA imposes the need to establish the degree to which claimants remained unaffected by the impacts of colonialism. The native title community in the Pilbara then responds to these requirements through the performance of culture and the adoption of cultural practices which may have been discarded or may be projected as appropriate of a 'traditional' culture which has 'continued' through colonisation. They know their history through oral and historical records, as I have shown in Chapter 2, but they must erase the history of change and colonisation for native title to be recognised. Claimants, with the assistance of the NTRB, select appropriate parts of their history that fit the category of 'tradition' fuelled by the sense that 'change' is a dirty work in the native title industry and the NTA which promotes "a state-mandated and resourced project of traditionalism" (Bauman, 2010: 2).

It is necessary to acknowledge that native title anthropology does not attempt to engage in the immersion of long-term fieldwork, nor build an ethnography<sup>33</sup>, or build on an existing body of work, but rather, it uses the testimony of selected claimants and historical documents to produce a report which satisfies the perceived requirements of the NTA (Sutton, 2003). And the 'connection' it seeks to describe is based on the legal precedent of what constitutes 'continuity' and 'tradition'. The methodology applied is one which responds to a legal brief rather than one which is grounded in theory. This methodology is problematic because it is built around the legal parameters set by legal precedent which imbues it with a degree of ambiguity and room for interpretation. Therefore, a connection report is not an ethnographic account.

Palmer states (1981: 134):

Proof of native title relies upon a relationship being established between past customary practice and present practice. The evaluation can then be made as to whether there is continuity of laws and custom over time and, ideally since the time of sovereignty. As a consequence, native title anthropologists need to ascertain from those with whom they work whether a practice or a belief is of some antiquity.

While this statement is accurate as to the native title requirements of proof, Palmer (2018) does highlight that a practice or belief should be identified as being of "some antiquity" rather than derived from a practice or belief in antiquity. The determination of the 'antiquity' of the practice is then derived from the expert opinion of the anthropologist and assessed by a judge based on legal precedent. This process allows for a large amount of interpretation which cannot be avoided because of the lack of understanding of anthropological concepts on the part of the legal system. The statement by Palmer (1981: 134) having been made in a book which is commonly used as a guide for native title anthropologists makes the issue of the requirement for the stasis of Aboriginal cultures clear. Palmer (2018: 52) makes no allowance

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<sup>33</sup> There is a notable exception where a connection report was published as an ethnography by Bagshaw, G. (2003). *The Karajarri claim: a case-study in native title anthropology*. The University of Sydney.

for the potential for the practice or belief to be derived or to have been adapted over time in this section of his book, although in an earlier section he does state:

It is not that native title law admits no change: it can accommodate significant change and adaptation provided there is a clear connection with pre-sovereignty formations.

Anthropologists in the native title industry attempt to describe normative systems in a way which avoids the insinuation or suggestion of adaptation or cultural change (Bauman & Macdonald, 2011a) although the idea that a pre-colonisation culture can be accurately described is problematic and an impossible expectation. Trigger (2015) discussed cultural change and adaptation in relation to *The Lardil Peoples v State of Queensland* [2004] stating that there has been substantial adaptation and change to the connection to country. Trigger (2015) argues that the contemporary connection to country must be thoroughly documented and researched as it is based on previously operating systems. And while in this case, Trigger was referring to the transference of country from one group to another, the concepts of adaptation and change are clearly relevant to all aspects of any native title claim. Interestingly, Trigger refers to pre-sovereignty formations as being the baseline of the current systems in place. However, as we do not have access to pre-sovereignty formations, this must be explored through the oral histories which, when referring to pre-sovereignty will contain a degree of ambiguity because of the amount of time that has elapsed. Another factor which influences the use of pre-sovereignty oral histories is that memory is not passive, but rather an active process of creating of meaning (Thomson, 2010).

Ambiguity is immanent in human reality regardless of any research; all research deals with ambiguities and requires interpretation and this holds true of everyday life. Although, some researchers – anthropologists, historians, geographers, linguists, archaeologists – will try to achieve a maximum of clarity and explicitness about their interpretations. Native title methodology introduces further ambiguity and the need for interpretation regardless of how it is applied and critically controlled by any given researcher. Research carried out and the resulting documentation of the native title claim becomes a legal record of the claimants and their culture, which potentially presents a problem should that culture be represented incorrectly or based on problematic methodology and data. In terms of the wilful blindness to

cultural change and adaptation and the impacts of colonisation on 'tradition', the connection report obfuscates the lived experience of Aboriginal people and instead presents an idealised version.

Legal precedent has contributed to the development of a cultural stasis model which is commensurate with the concept of 'tradition', thereby blotting out the reality of cultural change. However, this use of the term 'tradition' is a departure from the theoretical grounding of anthropology where it is understood as a custom which contains symbolic meaning and stands as a referent of collective identity of a culture (Bauman, 2015; Ollier & Winter, 2006; Wallace, 1970; Whitaker, 1970). Anthropologically, traditions are enacted or performed through ritual and are an element of historical continuity (Bauman, 2015; Whitaker, 1970). However, within the application of the theoretical frameworks of tradition within anthropology, there is a recognition of 'change' and 'adaptation':

A more concrete and practice-centred understanding of tradition recognizes that the temporal continuity of tradition is instantiated in successive enactments of cultural forms that are guided by precedent and convention and constructed as replicating, in some essential sense, what has been done before. When the focus is on the dynamics of tradition, the process of handing down, or intergenerational transmission, the element of social learning is often emphasized, whether under the rubric of enculturation, which foregrounds the acquisition of cultural knowledge, or the now preferred socialization, which foregrounds the social matrix of the acquisition process (Bauman, 2015: 503).

The concept of 'tradition' brings with it what Bauman (2015: 503) terms "its normative force, the notion that tradition enjoins conformity", which is entwined with its replicant quality and which is an aspect of Aboriginal culture as echoed in legal precedent. However, the application of both 'tradition' and 'normativity' are impositions and projections which frame Aboriginal people through the trivialisation of colonisation and institutional violence and where they are expected to conform to Western notions and understandings while also projecting an image of 'traditional laws and customs acknowledged' and unchanged, to prove that their society is a 'normative' one.

Olney J's decision to deny native title to the Yorta Yorta people contained within it an assumption that 'tradition' is unchanging in Aboriginal cultures:

The most credible source of information concerning the traditional laws and customs of the area from which Edward Walker's and Kitty Atkinson Cooper's early forebears came is to be found in Curr's writings. He at least observed an Aboriginal society that had not yet disintegrated (Olney, 1998: par 106).

Here is an inference that Yorta Yorta culture "disintegrated" and therefore it is no longer normative, which echoes the attitudes of reconstructionists (Rennu et al., 2018). Indeed, Olney J states that there is no evidence that those aspects of what he deems a traditional lifestyle were practiced by the descendants of the people described by Curr in his writings. However, Olney J makes no attempt to describe what he means by the term 'traditional' or why there should be an expectation that a culture continues to practice the same lifestyle as it did a century and a half before, and before colonisation for native title to be recognised.

The issue of tradition and change also emerged in various other native title claims, however the issue was originally created in *Mabo 2* where Toohey J and Brennan J disagreed as to what the foundation of native title was, with Toohey J defining it as the physical presence on country, while Brennan J defined it as the acknowledgement and observance of traditional laws and customs (Brennan, 1992). Brennan J also emphasised that his decision was based on the condition that those laws and customs be acknowledged and observed "so far as practicable", implying that he had considered that cultural change and adaptation may have taken place in the two hundred years since first contact. This is, in essence, an acknowledgement of cultural change and recognition of the impacts of colonisation inflicted upon Aboriginal and Torres Strait Islander peoples, however this is not how it has been interpreted.

### **3.3 Tradition in the Pilbara**

While the depiction of Aboriginal cultures through distorting lenses began early in the colony, where the paradox of the 'noble savage' and the 'ignoble savage' played out within settler

society, early descriptions of *marlpa* contain little to no romance about a 'simpler' life. Rather, they are heavily loaded with biased criticism. Withnell stated, "The natives of these parts—I am referring to civilized ones—are very dirty in their habits" (1901:4), allowing no room for idealizations in his manuscript. Indeed, most of the physical descriptions of *marlpa* come from police patrols or the diaries of station owners who described them in colonial terms.

The documents produced by early anthropologists focused on cultural descriptions, kinship and language, leaving very little room for either romantic or pejorative notions. Instead, romantic notions were born from the appreciation of pre-colonisation cultural remains (Byrne, 1996), such as the petroglyphs in the Dampier peninsula in the Pilbara, where depictions of megafauna alongside European ships stimulated the imagination of settlers. What settlers saw as a disappearing culture which would eventually succumb to extinction was an adaptation of the same pre-colonisation culture which settlers saw as 'pure', and these imaginings became the benchmark for the authenticity of Aboriginal cultures.

The concept of 'tradition' is now used romantically in the Pilbara, where it is customarily applied by non-Aboriginal people to describe Aboriginal cultures in the past tense thereby creating an expectation of change, but also of an inauthentic present (Morphy, 2020). Tourists and visitors to the region sometimes feel confusion when they come across practices that challenge these understandings, as I demonstrate in the vignettes that follow:

As I entered the airconditioned art gallery in Roebourne, I proceeded to look at the works of one of my old Yindjibarndi friends. There was a couple of 'grey nomads'<sup>34</sup> admiring one of the paintings and discussing the composition of the painting and the colours used. The woman was explaining to the man that the dots in the paintings were traditional in Aboriginal art and that the painting was of a 'Dreaming'. The man wondered if the paint used was ochre and quickly bent down to read the label next to the painting and he then stood up abruptly and exclaimed, "Can't be that traditional! It's acrylic!" The woman began whispering to the man and the couple quickly turned around and left the gallery in a flurry of whispers. The reaction of the man

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<sup>34</sup> The term is applied to Australian retirees who have adopted a nomadic lifestyle and travel around the country in the caravans.

showed a level of disappointment at not being in the presence of what he expected to be 'traditional' Aboriginal art. What the tourists didn't appear to know is that dot painting is not a nation-wide pan-Aboriginal practice, and that it is not traditional practice in the Pilbara. The understanding and conception of what constitutes 'traditional' Aboriginal art for a non-Aboriginal person is vastly distinct than what is perceived as 'traditional' Aboriginal art by the *marlpa*. There seems to be an implication here where a level of 'non-traditional' methods are acceptable in art, such as the use of a canvas, a frame and artificial lighting, however the use of acrylic paint is not acceptable as it does not fit within the constructed notions of 'traditional' Aboriginal art.

Tootsie, a Yindjibarndi artist who regularly exhibits her paintings in the same Roebourne art gallery, was sitting in the back room of the gallery going through some old canvases:

All these, see, they are all mine but most of them are no good. I have some good ones, the ones that sell are these ones, the colours are right.

I asked Tootsie why only some of her paintings sell and she stated:

See, they like dot art. Some of the others do sell, but the dots always fly out.

The practice of dot painting in the Pilbara is relatively new (Wright, 1968). It was introduced in the 1970s and, according to the artists themselves, they began painting because there was a demand for Aboriginal dot art (Bullen et al., 2022; MENA, 2021). The introduction of mining into the Pilbara brought with it a demand for Aboriginal art which has long been stereotyped as being dot art (Bullen et al., 2022; Taylor & Scambary, 2005). As a result, artists with knowledge of dot art were guaranteed a supplementary income in the Pilbara which is seen as desirable. The close kinship ties with the Central Desert language groups (see further, Chapter 5) and constant travel between the two regions allowed Pilbara artists to learn the techniques used in dot art and to capitalise from the burgeoning industry (Myers, 2002). There are now

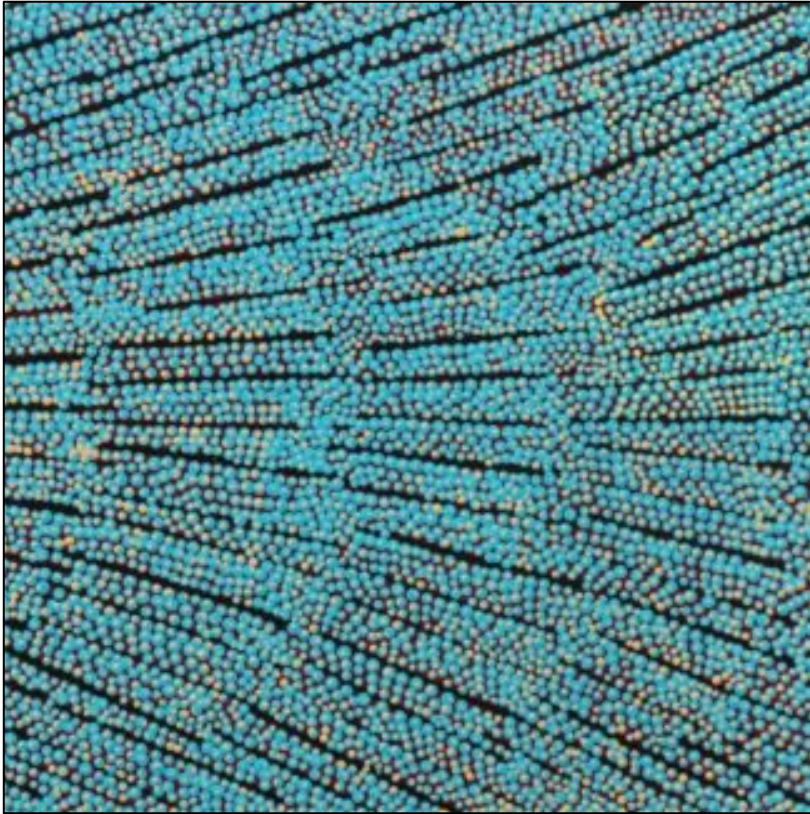


Plate 7: Dot painting by Yindjibarndi artist Maudie Jerrold from Yinjaai-Barni Art. The painting is titled “Fireworks (No 1)”, and it is priced at AUD\$810.00 at the Roebourne gallery (image courtesy of the artist).

several galleries in the Pilbara all of which sell Aboriginal art which is in turn marketed as ‘traditional’ Aboriginal art. Tootsie, a Ngarluma woman who is also an artist said:

We never did dots in the Pilbara before. We were carvers<sup>35</sup>. But we learned and now we do it. So, when we paint, we make Aboriginal art, because we are Aboriginal. Any art made by a black-fella is Aboriginal art. But if you want traditional, well we have the carvings in the Burrup from the old people!

This statement clearly makes a distinction between what is perceived as ‘traditional’ and what is not by Tootsie. However, the authenticity of the dot paintings cannot be questioned in her view as the identity of the person producing the art is what gives the art its authenticity rather than the style. Furthermore, the income derived from the sale of the paintings has assisted the Roebourne community in its subsistence considering that, in their majority, the people of

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<sup>35</sup> The term ‘carver’ here refers to the Aboriginal practice of carving and chiselling petroglyphs in stone (rather than making carving figures out of wood).

Roebourne survive below the poverty line. The reference to carving petroglyphs in the Burrup peninsula reinforces that the idea of what is 'traditional' within Aboriginal consciousness relates to what has been passed down by the 'old people'. This signifies a duality in the conception of the concept of 'tradition', one within the *marlpa* lifeworld and one within the non-*marlpa* lifeworld.



Plate 8: Petroglyphs at Murujuga, on the Burrup Peninsula on Yaburra country. This type of art is what *marlpa* themselves consider to be the art which belongs on the country.

I found that the native title industry prescribes to the non-*marlpa* conception of 'tradition' and change, similar to the tourists I observed. As the preparations for the Yule River meeting were being made, Donny, a Kariyarra man and at the time, the Regional Manager for the YMAC Port Hedland office, was busy helping the Kariyarra kids get ready for their first dance. He was unwinding red wool which he had taken out from a shopping bag and measuring out lengths. A woman wearing the uniform of the NTRB in the Pilbara was observing keenly and approached Donny. She asked him what he was going to use the wool for. Donny responded that it was to

tie around the kids heads for the dance. The woman looked confused and asked, “But isn’t that from the shops?”, to which Donny responded in the affirmative. The woman nodded and wandered off, having lost interest in the proceedings. However, her question to Donny and reference to the provenance of the wool presents the rejection of reality and a yearning for the ideal of traditional authenticity which only exists in the non-*marlpa* lifeworld. There is an implication in the woman’s question which delegitimatises the red wool as a cultural artefact because it was purchased from the ‘shops’. This delegitimation of aspects of Aboriginal life today derives from an unconscious idealisation of what Aboriginal cultures should look like and how they should behave, rather than reality. The dispute over the legitimacy of practices and cultural artefacts is a co-option of Aboriginal cultures by non-Aboriginal people which began with the construction of the Aboriginal past through the archaeological record and the institutionalisation of the recollections of the settler past through the preservation of records, building of museums and the inception of curricula for children (see Attenbrow, 2002; Attwood, 2017; Byrne, 1996; Lourandos, 1997; Mulvaney, 1999). This institutionalisation of Aboriginal cultures provided a vehicle for what is perceived by non-Aboriginal people to be ‘traditional’ thereby co-opting their cultures and creating an imagined ideal.

### **3.4 ‘Tradition’ and ‘change’ in tension**

As applicants move through the native title claim process, the tension between tradition and change becomes clear. For instance, there is a disjuncture between expectations held by claimants about and outcomes from fieldwork carried out by anthropologists and the reality with which claimants are faced during the negotiations and interactions with mining and resource companies in the Pilbara. Fieldwork interviews carried out by anthropologists tend to focus on the perceived ‘traditional’ knowledge of the people and their recollections of stories passed down, while the meetings and negotiations are based on the claimants’ abilities to navigate a Western legal framework and to adapt to the increasing contact with Western culture and its conceptions of ‘community development’ and ‘engagement’.

While there is a large emphasis placed on ‘traditional’ knowledge at the beginning of the native title process when data is being collected from applicants, once determination is achieved there is a shift in emphasis where the ‘non-traditional’ is of more value to Aboriginal

communities. As such, wider value placed on those who are seen to hold 'traditional' knowledge is lost as the claim progresses. The careful selection of claimants deemed to have 'traditional' knowledge by native title professionals inevitably resulted in the exclusion of data from others who did not fit the category of 'traditional' imposed on them. However, this value is then transferred to those who have Western education and can represent their kin-group or family in negotiations and meetings concerning access and use of country. This has led to a shift of the attitudes towards Western education and provided a new avenue for the development of employment streams. It is a new way of asserting agency. Although this has not been explored through an anthropological perspective, it is seen as a positive adaptation by some of the Pilbara community.

The methodological framework followed by in-house anthropologists in the Pilbara was primarily based on semi-structured interviews which were sometimes filmed for the purpose of 'preservation evidence' (Palmer, 2018). The term 'preservation evidence' is an obfuscation of the anthropological methodology known as 'video ethnography' (Haines et al., 2018), and the term serves only to vaguely link the recording of ethnography to the legal framework through the term 'evidence'. This term makes the method less 'academic' and more palatable for the legal field. Video ethnography was only used in the Pilbara when an elderly claimant had information which would be needed during the evidentiary presentation stage of a native title trial and there were fears for their health. For a claimant to be recorded, they needed to be identified as a 'knowledge holder' by YMAC. The identification process was based on assumptions of 'tradition' and a rejection of change.

Cyril commented to me while we were waiting for his dialysis machine to finish:

I was never called a knowledge holder. It's strange that. I am a Kuruma and Yindjibarndi and I am respected in law ground. But YMAC only ever wanted me for the surveys, not that I'm complaining. But my sister Marilyn, she did preservation evidence. I could have told them more about our family and our country, we were all there. I know the men's side too.

Cyril's experience of having been minimally consulted throughout the research process for the connection report is not unique. The process of identifying a 'knowledge holder' is in direct conflict with the Aboriginal concept of an 'elder' and it reflects YMAC's lack of cultural objectivity. It is an uncritical use of a specifically Western concept (Mimica, 2010) where the methodological framework used was re-framed as exemplified by the change from 'video ethnography' to 'preservation evidence' and from 'elder' to 'knowledge holder'.



Plate 9: Cyril Lockyer, a Kuruma elder in South Hedland after his dialysis treatment in 2018.

The formation of the categories of 'traditional' and 'knowledge holder' produces a category of 'offending' leftovers' (Douglas, 1966; Meigs, 1978). In the case of 'traditional' knowledge in native title claims, they are the claimants deemed too Western and therefore fall into the category of anomalous and are excluded from the research process. The anomalous group of claimants is then considered as 'having no connection' or 'having a historical connection', which reinforces the co-option of Aboriginal cultures and the imposition of romantic notions. The exclusion is not a negative act against those who are not perceived as 'traditional', but rather an attempt to compile data which will be favourably received by the courts. The aim is to reinforce the requirement of continued connection to country being claimed. Exclusion of those not perceived as 'traditional' from providing evidence reinforces the impact of the Yorta Yorta decision on native title proceedings.

In enforcing this ideology, native title professionals are constructing an image of Aboriginal people which is not representative of the group as a whole and which excludes and ignores the legacy of colonisation and contact with Western cultures. It is also problematic in that it presents *marlpa* with a construction of their identity which is then contrasted and compared with another construction which is drawn from the historical record of their ancestors. It also implies that participation in Western culture will lead to the extinguishment of the continued connection to country and therefore a negative native title determination as was the case of Olney J's response to the Yorta Yorta people's 1881 application for a parcel of land on which to cultivate food.

### **3.5 Change: the dirty word in native title anthropology**

I was sitting on the banks of the De Grey River with Kurtiri, he was telling me about his childhood and his recollections as a teenager:

I was told by the old people that when the whitefellas first came, law time had to change, we had to change when we got together. It was never done when it's hot, it used to be when there was a little more cool in the air, but because we all had to go to work in the stations then the only time we have the law was when the whitefellas didn't need us.

That's the holidays. So now we have law time in the hot, that's what the old people told me.

Kurtiri describes a pivotal change in the way in which the initiation ceremonies for the men are held in the Pilbara. This change in the time during which the ceremony is held would have had a lasting impact on the social lives of the people, considering that prior to colonisation, their movements across the country were dictated by seasonality. Change was a necessary adaptation for them which allowed them to continue to practice an integral aspect of their culture. The discussion about change in anthropology necessitates the contextualisation of the circumstances to gain perspective. Contextualisation, when applied to the Pilbara, allows for change to be seen as a form of agency where *marlpa* were able to adapt their lifeworld. Kurtiri continued, "And there was a time when the law stopped. For years! We ran out of boys! But it started up again. The law never really goes away." It is an interesting incongruity when the recollections of Kurtiri are seen through the lens of Olney J's Yorta Yorta decision. Olney J stated that:

A native title which has ceased with the abandoning of laws and customs based on tradition cannot be revived for contemporary recognition (Olney, 1998: par 3).

This statement is problematic. In Olney's opinion, cessation of the practice of initiation, for whatever reason, is interpreted as an 'abandonment' of laws and customs. In contrast, according to Kurtiri, law does not dematerialise, it is something which remains on country and within people regardless of the practice of initiation ritual. The conceptualisation of law, as Kurtiri describes it, does not fit the simplistic definition of extinguishment of native title as described by Olney J. In terms of legal precedent, the admission of such a break would have amounted to a negative determination which would have an impact on the careers of those involved in the claim, thus, the concept of cultural change has become a dirty word within native title anthropology.

This post-colonial reality of Aboriginal cultures in the Pilbara is continually at odds with the requirement to demonstrate the 'continuity' of the 'traditional' which comes to a head in the native title context where anthropologists utter the dreaded "You only have a historical

connection” phrase which is another of the classifications given to ‘problematic claimants’ who are deemed to have ‘no connection’ (Weiner, 2007b). However, the connection which is proved using historical documents is, by definition, ‘historical’. For instance, when the Dhu and Derschow families were removed from the Banyjima native title claim they were advised that their connection to Banyjima country was ‘only historical’ and therefore they could not be proved to be Banyjima people. This historical connection is based on the historical documents which place them as pastoral workers in stations on Banyjima country. This material proof of their continued presence on country, however it was not seen as such by the NTRB. The larger issue presented to the Dhu and Derschow families is the lack of a tangible evidence which refers to their apical ancestor, Daisy, as a Banyjima woman. The tangibility of this evidence, according to the NTRB is embodied by the historical evidence of Tindale and Radcliffe-Brown, overruling the intangible evidence presented, that of the oral histories and the historical documents demonstrating their presence on country. This is a politics of difference argument which continuously ignores the trauma of colonisation as well as the ability of Aboriginal people to negotiate new modes of being (Austin-Broos, 2002). It also denies the ability of *marlpa* to self-determine based on the oral tradition, and instead forces them to seek Western modes of validation.

A new mode of being that has influenced the way in which *marlpa* see themselves and other members of the community centres on residence and connection to country. Choosing not to reside on the Pilbara is seen as a break with the connection to country and is openly criticised despite the maintenance of the connection through regular trips to the Pilbara and participation in rituals and maintenance of kinship and social relationships. However, absence from country for an extended period is seen differently by some members of the native title community. Christine maintains that her family never abandoned Nyiyaparli culture and that her exposure to Western culture as a child does not negate her identity and connection to country. Christine expresses her connection to country in terms of the cosmological connection to the ancestors, the language, and the country. However, Christine is seen as a ‘troublemaker’ within the Nyiyaparli community because her family had to engage in complex and adversarial negotiations and, even, conflict to be included in the native title proceedings through legal challenges and conducting their own genealogical research. The majority of the Nyiyaparli community saw the return of Christine’s family to the Pilbara as a financially

motivated manoeuvre. The presence of some of Christine's kin-group in the Pilbara was not considered, nor was her own wish to look after her kin country. Christine's family continues to participate in cultural activities in the Pilbara community even though there is a marked 'coldness' from the community towards them. Christine rejects these claims and states:

We came back, and we joined in because we speak for our country. No one can take our country away and we want to be able to protect it.

In contrast to what Christine expressed as her core value, the most valuable asset for a native title holding group is not a connection to country but, rather, the knowledge of how to navigate pre and post determination and negotiate the Western legal and economic systems. Hence why there is the need for the younger generations to acquire Western knowledge rather than to learn from the elders. The need for this knowledge is reinforced through the need to establish a PBC as prescribed by the NTA and to access the trusts which have been set up pre-determination through negotiations with mining and development companies as compensation for the use of the land.

### **3.6 Cultural adaptation**

The term 'adaptation' has an unfortunate association to Darwin's (1860) theory of evolution and in saying 'unfortunate', I lament its connection to the theory not because it is problematic, but rather because of its application and use within native title discourse. Here, the distinction must be made between Darwin's theory of 'evolutionary adaptation' and the concept of adaptation as applied to anthropological theory and research where it is understood to mean 'cultural adaptation'. It then becomes necessary to state that evolutionary adaptation is the transgenerational change of organisms which leads to the increased maximisation of a specific environment (Alexander, 1975). The translation of this process from change in a biological organism to the phenomena which occurs within a normative system of laws and culture then, is what cultural adaptation can be defined as. However, this change must be further explicated in terms of anthropological theory. There is evidence of cultural adaptation where adaptation is seen as a process of 'accommodation' to changes to the environment (Godelier et al., 1984). The question of how a native title claimant group is constituted and its comparison to the

historical record, as well as social reproduction and sustainability over time are a major concern in the native title industry (Finlayson et al., 1999b). However, it is this tendency in native title anthropology which applies pressure, reinforces cultural stasis, and overrules the agency of Aboriginal persons when they engage in cultural adaptation.

The imposition of static cultural expectations based on romanticised notions of Aboriginal identity can be identified in the Pilbara as a reduction in the 'authenticity' of the identity of native title claimants and holders from the perspective of the NTRB where anything outside of the understood norm is seen as detrimental (Barcham, 2007). Vincent, reinforced this when speaking to me in South Hedland:

My family doesn't live in a community, we live here in town. And before that we lived in Mallina<sup>36</sup>, we all worked there. Before we moved to town, we hardly ever came into Hedland. We didn't need to, we lived on-country and all our family was there. We are not like the other Kariyarra, we had other experiences and kept to ourselves, mainly because the owners out at Mallina were nice and they didn't kick us out. They wanted workers so we stayed on-country.

Vincent acknowledges his kin-group's inability to fit into the imagined perception of being a Kariyarra person. His choice to live at Mallina and participate in work there does not negate his identity or diminish his claim to country. On the contrary, having remained on-country, should, support his on-going connection and confirm his claim to Kariyarra country. These rights, however, were not enough for the NTRB: he participated in the Western economy, and his family were seen as 'workers' on Mallina Station, thus the label of 'historical connection' was applied to him. Vincent's refusal to accept this label and to withdraw his claim to membership of the Kariyarra claim, which caused a rift within the Kariyarra community, like that of the Alec kin-group.

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<sup>36</sup> Mallina is a station in Kariyarra country which forms part of the kin group country which to Vincent and his kin-group belong.

Vincent's kin-group identity as Kariyarra is widely acknowledged by the Pilbara community and recorded by both Radcliffe-Brown and Tindale. Despite this historical documentary evidence, Vincent, as a four-generation Mallina worker was seen as not being 'traditional' by the NTRB based on assumptions and the 'problematic' label which had been attached to them over time. The assumptions were made through the opinions which the in-house Aboriginal staff provided to the legal team. And while these opinions must be taken into account, the objectivity of those opinions must also be considered as those staff members were not elders. Vincent was thus assumed not to hold sufficient knowledge to contribute to the native title claim or participate in anthropological research despite his country being included in the Kariyarra claim and all the elders stating that Vincent was the only person who had knowledge of that country. Vincent lamented:

None of the anthropologists ever came to ask me to take them out on country and tell them what I know. All my knowledge was given to me by my elders and because we had free run of the station and the rest of my country, I have a lot of knowledge. But no one asked because they didn't think I knew anything. And you know, no one else knows what I know, because none of the other Kariyarra have been out there. I know that for a fact, because if they had come out, we would have known.

The employment of Vincent's ancestors and family at Mallina Station was an adaptation to the changing socio-economic environment of the Pilbara. By obtaining work at Mallina Station, the kin-group was able to remain on country and maintain their cultural practice. Otherwise, they would not have had access to their country. Legal precedent would agree that continuous presence on-country, as practiced by Vincent's kin group, constitutes clear evidence of the maintenance of connection to country as demonstrated in *Western Australia v Ward* (Gleeson et al., 2000). Furthermore, they were also able to continue practicing their culture in a modified manner which allowed for them to maintain their employment and use "down time" as what Vincent described as "cultural time":

My father told me that when he was a little fella, he worked just like all the other blackfellas. And there was very little time off, so during that time off everyone went

into the bush and this when they had cultural time. It worked because everyone did their work, but then everyone also came together and did culture.

In direct contrast to Vincent's experience is that of the residents of Yandeyarra Community in the central Pilbara where attendees come from all over the Pilbara, the Kimberley, and the Central Desert regions for law time (Peterson, 2000). It would be reasonable to question why Yandeyarra *bugali* business<sup>37</sup> is so popular and widely attended. The reason is due to the diverse cultural origin of the residents of Yandeyarra. The introduction of pastoral stations to the East Pilbara provided markedly different existential conditions for the Aboriginal community than that of the Aboriginal community of the West Pilbara. The requirement for workers in the stations encouraged people from the Central Desert region to relocate for work and eventually settle in the area, bringing with them a different type of 'law' than that of the Pilbara.

The landmark Pilbara strike in 1946 saw all Pilbara and Central Desert Aboriginal station workers cease work and created a new type of kinship among those workers, as well as the empowerment of taking action against their oppressors (Holcombe, 2005). The strike was about the demand for increased pay and better work conditions for Aboriginal workers. They were brought together by the introduction of communist ideals by a non-Aboriginal man, Don McLeod and prominent Pilbara Aboriginal law-men such as Peter Coppin, Ernie Mitchell, Clancy McKenna and Dooley Bin Bin<sup>38</sup> (D. McLeod, 1984) .

While McLeod provided a foundation to this advocacy movement, after some years, the strikers divided into two separate factions, one of which was led by Coppin and Mitchell who became known as the Mugarinya group and settled at the 12-Mile community in Port Hedland, on Kariyarra country, where some of their descendants still reside today (Palmer, 1981). The other faction settled at Strelley Station on Ngarla country. However, Coppin and Mitchell with the support of the government, returned to Yandeyarra Station where many of the former Aboriginal strikers and their families settled (Palmer & McKenna, 1978). The group of people

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<sup>37</sup> The ritual of circumcision for male initiates which takes place every year.

<sup>38</sup> Dooley Bin Bin was a Nyangumarta law man from the Central Desert region.

who settled in Yandeyarra belonged to different language groups and some came from outside the Pilbara, with Coppin and Mitchell both being Nyjamaal.

Residents of Yandeyarra at the time numbered around 100 with some of the residents being from other regions in Western Australia. In 1972, the Mugarinya Community Incorporated was created with the pastoral arm being wholly subsidised and called Yandeyarra Pastoral Company (Palmer, 1981). The history of Yandeyarra is of relevance when seen through the native title lens because of the emphasis on the 'traditional'. While Yandeyarra is indeed a centre for the celebration of *bugali* business on a yearly basis which has been deemed to be 'traditional' by the NTRB where staff are regularly invited to witness the events yearly. Of equal importance is that the community is located within Kariyarra country which, according to Diana, should only ever hold Kariyarra law celebrations, however the law-men and women of the Pilbara all agree that the law practiced at Yandeyarra is not Kariyarra law (Palmer, 1981). The law practiced in Yandeyarra is a mixture of East Pilbara and Central Desert law making its categorisation as 'traditional' by the NTRB problematic.

And while the gathering for law at Yandeyarra may appear to support an image of 'traditional' Aboriginal people who practice 'traditional' law and customs, this is not the case due to the colonial history and Yandeyarra's development as a self-sufficient Aboriginal community. Still, the gathering is imagined as being an event where non-Aboriginal people, if they are invited, can witness 'traditional' law and culture. Kurtiri, lamented:

Our Ngarla mob is keeping our system. There is not a way that we never bring anybody in our law or give anything to 'im. We gotta really know 'im to give anything to 'im. 30 years when there was no boys to put through Warralong the law stopped. Out at Strelley those people from the strike back in 53 they had to get our permission to have their law. We keep away.

Kurtiri refers to the introduction of a different law to his country by some of the strikers and their descendants who still reside at Strelley Station. Kurtiri and Jeffrey, stressed that they have a conflict with the 'Strelley mob' because they have not come to pay their respects to Kurtiri or asked for his continued permission to carry out their law business on Ngarla country. Both

Kurtiri and Jeffrey stressed that they do not attend law at Strelley because it is Central Desert law, rather than Ngarla law. Similarly, Jeffrey stated that, “The *nyambali*<sup>39</sup> there (at Yanderra) needs to come and ask permission from the Kariyarra. Same if you want to start a business. You got to ask.” This invocation of Aboriginal courtesy and recognition of rights implies that there has been a rift and that there is conflict among the settlers and the owners of country. This discord within the Pilbara Aboriginal residents is a consequence of the departure of the practice of Pilbara law and culture exclusively in the Pilbara. There has now been over fifty years of habitation and the practice of a hybrid law in two separate sections of the Pilbara where the consent of the owners of the land was not sought. However, the practice of Central Desert law and culture in the Pilbara has not been seen as an obstacle to native title (see further, Chapter 5). Indeed, the law ceremonies carried out at Yandeyarra have been attended by several native title professionals over several years without consequence.

### 3.7 Conclusion

*Marlpa* come into constant contact with Western values as they participate in some aspects of it and must navigate this duality. Active participation in Western culture or relocation to another region, state or country is not a rejection of Aboriginal cultural values or a severing of their connection to their country or loss as Olney J suggested in his decision of the Yorta Yorta claim, but an adaptation. Change and adaptation are processes which have allowed *marlpa* to navigate and exist within their new socio-political setting as well as to continue to practice their cultures in a cohesive and normative manner.

Notwithstanding this reality, conceptions of ‘traditional Aboriginal cultures’ have been superimposed on to normative Aboriginal societies by the native title industry in their quest for a positive native title outcome. The active process of cultural adaptation and the inevitability of change over time are overlooked because there is a discomfort associated with their acknowledgement. This has produced both a static conception of Aboriginal culture and paradoxically, the requirement that Aboriginal people adopt new practices such as conducting

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<sup>39</sup> Boss in Nyjamal language which has now become a standard way to address the senior law man or woman across the Pilbara.

research with historical documents, to demonstrate continuity of practice and connection to country and thus, achieve native title recognition through the legal system.

While the concept of cultural change and adaptation is seen as negative in the native title setting, romantic notions of a pristine and unchanged culture are an imagined comfortable ideology which non-Aboriginal people promote to avoid the guilt and culpability which is derived from the impacts of colonisation. Thus, the concept of “denial settler society” (Attwood, 2017) is an active agent in the Western ideal of the ‘traditional’.

## Chapter 4: The Kariyarra native title claim: an ethnographic portrait

From 2008 to 2011, I lived and worked in the Pilbara region as an in-house anthropologist for YMAC. I had the opportunity of working with most language groups in the region, conducting heritage surveys on a weekly basis and producing survey reports with a turnaround time of seven days, although in some cases, it was twenty-four hours. When my first 12-month contract came to an end, the position of 'Claim Anthropologist' was offered to me in Port Hedland with the proviso that I would be managing several claims, but my primary focus would be the Kariyarra claim. My introduction to the native title community of the Pilbara in a meaningful and more in-depth way was through my work with Kariyarra claimants. From the day I arrived in Port Hedland in 2009, I spent on average of three days per week with Kariyarra people. The history of the Kariyarra claim and the role I played in the research process provided the contextual framework for the concepts and themes of my thesis which were then supplemented by the similarity of the experiences among the broader native title community of the Pilbara.

On my first day as Claim Anthropologist, a community meeting for Kariyarra people was scheduled and the lawyers informed me I would be introduced to the community. I made my way into the meeting hall alone, having just arrived from Karratha and knowing that the meeting was already underway. I could hear a commotion coming from the hall, and as I opened the door, a few people pushed past me on their way out, loudly stating that they were leaving. As I investigated the hall, there were chairs set out together in groups and a long table in front of them facing the front of the room. The people placed in groups around the hall were individuals from a range of age groups sitting in semi circles that clearly excluded anyone else in the vicinity. There was also a man sitting alone to one side and an older man and a woman sitting together to another side. The way in which Kariyarra people had grouped themselves could be interpreted as random. But as my knowledge of the community grew, I understood that the groupings reflected local identity politics and roles. People sat in kin-groups, although the individuals sitting alone were those who were trying to be recognised as Kariyarra people but had been rejected by the community at large.

The people sitting at the front and along table were all employees of YMAC. They sat at the table watching a woman of approximately my age, hunched over with her head in her arms, sobbing quietly. At the front of the hall was the in-house claim lawyer who held the microphone in his hand and stood watching the scene unfolding in front of him. The positioning of the YMAC staff presented the power dynamics between them and the Kariyarra community where the former clearly reinforced their authority by being the only people in the meeting hall sitting at a table. Surrounded by folders, paperwork, and their laptops, they sat with their back to the community whom they represented. The placement of the folders and other professional paraphernalia of the YMAC staff served to symbolically reinforce their status as the people who were in charge, and as such held the most important roles in this meeting. This was a realistic manifestation of the way in which a community that claims native title is rendered almost irrelevant in this kind of meeting since, factually, their opinions are not necessarily needed or heeded.

Behind the crying woman, the outgoing anthropologist, was another woman who was yelling and pointing a finger at her. When the claim lawyer saw me, he shrugged and gestured for me to sit at the long table. I took a seat next to the minute taker who had flown in from Perth and another in-house lawyer. I asked him what was going on, and he said, "They are upset about 'who's in and who's out'". Having only just looked over the claim briefly and not been given a summary of its status, I understood that this related to the genealogical research of the claim group but was not familiar with the parties involved.

After a few minutes, when it became clear that no one was going to rescue the crying woman or to put a stop to the yelling, I stood up, walked over to the screaming woman, and said, "Hi, I haven't met you yet, my name is Nayeli, and I am your new claim anthropologist." She looked me up and down and asked, "Another anthropologist! How long you gonna stay round for? We 'ave had more anthropologists than sand round here!" With that, statement, the woman sighed and began to express her frustration with the high turnover of anthropologists in the Pilbara and their inefficiency in completing native title research. I waited for her to finish and said, "I'm sorry, I know it's frustrating, but can I ask what your name is?". She narrowed her eyes at me and said, "I'm Diana and I am the boss of this country. This 'ere, Port Hedland, that's

my country and no one can tell me different!” I nodded and responded, “Nice to meet you Diana, I don’t know how long I will be here for, but I will do my best to get your research done. But can I ask you to please stop yelling and swearing, it’s not that it upsets me - I used to be a debt collector - and there is nothing I haven’t heard; it’s just that I think the lawyer is trying to say something. Maybe you and I can sit and have a yarn later after the meeting?” I knew it was a long shot, but Diana paused for a moment and then broke into a huge grin, she slapped my arm and said, “Ay! You’re right!”, and with that she sat down.

I put my hand on the shoulder of the crying woman and whispered, “Are you ok?” and Mercedes, the outgoing anthropologist, looked at me and nodded; she wiped her eyes, and the lawyer took over and continued his presentation. It quickly became obvious that the legal team wanted to have a community vote as to who should be in the Kariyarra claim and who should not. They were basing their request on the research carried out by the outgoing claim anthropologist who had questioned whether some of the people present were indeed Kariyarra by blood. One of those whose identity had come into question was Diana. However, in that instance it was decided by the legal team, at the request of the community members present, that I carry out further research and determine “who’s in and who’s out” of the claim because they refused to accept the findings of the outgoing anthropologist.

This first interaction with Diana has been re-lived by us many times. Diana describes our first meeting as being the first time that an anthropologist surprised her, although Diana and I have had many disagreements which have not been easy to manage. Although, I must admit that the knowledge that Diana’s anger was born out of frustration with the native title industry has allowed me to remain objective. However, Diana does not express any regret over her treatment of Mercedes as she believes that she was “useless” and that she wasted time and caused problems. This is an opinion which is often heard throughout the Pilbara in relation to the work carried out by anthropologists for the purpose of native title. Diana has often lamented the amount of information and knowledge that she has shared with several anthropologists which she has never seen again. Indeed, there was a very high turnover of staff at YMAC, and the turnover of staff has been discussed at length within the native title industry as it was, at the time, prevalent across Australia. However, this does not negate or override the experience of *marlpa* where research was conducted from scratch in claims every time a new

anthropologist was engaged. My experience mirrors Diana's frustration where all the research carried out over more than a decade and by several different anthropologists was left to the side and I was instructed to begin researching the connection of the established apical ancestors and the existing Kariyarra community from scratch.

After that first meeting, I went back to the office and still, without having looked at any up-to-date documentation, sat down with Diana and asked her to tell me her story. At first, she looked at me blankly, then she asked me, "What do you mean? I never been asked to do that! What you mean my story?" I told Diana that I wanted to hear about her life and her family, and this earned me another huge grin, "You might work out ay?" she remarked before beginning to tell me about her father. Diana said that her father was Percy Robinson, a son of Dougal. Dougal, she said, was a brother of *Jinapi* and stated:

All the lies them people are spreading about my family are not true. Dougal was Kariyarra and he was Percy's father. Percy was called Yalkaringu, that his blackfella name. His country was Port Hedland, and he showed me all over and I know my country and the boundaries.

It was clear that Diana was in the middle of a conflict with other people in the native title community who openly expressed their doubts about her identity as a Kariyarra woman and an elder of the Port Hedland area. Years later, during my fieldwork, Diana told me that she has always felt the need to defend her identity from anthropologists because before native title began in the Pilbara, her identity had never been questioned by the Aboriginal community. The issue of mining royalties exacerbated these tensions. It was not until native title research began that people began to be concerned with how much money was involved in mining and royalties and the number of people who could claim those royalties. Her country being heavily developed for mining and transport purposes was the target of many claims and a lot of people questioned the validity of the research into her family carried out by anthropologists. Because they carried out research without publishing and without providing feedback to the community, the word of the NTRB became the standard for the legitimisation of Kariyarra identity. This placed Diana into a precarious position within her community because if an anthropologist questioned her identity, then the entire community would too. In Diana's eyes, her attitude

and emotional response to anthropologists was a direct response to her experience of native title and her way of reinforcing her status within her own country. Her frustration was a response to the destabilisation of her relationships with her community.

I asked Diana whether anyone had conducted research into her apical ancestor or made a genealogy for her family, and she said:

I sat down with every anthropologist that has worked 'ere, but I never seen a family tree. It's my family and my old people and no one has ever shown me what they come up with. Now Mercedes is asking people to vote to see if I can stay on the claim. They're not going to mess with me. I know who I am, and I don't need an anthropologist to tell me. My husband used to work for the rep body, but he doesn't anymore so I'm not safe!

Up until that point I had not thought about the process which was being put forth by the NTRB and how the process of voting forces claimants to use a Western framework rather than their own cultural frameworks in the identification of their members. This process is an invalidation of the oral histories and the social hierarchies of *marlpa*.

The idea of implementing a Western framework into the way in which an Indigenous community self-identifies did not fit into my conceptualisation of Aboriginal practices. But because native title is a Western process imposed on Aboriginal people, at the time I could not completely fault this framework. Nevertheless, I was fully aware that the community could be voting for someone to be part of the claim or not, and that this was not an Aboriginal practice, so I asked Diana, "So, is that how the Kariyarra people recognise someone? By voting?" She laughed saying that the lawyers had asked the community to vote in the past, so the voting system had been adopted for native title purposes, but that *marlpa* were identified by blood and the law. She staunchly stated that you cannot be a Kariyarra person without having Kariyarra blood. This claim by Diana has been reinforced over the years by most of the Aboriginal community in the Pilbara, but there are instances, where this has been questioned and has inevitably led to conflict.

My conversation with Diana went on for a few hours and we both agreed that I would proceed with research from scratch into each of the acknowledged apical ancestors and all the newly proposed ones. She also suggested that I investigate the boundary of the claim because she said it had been incorrectly drawn. Subsequently, I went to speak to the legal team and told them that I will begin research into all Kariyarra apical ancestors the next day. The lawyers did not look happy and one of them warned me that the apical ancestor Yankee Williams was in fact the ancestor of the then, Deputy Regional Manager of the Pilbara and that he was accepted as Kariyarra. I took their warning under advisement; it seemed an interesting and perhaps ominous warning. So, I made a mental note of it. This discussion with the lawyers clarified what I had suspected while speaking with Diana: there were politics at work in this claim and the status of native title claimants who worked for YMAC was considered when conducting research. Diana's statement about her husband being a past employee had stuck with me too, but at that time I had not asked her about it.

Despite being born in the Pilbara and having lived there her entire life, Diana's status and knowledge has been repeatedly questioned. I found no evidence to support the claims that Diana's family was originally from the Meekatharra area. Similarly, I found no evidence to link her family to any other language groups in the Pilbara other than Kariyarra through her father, and Banyjima through her mother. I asked Diana to tell me her story shortly after the Kariyarra determination, and Diana smiled widely and began by saying:

You know all the times I have told anthropologists about my family and country, and no one ever has given me a copy of what they wrote down. I want a copy of this. You know, I asked for a copy of the genealogy that Kingsley Palmer did for the court, and he can't give it because he says it belongs to YMAC. I asked for a copy from Simon Hawkins, and he wouldn't give it.

I promised Diana that she would get a copy of anything I wrote about her, and her family and she began telling me about Percy Robinson, her father.

Diana told me:

I got my country, me and my brother and my kids, and that is Marapikurrinya, that is our family clan<sup>40</sup> and each clan has their own country. And the country, that you get from your father. You need to have Kariyarra blood to be Kariyarra. The blood is what calls for country and the country calls for your blood. When you are the traditional owner of the country you get the blood systems, and you know your stories and your customs and your laws. If you are Kariyarra you know that, but all these other people that come and live on Kariyarra country and they have kids here and they are born, they think they have a right to country. But they are not Kariyarra people. Like the Alecs.

Diana expressed her disappointment that some of the families had been accepted into the Kariyarra determination. She stated that when the claim was first lodged, her husband Jeffrey Brown, a Ngarla man, and *Kurtiri*<sup>41</sup> were both present and that they both advised YMAC that the Kariyarra boundary, as it was drawn, had encroached onto Palyku country. She also stated that *Mumbalunyja* Hill is not on Kariyarra country and that it was included into the native title claim because it belonged to Yankee Williams. However, Diana quickly left that to the side and continued speaking about her father. This attitude demonstrates that long-standing feuds and allegiances have been on-going within the native title community in the Pilbara.

Diana stated that Percy Robinson's Aboriginal name was *Yalkaringu* and that he had been taken in by his paternal uncle Yawi and his wife Dinah because his father Dougal passed away when he was young in 1917. Dougal, Diana stated, was the son of a Kariyarra woman and a non-Aboriginal man. He had several brothers of which Diana recalled *Jinapi*, Jimmy, and Yawi. This particular family group was recorded by Radcliffe-Brown (1915-1951b) during his fieldwork, and the brothers and sisters of this family constitute the majority of the ancestors to the current Kariyarra people. Radcliffe-Brown recorded *Wilrimara*, a Kariyarra man who married *Mindiangu*, a Kariyarra woman who had five children, Dick<sup>42</sup>, *Jinapi*<sup>43</sup>, *Wiringbangu*<sup>44</sup>, Dinah,

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<sup>40</sup> Diana is referring to her kin-country by using the colloquial meaning of 'clan' rather than the anthropological definition.

<sup>41</sup> Charlie Coppin, a Ngarla elder and senior law man in the Pilbara.

<sup>42</sup> One Arm Dick.

<sup>43</sup> *Jinapi*.

<sup>44</sup> Jimmy.

Dougal<sup>45</sup>, Tommy<sup>46</sup> and Yawi<sup>47</sup>. From those children, *Jinapi* is an undisputed apical ancestor within the Kariyarra native title determination as is *Wiringbangu*. However, the descendants of Dick have been challenged throughout the life of the claim and continue to be rejected by the community. I recently found that the descendants of Dinah moved away to Queensland for a long period of time and have since returned. They have not been accepted into the community nor were they ever named as claimants in the native title claim or determination.

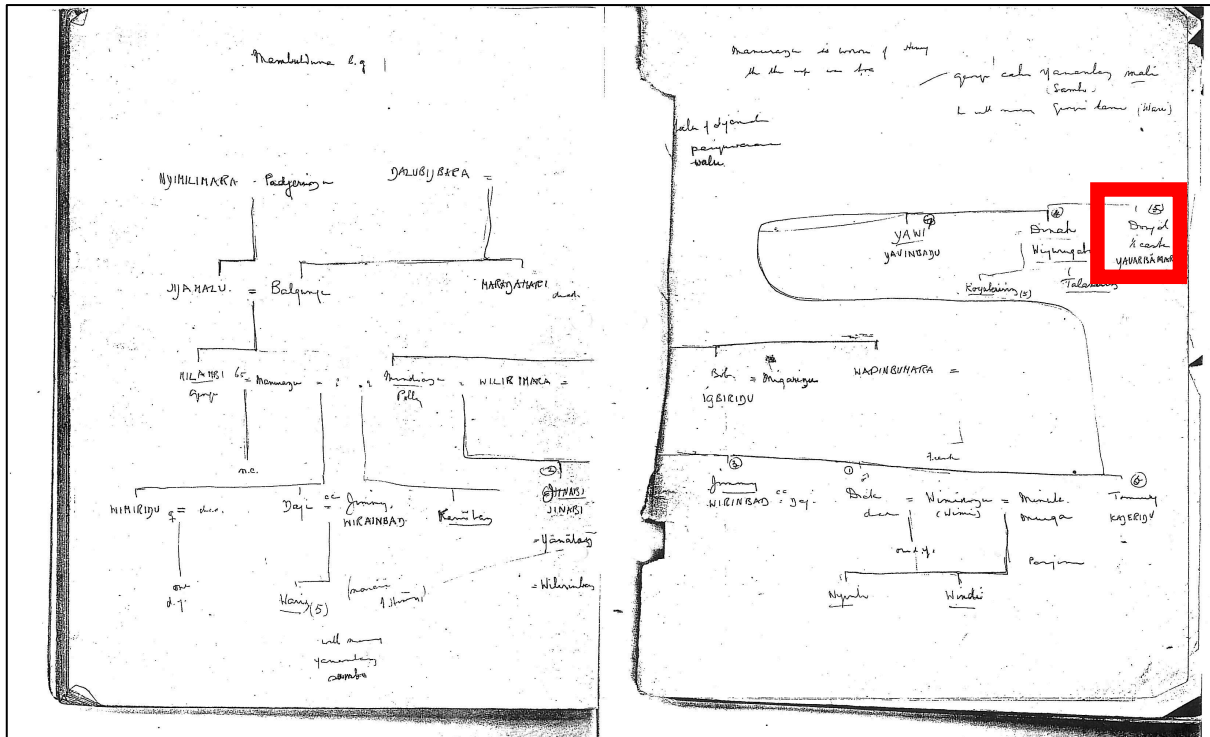


Plate 10: Radcliffe-Brown’s depiction of the family tree including Dougal, Diana’s ancestor and his brothers and sister (1915-1951b).

During my time with YMAC, I attempted to prioritise speaking to the old people in general as I thought they would remember their grandparents and be able to provide a more in-depth insight into the consanguineal bonds. Although, instead of being able to focus on the genealogical knowledge of the old people, I found myself inundated with paperwork which was presented to me in a somewhat ceremonious manner by the younger generations. The people between 25 and 40 years of age would arrive at their scheduled meetings with me with large folders and piles of paper which contained genealogies constructed by the Department of

<sup>45</sup> Yauarbangu.  
<sup>46</sup> Kajeringu.  
<sup>47</sup> Yavinbangu.

Indigenous Affairs (DIA), by researcher Mr. Mark Chambers<sup>48</sup> who worked for YMAC in the past, home-made family trees, birth certificates and to my surprise, photocopies of Tindale genealogies. These were all presented to me as proof that they were indeed Kariyarra people with the expectation that it would be sufficient for me provide assurances of their membership in the claim. However, as is the case with many genealogies, the documents provided contradictory evidence and thus I did not think they were reliable.

In one instance, that of Alfred Barker, the material he had presented was contradictory and so I said to him that I needed to conduct more research. I felt that I needed to explain to him what that entailed, to put an end to the insistence that the paperwork he had provided, which was authored by Mr. Chambers, was correct. Alfred was visibly disappointed and reiterated that he was a Kariyarra man and that his mother was a Kariyarra woman who belonged to Port Hedland.

My research into Alfred and his family began with his mother and father and I attempted to follow the information which Alfred himself had provided, while also attempting to identify where the information compiled by Mr. Chamber came from. Unfortunately, I was unable to verify any of the people mentioned by Mr. Chambers in Alfred's family tree, and while I filed the document as part of the research, I did not use it in subsequent research which became a point of contention with the legal team who were inclined to accept Mr. Chambers' research as factual.

The legal team arranged for a phone meeting with Mr. Chambers to discuss the information he had provided Alfred and his family. During the meeting, the Director of Research at YMAC was present, as was the Regional Manager of the Pilbara and both claim lawyers for the Kariyarra claim. Mr. Chambers insisted that he had in the past spoken to Alfred's father who had stated that Alfred's mother was a Kariyarra woman who belonged to Port Hedland. Mr. Chambers had no record of this discussion, nor any notes on the matter, he was simply applying

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<sup>48</sup> Mr. Chambers used the construction of family trees for Aboriginal people in the Pilbara as a pass time and would do so in his own time, however the materials he used for this trees were sourced, with or without permission from the DIA. Many people in the Pilbara often consult with him believing him to be an accurate source of information. Mr. Chambers has produced and disseminated copies of Tindale's genealogies to which he has added his own sourced information and corrected according his own 'findings'. Mr. Chambers is not an anthropologist or historian. Mr. Chambers is now employed at Aboriginal History Western Australia (AHWA) within the Department of Local Government, Sport and Cultural Industries (DLGSC).

what he insisted was his “knowledge of the mater”. Mr. Chambers could not provide any historical documents to support his claim, nor did he offer to research the matter, he simply informed me that I did not have sufficient experience nor knowledge to challenge his findings and then terminated the call. Despite all this, the information which was contained within the genealogy compiled by Mr. Chambers had to be discarded as it was not substantiated by historical documents nor the oral histories of any member of the Aboriginal community in the Pilbara, not even Alfred himself.

The oral information that Alfred provided me changed over time and then it changed again during my fieldwork. The name of his mother changed as did her place of birth. During my last visits with Alfred and his wife Sally Mack in 2018, his story was unrecognisable from what he had told me when we first met. This time Sally stated that she was “a Kariyarra by marriage.” Sally, a known Banyjima woman, had never claimed Kariyarra identity in the past but since the determination of the Kariyarra claim she had begun to state that she too is Kariyarra. Sally was so determined to prove her claim to me that she asked me to visit some of her family to obtain the “Kariyarra history of the family.” Following Sally’s instructions, I went to visit Ronny Roy<sup>49</sup>. I had met him during my tenure with YMAC and was glad that he remembered me and invited me inside for a cuppa. Ronny told me that Sally is his sister, although not a blood sibling bond; rather, Ronny and Sally are first cousins which means they share the same section name, making them brother and sister through kinship-derived categories.

The Aboriginal community in the Pilbara relate to each other through kinship terms and the ensuing social interaction is largely governed by behaviour considered appropriate to the kin relationship, notwithstanding sex and age. Ronny stated that his father was Jack Roy Pontroy, a Banyjima man and his mother was Heely Bobby, a Kuruma woman. Sally’s father Mack Pontroy was a brother to Jack. Ronny stated that his paternal grandfather was called Pontroy and that he had married a Banyjima woman called Sally *Walun*. She and Pontroy had lived in Yandeyarra Station and that is where Ronny’s father was born.

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<sup>49</sup> Ronny Roy is a Banyjima law man who at the time was residing in South Hedland.

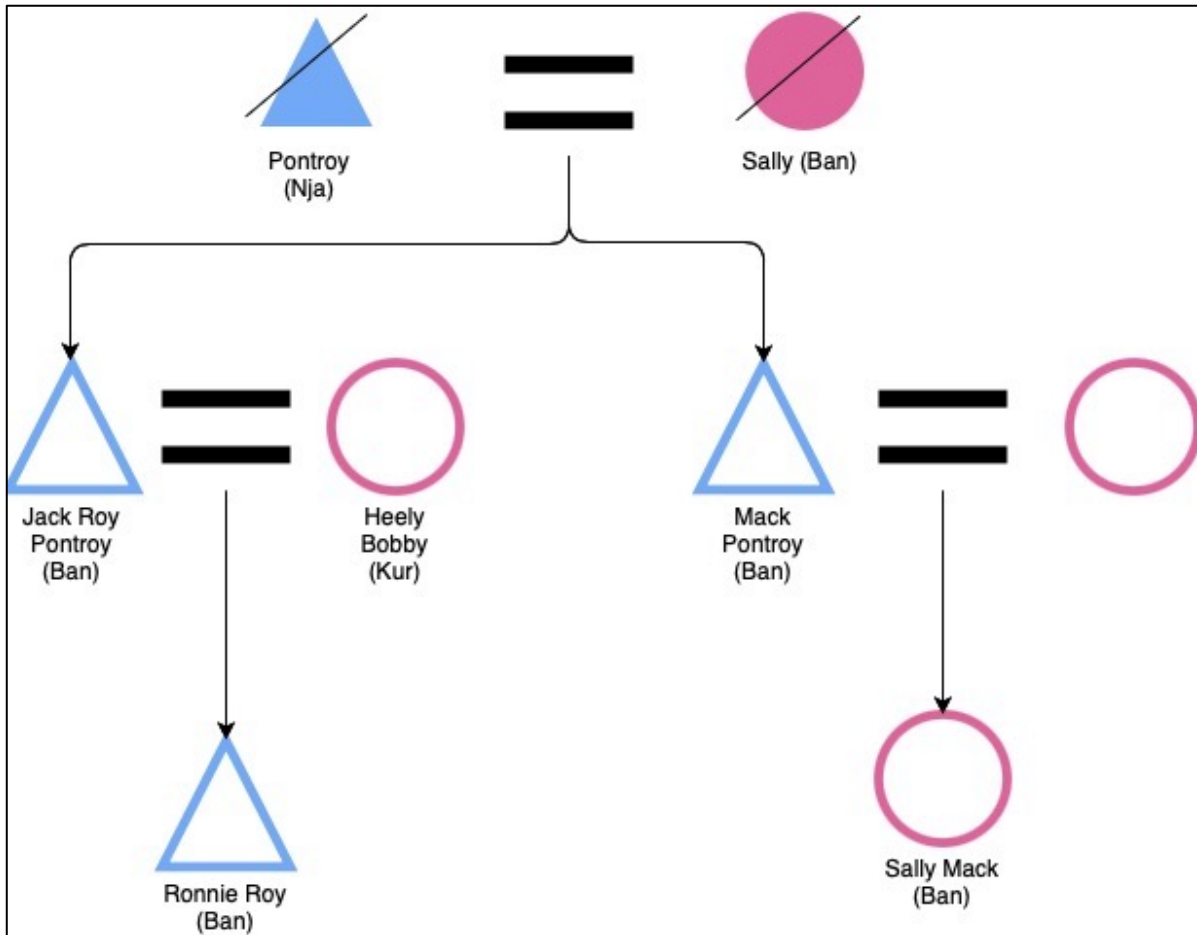


Diagram 2: Three generational diagram of Sally Mack, tracing her kin-group through her F, Mack Pontroy to his F, Pontroy, a Nyjamal man.

Ronny was confused about where the Kariyarra connection came from, but he did state that “Sally, she should be with us. With Banyjima.” He further stated that there was no problem with his kin-group acceptance and acknowledgement within the Banyjima native title community because his family is well known, and his country is known to be located near Mt. Bruce and the boundary of Hammersley Station. Ronny stated that although he did not participate in native title research, his country was included in the claim even if in some areas the boundaries were wrong, and they had encroached into Niyaparli country. However, the connection of Sally’s family and the Kariyarra people did become clear to me once Ronny mentioned the name Pontroy.

While spending some time in Roebourne in June 2017, I went to visit Nelly Wally who told me about her father, Pontroy and her mother *Wagula*. Nelly stated that her father was a fluent speaker of Kariyarra, Nyjamal, and Yindjibarndi having spent a large portion of his life at

Yandeyarra, but that he was a Nyjamal man. Nelly recalled her father as belonging to a place called *Djirindjina*, but she has never been there. The Department of Aboriginal Sites (DAS) has a listing which fits the description provided by Nelly. It lists an area in the vicinity of Turner Springs as *Tjitintjitna* (P06285); the area is described as a 'camp' and has no heritage protection status. Indeed, if this is the same place as recalled by Nelly; it does in fact lay within the native title determination area of the Kariyarra people. But as Diana and other Kariyarra elders have repeatedly stated, the boundary of the Kariyarra claim does not go that far south and when the claim was lodged, it was done with an incorrect boundary which again places the origin of the Pontroy line within Kariyarra in doubt. The matter of the Pontroys has, as far as I am aware, been one of discontent within the Kariyarra community.

In 2018, Irene, a Kariyarra elder and law-woman who is recognised as being the owner of the area between *Yurrya*<sup>50</sup> and Yandeyarra Station, recalled her father one afternoon at her house. She stated that her father, Alffie Roberts, was born on the Yule River, near Abydos Station and that sometime after the strike, Gordon Pontroy, one of the sons of Pontroy, was given the charge of looking after her father's country in the capacity of caretaker until her brother, Teddy Roberts came of age. However, she was adamant that this was not an adoption, and that Gordon Pontroy was in fact a Banyjima man, and as such, the country was not given to him, but that he was placed in charge of the area because of his knowledge of the law. The knowledge of the law is supported by the oral histories of the area which refer to Yandeyarra as being a law-ground. This is also supported by the continued celebration of law time in the area and the frequent visits from law-men from all over the Pilbara. The authority of a law-man and the associated esoteric knowledge goes beyond the knowledge of a specific country as the song-lines span across vast distances and language groups. As such, this engagement of Gordon Pontroy would not have been unique, nor would it have imbued him a Kariyarra identity.

Irene recalled that Pontroy, Gordon Pontroy's father had come to Yandeyarra after the strike and that he was a well-known law man. The clarification that Irene gave about adoption serves to reinforce the claim by Kariyarra people that to be a Kariyarra person, there must be a blood

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<sup>50</sup> This the Wadjina area.

connection, and it invalidates any potential 'gifting' of country to Gordon Pontroy and the claims his descendants have placed on country based on this assertion. Based on the history of the Pontroy family, it was quite a surprise in 2018 when Justice Barker handed down his decision of determination of the Kariyarra native title claim which now included Pontroy, a Nyjamal man and the father of Gordon Pontroy, as a recognised Kariyarra apical ancestor.

Indeed, Barker J's decision was a controversial one for the Kariyarra community and it dampened the achievement for the community. Pontroy was one of several apical ancestors accepted into the claim and formally recognised by the court in the determination although they are not accepted as being Kariyarra by the Kariyarra people. Thus, the Australian court has recognised several family groups as being Kariyarra, despite the insistence of the majority of the Kariyarra community and *marlpa* throughout the Pilbara to the contrary. This decision validates Sally's claim of her being a recognised Kariyarra person and the change of her Aboriginal identity from Banyjima to Kariyarra through her descent from Pontroy. According to Australian law, Sally is now recognised as a Kariyarra person and the rights of the Kariyarra people which were recognised through the native title determination were also extended to her. This has also allowed her and all descendants of Pontroy to become members of the PBC and claim compensation in the form of royalties from resource and development companies operating on Kariyarra country. This decision by Barker J has, in one swift blow, invalidated oral histories, and assigned a group of people an identity which will financially benefit them while failing to consider the social impact on the wider community. This loss of agency of the Kariyarra people is ironic considering that it happened during the process which was to provide them with some agency over their country. This means that while native title seems to be a process which recognises Aboriginal people's practices and enables their agency, it instead limits this agency by allowing non-Aboriginal people to dictate who can claim an identity and connection to country and who cannot.

However, in the case of Sally, there was one more development which came to light while I was talking to Diana in 2023 about her own family and she mentioned that she is related, by blood, to Sally. Diana stated that Sally's mother, *Mundja*, was a child of Captain, a Karadjari man, and *Idjibong*, a Kariyarra woman descended from *Wiringbangu*. This indeed provides a solid link between Sally and an undisputed apical ancestor, *Wiringbangu*. Having this

connection means that Sally and her family are eligible for membership into the Kariyarra PBC on this basis, however she claims her Kariyarra ancestry through Pontroy or via her marriage to Alfred. This claim by Sally is not possible because Kariyarra membership is not transferred through marriage and Pontroy was not a Kariyarra man based on the ethnographic and historical evidence. In another act of stolen agency, Alfred's claim of Kariyarra descent was accepted by Barker J who added his mother, Topsy Elsie McKenna (nee Dougall) as an apical ancestor.

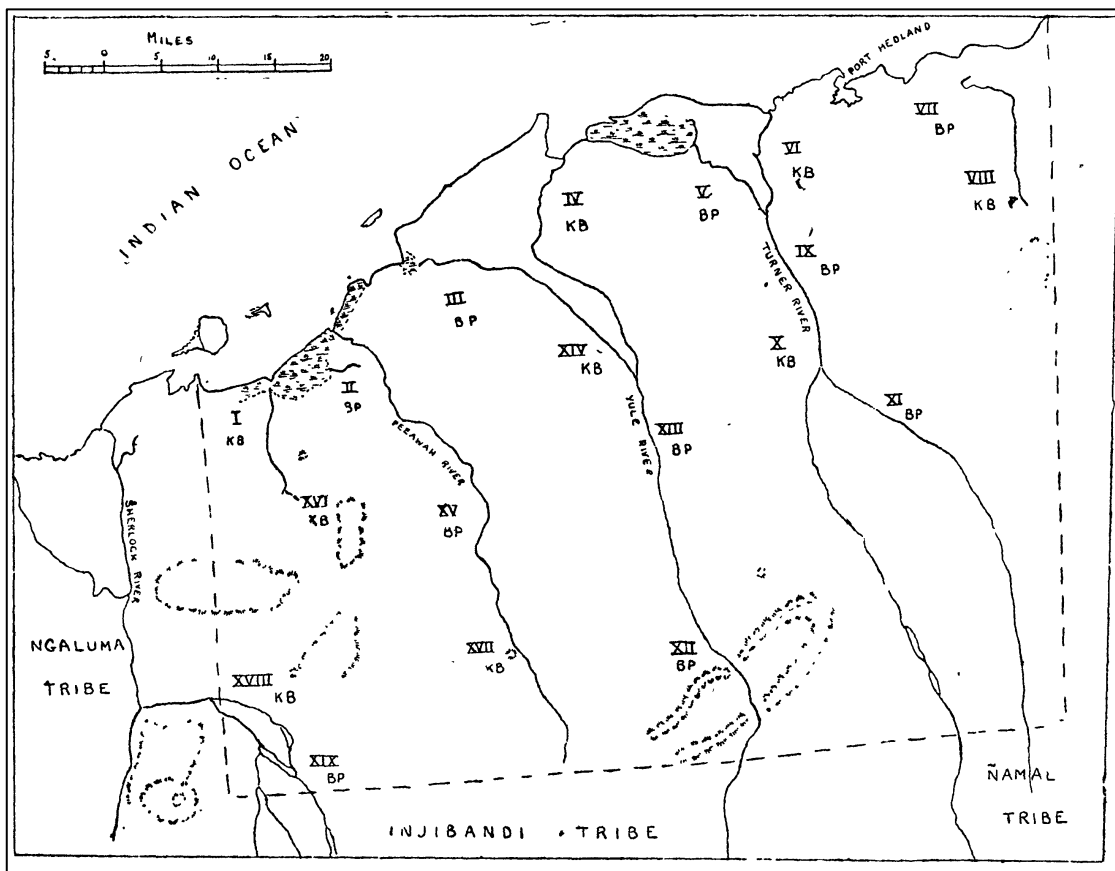
The life of Topsy McKenna has been reasonably well recorded in the historical records of the Pilbara Strike of 1947. However, Alfred's knowledge of this history is not sound. He has relied on the research of others to construct his genealogy<sup>51</sup>. In June 2018, while having a yarn with Alfred and Sally at their house at 2 Mile community, Alfred asked me whether his grandmother's M could have been a Kariyarra woman. This question casts a shadow on his knowledge of his family and highlights that his upbringing was not of the kind that is 'usual' for an Aboriginal child in the Pilbara, as children are brought up by their grandmothers up to the time when they reach puberty. Alfred stated that he had heard that his Kariyarra connection comes through his grandmother's M, but he does not know which of his grandmothers they were referring to and he has never known their names. He further stated that, "When we started native title, there was no family estates, we was all Kariyarra people. Diana had no estate, nobody, Irene, that all happened after native title." He added that to him, entering other kin groups' estate was not relevant or an impediment as he does not believe this is correct information. This contradicts the findings of several anthropologists who have worked in the Pilbara over the past century, and it seems to stem from his personal conflict with Diana over the ownership of her kin-country, Marapikurrinya.

Alfred has always maintained that the area of Port Hedland is his country, and this has always been a point of contention between him and Diana's kin-group, particularly where 'welcome to country' duties and cultural heritage surveys are involved. Alfred argues that Diana claims

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<sup>51</sup> Alfred has developed a close relationship with Mr. Chambers who has constructed a genealogy of Topsy McKenna claiming she was a Kariyarra woman, however there are no corroborating historical documents, and this also contradicts the oral histories of not only the Kariyarra people, but the Pilbara Aboriginal community at large.

the area from Port Hedland all the way out to Boodarie Station and that this is incorrect as the area is his FFs: “My grandfather’s side Turner River out way to Munda.” This directly contradicts his statement about the kin-countries, and it also highlights that while he is claiming specific areas of country, he does not know who his grandparents were on either side. He further supported his claim by saying that Prof. Weiner had confirmed to him personally that Marapikurrinya “comes up after low tide, there where there is a hole in Port Hedland, and he wouldn’t even look at me, because he knew I was right. It’s not the name of an area, but of that hole.” Having been present at the bush meeting that Alfred is referring to, and having worked with Prof. Weiner, I remember the commotion and violence of that meeting where it was necessary for YMAC to engage security guards for safety. Indeed, Marapikurrinya is the name of a specific site along the coast of Port Hedland, although this does not negate the existence of the kin-country which was recorded by Radcliffe-Brown (1912b, 1913) during his fieldwork in the area in the early 1900s and which Diana claims as being her country.



Map 3: Radcliffe-Brown’s “Map of the Kariera Tribe” which depicts the kin estates or “local groups”, all of which have a defined territory (Radcliffe-Brown, 1913: 144).

Alfred continued discussing his Kariyarra connection and noted that Mr. Chambers had assisted him in compiling a new genealogy of his mother, Topsy McKenna, in recent years. He stated that he now knew that she was born on Kariyarra country, at Boodarie Station, which he had learned from the reports he had obtained from the archives in Perth. He rationalised this as being the confirmation of his MM's Kariyarra identity because he believes that women in those times preferred to give birth on their own country. Although, it is common knowledge throughout the Pilbara that Topsy McKenna had two husbands, the first being Adam Barker, Alfred's F, and the second being Clancy McKenna, one of the Aboriginal activists who led the Pilbara strike. Clancy McKenna was a well-known Nyjamal man, and Adam Barker was a Nyangumarta and Warnman man. Of Topsy McKenna, a handful of the members of the Pilbara Aboriginal community maintain that she was Kariyarra, and this is supported by a biography written by Kelly where she is described as "a full blood Aborigine of the tribe Kariara" (Kelly, 1987:60). However, most of the Pilbara Aboriginal community assert that Topsy McKenna was a Nyjamal woman as described by her husband, Clancy McKenna in his biography co-authored by Palmer (1978:104). Notwithstanding the lack of evidence for Topsy McKenna and the consensus of the Aboriginal community, she was incorporated into the Kariyarra determination by Barker J, thereby giving Alfred the right to speak for the area claimed and again restricting the agency of Aboriginal people to make decisions about membership of native title claim groups. This decision by Barker J has also created a lot of conflict between Diana's kin-group and Alfred's family and has also had a financial impact on both parties.

While I was working as an in-house anthropologist for YMAC and working with Prof. Weiner<sup>52</sup>, I expanded the field of research for the Kariyarra people and began looking into the material produced by Radcliffe-Brown (see 1913; 1912b, 1930a, 1930b, 1931, 1940) and Daisy Bates (see 1913). In my research, I came across the record of *Wilrimara* and *Mindiangu* and was surprised that I could connect *Jinapi*, Jimmy, Dougal and Tommy who were existing apical ancestors at the time, as blood relations. I consulted with Prof. Weiner, and he instructed me to investigate the descendants of those siblings depicted in the record who had not been existing apical ancestors. I quickly located a record by Tindale (1952-1954) which corresponded

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<sup>52</sup> Prof. Weiner was contracted by YMAC as a consultant anthropologist to compile the connection report for the Kariyarra claim.

to the Radcliffe-Brown genealogy and found a little more information. However, the research needed input from the elders to verify or amend any mistakes in the records.

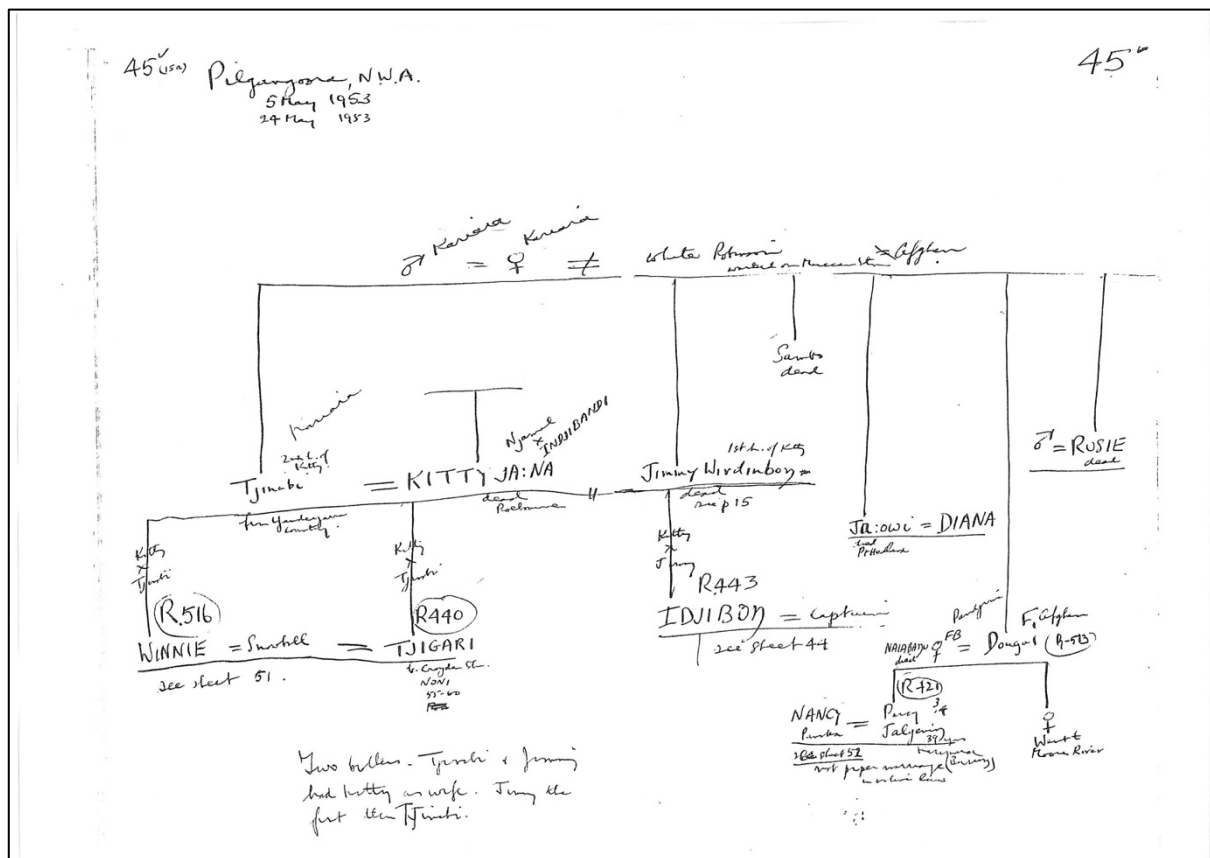


Plate 11: Wilrimara and Mindiangu's family as recorded by Radcliffe-Brown was also recorded by Tindale almost 50 years later (Tindale, 1952-1954).

I began my research with Dick, the eldest of the brothers, and I noticed that one of his wives is listed by Radcliffe-Brown as Banyjima. I went to visit Banyjima elder Alec Tucker at his home near Roebourne to ask if he remembered an old lady by the name of Minute. Alec told me that he remembered the name and that I needed to go and speak to Dulcie Cox who would be able to give me more information. The following week I drove to see Dulcie at her house in the community of Bellari Springs, near Tom Price. As I arrived, her 'grannies'<sup>53</sup> were outside playing and one of them ran inside to get Dulcie. We sat outside on the ground, and I asked her about Minute. Dulcie's face lit up and she told me that Minute was her grandmother. After this statement, she asked her grannies to call her brother David, and I spent the next few hours hearing stories about their mothers Daisy and Fanny. Dulcie told me that Dick had one arm and

<sup>53</sup> The term used to refer to grandchildren and great-grandchildren by *marlpa*.

that he was often called “One Arm Dick” and that he had fallen into a creek and drowned near Whim Creek. She remembered him as a Kariyarra man from the Whim Creek area who spoke both Kariyarra and Ngarluma. David and Dulcie were unable to recall any of Dick’s siblings, but they were very clear on Dick being a Kariyarra man and him having had children with his previous wife.

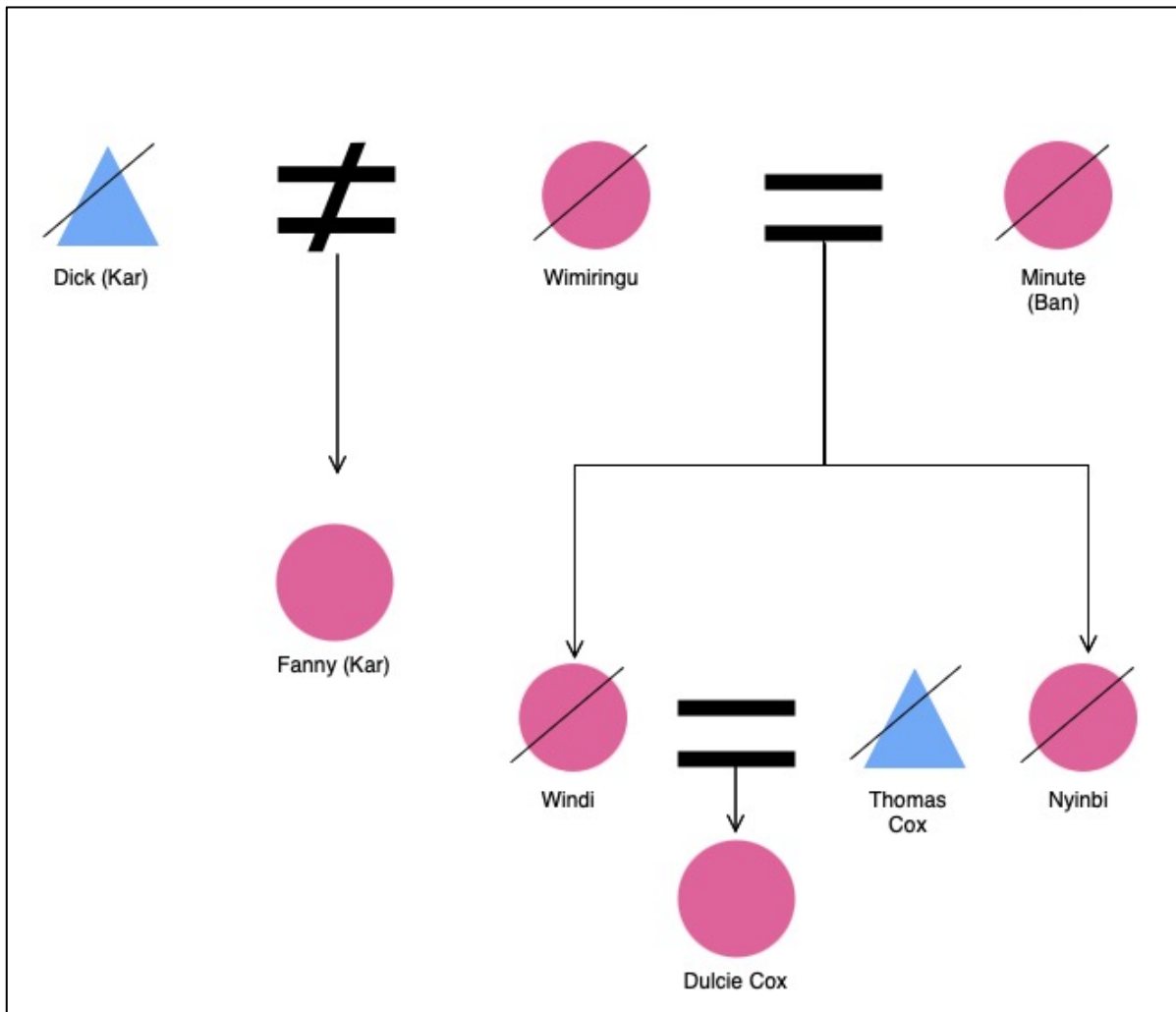


Diagram 3: Three generational diagram of Dulcie Cox through her M, Windi, and her MM, Wimiringu who was married to One Arm Dick, a Kariyarra man.

The name Fanny was not one which I had come across before, so my inquiries into this line were left to the side but six months later I was made aware by the Kariyarra legal team that there were two families who were in constant communication with them in relation to their connection to Kariyarra. These were the Lockyer family and the Todd, Dann, and Attwood family. The Lockyer family was led by their elder, Vincent, who claimed to be a Kariyarra man,

but had so far been unsuccessful in providing proof of his connection. No research was ever carried out on his family by YMAC. Considering that the role of a NTRB is to provide support to claimants and to make sure that all people who have a connection to the claim area are included in the claim, it seemed to me that research should have been carried out rather than requesting that they provide proof of connection to the NTRB. I discussed the matter with Prof. Weiner and we both agreed that research must be carried out on the Lockyer family as a matter of priority. He informed the legal team on this and obtained permission for me to do so.

I attempted to contact Vincent via phone many times but each time I called he told me that he had nothing to say to anyone at YMAC. After a few days I found his address and went to see him in person. His wife, Hazel Dhu<sup>54</sup>, opened the door and I introduced myself and asked for Vincent. She asked me to wait and went to get him. He came out and very politely asked me why I was trying to speak to him. I told him that since he wanted to be part of the Kariyarra claim, I needed to find his blood connection to the claim area and determine his apical ancestor. Vincent asked why YMAC wanted to carry out research if he had been trying to get this done for 10 years to no avail. I had no response, so I apologised telling him that I didn't know. At this point he invited me into his house and asked me to sit down in the living room while he went into the back. He came back carrying a pile of binders full of paperwork and presented me with one containing all his correspondence with YMAC where he had been requesting his genealogy to be drawn up and for someone to do fieldwork with him. I briefly looked over the paperwork; it was surprising to see that he had indeed been trying to get someone to investigate his family for a very long time. I asked him if he would allow me to investigate his family and record his genealogy even though it had taken this long for this to happen. He agreed reluctantly.

Over the next few weeks, Vincent narrated his life to me and went over his family tree, which was big, and spanned across two language groups, Ngarluma and Kariyarra. Vincent stated that Sylvia Hall<sup>55</sup>, a Kariyarra woman, had married Sam Lockyer, a Ngarluma man. Sylvia and Sam had six children, Samuel Edgar Lockyer, Arnold Alexander Lockyer, Albert Edward Lockyer, Ivy

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<sup>54</sup> A Banyjima woman.

<sup>55</sup> Often referred to as 'Sylvie'.

Christina Lockyer, Elliot Manni Lockyer, and Eric Lockyer. Albert Edward Lockyer married Rosa Costello and Vincent was their third child.

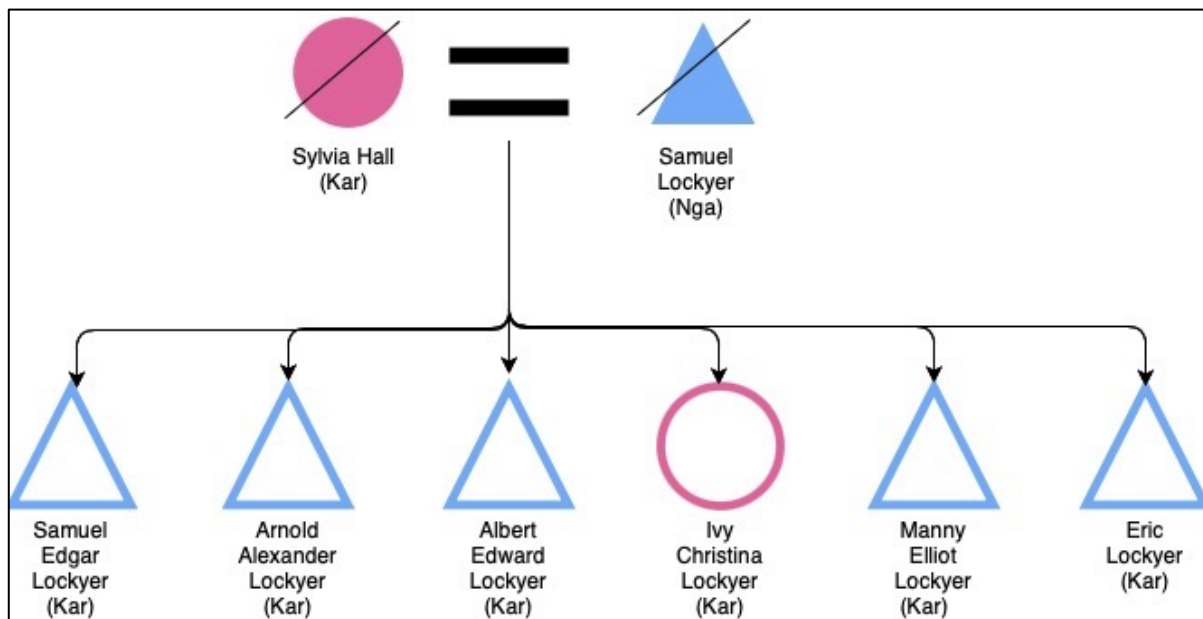


Diagram 4: Two generational diagram showing Samuel Edgar Lockyer and his siblings, his mother, Sylvia Hall, a Kariyarra woman daughter of On Arm Dick. Sylvia Hall married Samuel Lockyer, a Ngarluma man.

The problem with Vincent’s recollections came to light when looking into the Tindale records, where he recorded Sylvia as a Ngarluma woman. Tindale recorded her as the daughter of a woman called Fanny, also Ngarluma. However, it did provide more information on Vincent’s family, particularly that he had a connection to the Whalebone family. Marjorie Whalebone was currently living at the South Hedland nursing home, and I went to see Marjorie and sat down to have a cuppa with her. She was lucid and excited to have a visitor and agreed to speak to me about Fanny. She recalled that Fanny, her MM, was the daughter of One Arm Dick, who she said had drowned when he was still young. She said that Dick had a few brothers and that they were all Kariyarra. She recalled that Dick’s country began just east of Mallina Station and extended to the hills before Whim Creek. She recalled that Sylvia had a brother called Billy who had died at Croydon Station where he worked. She also said that Fanny’s first husband was Wallace Hall, a white man, and a station manager. Her second husband was Tommy, Marjorie’s MF. Given all the details that Marjorie provided, I concluded that Tindale had made a mistake in labelling Sylvia as Ngarluma when she was in fact Kariyarra and the daughter of Fanny. I then

realised that Dulcie and her brother David had spoken to me about Fanny, and this I found to be substantial confirmation of her identity.

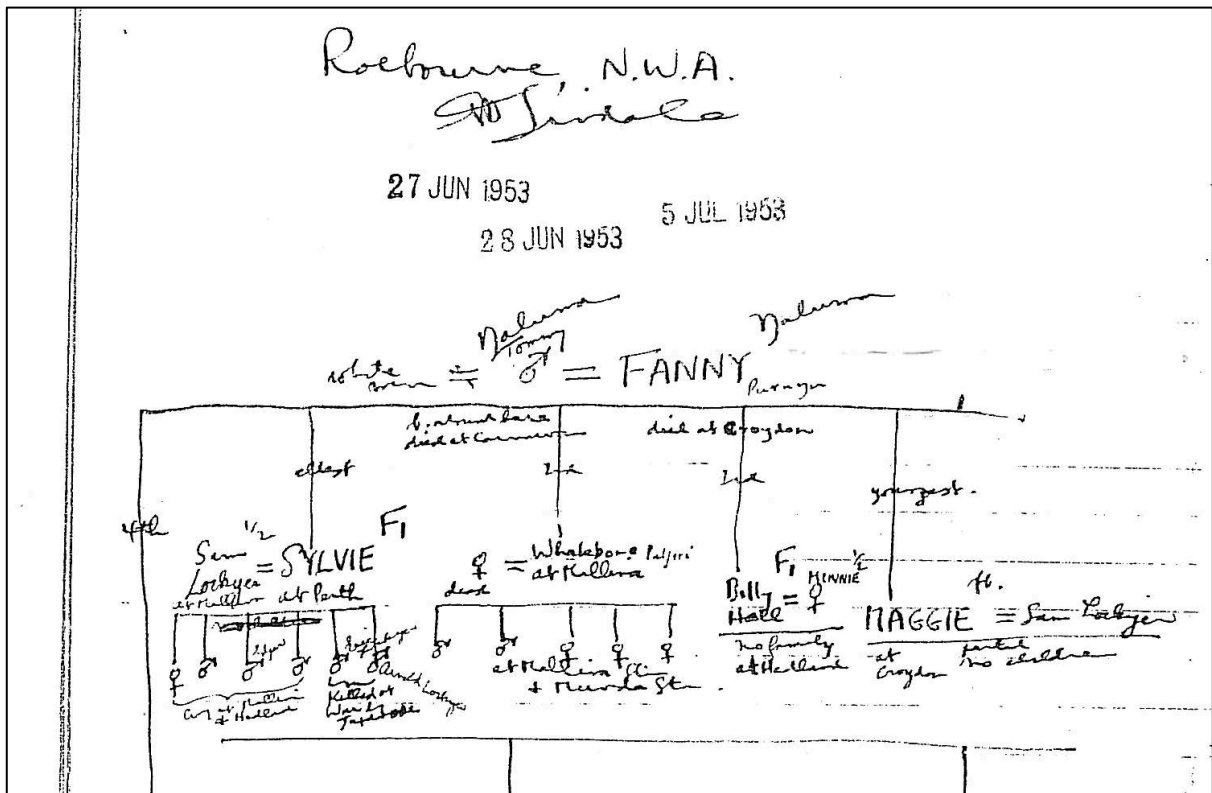


Plate 12: Snapshot of the top left-hand corner of Tindale Genealogy sheet 172 depicting Fanny who Tindale labelled as “Naluma” (1952-1954).

My findings were collated into a report and sent to Prof. Weiner, as well as the YMAC legal team. The response from the legal team was that because Tindale had identified Sylvia as Ngarluma, that the Kariyarra community would have a vote to see if they would be accepted into the claim. Prof. Weiner and I both disagreed with this since none of the other apical ancestors had required a vote. Voting for inclusion or exclusion is not an Aboriginal practice. Furthermore, the Lockyer family had been fighting to be accepted into the claim for ten years which had caused a lot of friction in the Kariyarra community. Nevertheless, the legal team prepared a community meeting and notified the community that there would be a vote. The invitation to the meeting was not extended to the Lockyer family since the legal team advised that officially they were not part of the community.

The community meeting was held on the banks of the Yule River in 2010 because the legal team thought it would be symbolic for them to meet on country. Prof. Weiner attended the meeting with me along with the legal team. Unfortunately, the Kariyarra community was very upset at being called to vote for the inclusion of a family group into the claim when neither the connection report nor the genealogies had been seen by anyone. They also raised the issue of the lack of connection of Alfred Barker and the Alec family, who were invited to the meeting and who were present that day. Prof. Weiner listened to the objections of the community and outlined his position on the Barker and Alec families as not being of Kariyarra descent. Similarly, based on the evidence of the Pontroy family, Prof. Weiner stated that they were not Kariyarra by blood and that the guardianship of country granted to one of their ancestors was a non-transferrable right.

Jason Alec, a relatively young man was the head of the Alec family at the time. He was a respected man who participated in law-practices along with the Kariyarra community and had spent his entire life living among Kariyarra people. However, he and his family have always known that they are Ngarluma and Nyjamal based on their ancestors. Jason had come to see me at the YMAC office when I first arrived in Port Hedland and asked whether there was any way in which his family could be included into the claim despite being primarily Ngarluma people. He had been aware of his ancestry, although he was born on Kariyarra country and had spent his entire life in the Kariyarra community. He told me that he knew that his family was descended from a man called *Tjigari* and a woman named *Nidji*, both of whom were Ngarluma from the Croydon Area<sup>56</sup>. Their daughter, Daisy was Jason's FM, and she married a Nyjamal man by the name of Alec who was his FF. Jason was particularly concerned with his ancestors being named as apical ancestors in the already determined Ngarluma native title claim, and subsequent determination and he was looking for a way to remove them from Ngarluma and transfer them to the Kariyarra claim.

Unfortunately, I advised Jason that it was beyond my power to have an apical ancestor removed from a native title determination and that it was something he would have to seek legal advice for. I also advised him that there was nothing that could be done as to the

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<sup>56</sup> Croydon is within Ngarluma country.

ethnographic evidence or the historical record. Thus, even though the Alec apical ancestors were still part of the Kariyarra native title claim, they would likely have to be removed.

The community did not vote at the Yule River meeting and the Lockyer family remained outside the Kariyarra claim despite having clear ethnographic and historical evidence supporting their case for inclusion and the Alec, Barker and Pontroy families, despite being found not to be Kariyarra remained in the claim. Prof. Weiner discussed with me the possibility of disclosing the connection report, the supplementary report, and the genealogies to the community but the legal team advised that it would not be a wise move. Shortly thereafter, Prof. Weiner resigned as consultant anthropologist for the Kariyarra claim and within a month, I resigned from my position too. After I left, the Kariyarra claim had three more claim anthropologists, as well as Dr. John Morton as a consultant anthropologist, and Dr. Kingsley Palmer as a court appointed anthropologist.

Between 2010 and 2015, many staff changed in the YMAC Port Hedland office, including new anthropologists and legal team. The new lead of the legal team for the Kariyarra claim caused quite a lot of concern among the Kariyarra elders because she became involved in an intimate relationship with Jason Alec who then left his wife. There was a lot of speculation as to the nature of their relationship and it resulted in Jason being excluded from the community at large. In June 2018, at the Yule River Meeting, while I was sitting down with a group of Ngarluma women, there was a sudden lull in the shaded area where we were sitting, I turned over toward where everyone was looking and noticed Jason and a woman walking toward the shade. The women I was sitting with quickly turned away from Jason when he raised his hand up in greeting and they all told me not to look at him. I queried why and they responded that they did not want Jason and his wife to approach. One of the women explained that they believed that Jason had left his wife and married the woman because she was the Kariyarra native title lawyer and that he had "Made her get him native title." Whether these were his intentions or not, *marlpa* felt that his relationship with the lawyer had inflicted an injury upon them.

Several months later, I was informed that Jason had been punished by the spirits for his actions and that his punishment had come in the form of committing a crime and being jailed for it in Perth. Some *marlpa* felt that the Kariyarra spirits had inflicted punishment on Jason for falsely

obtaining native title and for leaving his *nuba*<sup>57</sup> for the lawyer. Diana stated, “We keep telling YMAC, but they don’t listen to us, they are not Kariyarra!”. She believes that part of the blame also rests in the NTRB for allowing the Alec family into the claim although this is not necessarily the case. Once the matter went to court and the evidence was presented, it came down to Barker J to make the decision as to acceptance of the claim of the Alec family or not. He accepted them, and they are now native title holders with rights and interests within the Kariyarra determination area. This issue has produced a lot of conflict between the Alec family and the descendants of *Jinapi* because the Alecs have claimed the area of Mundabullangana Station as their country, country that has traditionally belonged to the descendants of *Jinapi*.

The descendants of *Jinapi* are one of only two kin groups who have never come under suspicion of falsely claiming to be Kariyarra. *Jinapi* was a Kariyarra man and the second son of *Wilrimara* and *Mindiangu* as recorded by Radcliffe-Brown (1915-1951b). *Jinapi* was also recorded by Tindale in May 1953 who described him as Kariyarra from Yandeyarra (Tindale, 1952-1954). *Jinapi* is recorded as having been married to Kitty Jana, a Yindjibarndi woman. Together they had two children, Winnie, and Noni *Tjigari* both of whom were recorded by Tindale.

In the winter of 2017, I was sitting outside Jinny’s house in South Hedland with Jinny and Trisha, her sister. They were telling me about *Jinapi* and his wife Kitty who married *Jinapi*’s younger brother *Wiringbangu* after *Jinapi* passed away. Jinny stated:

That’s how it was back then, if your brother died then you needed to look after his wife and kids. So, when *Jinapi* finished, Kitty went to the brother.

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<sup>57</sup> Wife in accordance with the section system in Ngarluma.

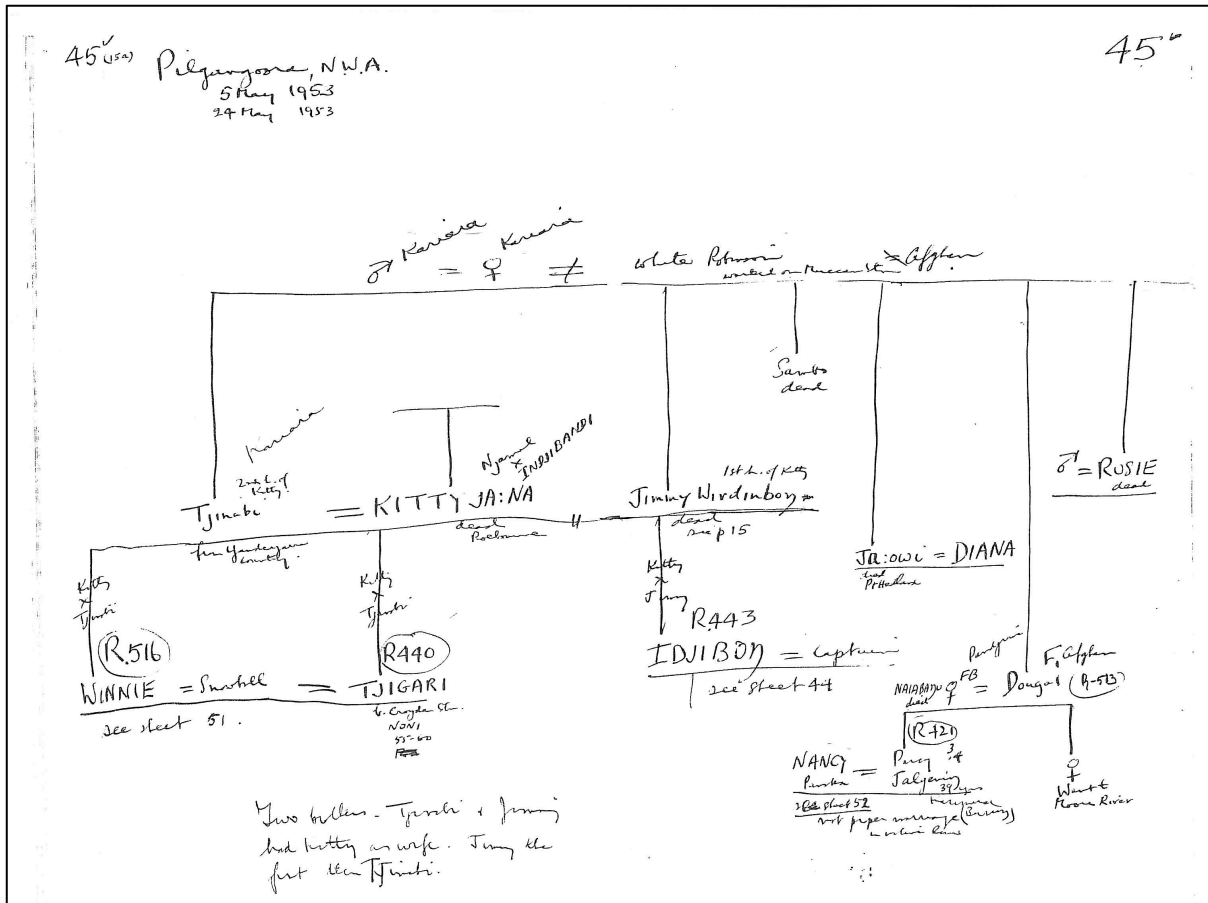


Plate 13: The children of Wilrimara and Mindiangu as recorded by Tindale, with the notable exception of One Arm Dick (1952-1954).

*Jinapi* is remembered by Jinny through the stories her mother, Ana Snowball, told her. Ana was born on the Turner River, and she was the daughter of Pansy Snowball who was in turn, the fourth child of Snowball *Nierjbangu*, a Palyku man and Winnie, a Kariyarra woman and daughter of *Jinapi* and Kitty. This family group was recorded by Tindale in 1953 (1952-1954). Jinny recalled that Snowball, her MMF was well known throughout the Pilbara as he refused to live in town and chose to remain in the bush with his wives and children. Jinny and Trisha's late brother Peter recalled a story about Snowball one day while we were walking along the Yule River in 2010. Peter said that Snowball was on the run constantly because he kept hunting sheep from the stations. He believed that if the animals were on his country, then they belonged to him. Peter laughed when he recalled the story told to him by his mother and said that Snowball was able to evade the law because he had many children who all served as lookouts for him and helped to keep him hidden. Peter also stated that at the time that Snowball was around, he was one of the only Aboriginal people in the Pilbara who practiced polygamy.

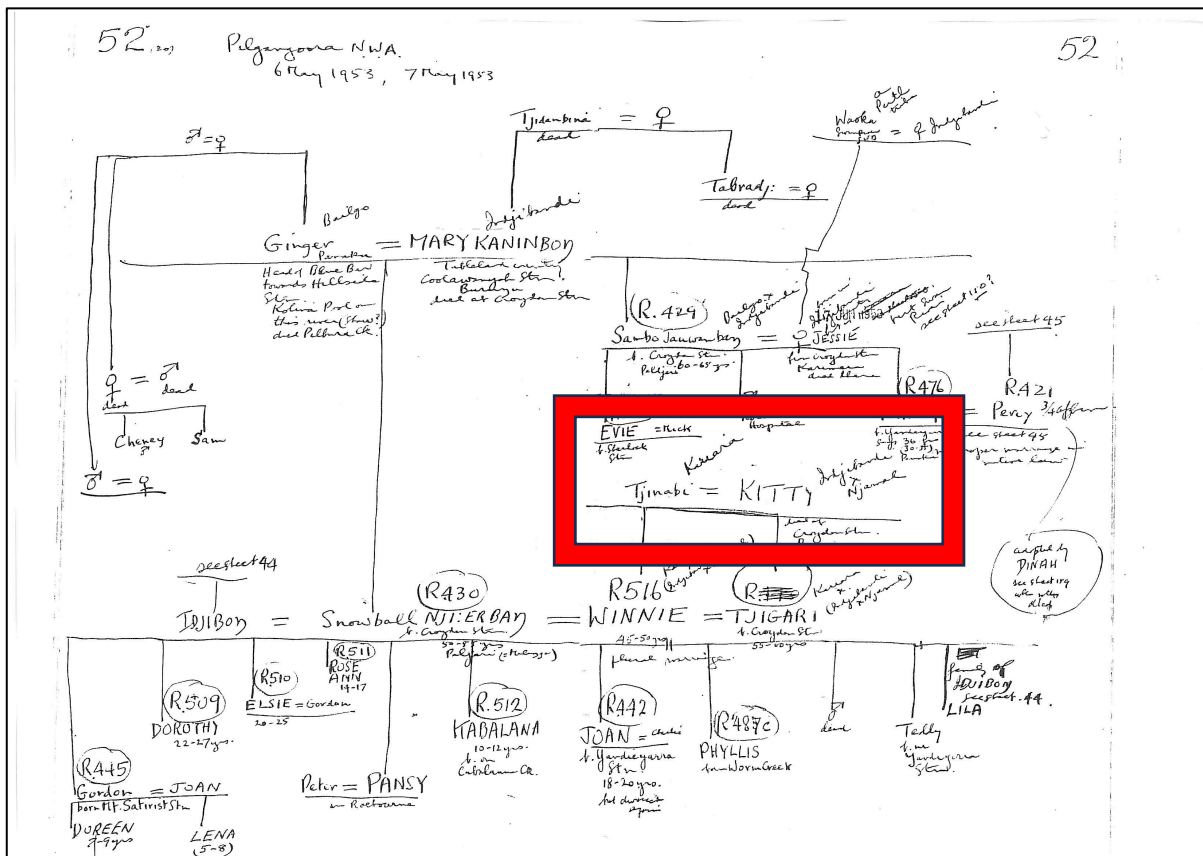


Plate 14: Tindale genealogy sheet 52, depicting Jinapi and his wife Kitty, and their children (Tindale, 1952-1954).

According to the oral histories passed down to Jinny, Trish, and Peter, *Jinapi's* name relates to his ability to walk long distances, with the term 'jina' meaning 'feet' in Kariyarra language. He was known to walk his country on a regular basis and the tract of country he transversed came to be known as "*Jinapi's* run". The area known as *Jinapi's* run is said to begin on the Turner River and extends across the coast through to Balla Balla Creek which is said to be the boundary of Kariyarra country. These accounts coincide with the accounts of Radcliffe-Brown and the station diaries of the time which record *Jinapi* and his siblings as being predominantly in that area. The descendants of Dick spent generations working at Mallina Station and continue to do so today, while the descendants of *Jinapi*, his brother, spent decades living and working at Mundabullangana Station.

For the descendants of *Jinapi* the biggest point of contention has been that the native title determination has enabled the Alec family to have a say in decision making and claim authority over the area of *Jinapi's* run. Similarly, the descendants of Dougal are currently coming to terms

with having the Barker family encroach on their kin-group's estate and be publicly recognised or called upon to provide an opinion on its management and development. A similar issue is taking place to the south of Yandeyarra Station, where there is a hill called *Mumbalunyja*. The hill itself is associated with Yankee *Jangenba* Williams who was MF of the current Regional Manager of YMAC, Donny. Yankee is recorded as being a Yindjibarndi man belonging to *Mumbalunyja* Hill according to Tindale (1952-1954). He is also depicted as having married Katie *Njuri*, a Nyjamal woman with whom he had several children, one of them being Elsie Williams, who is Donny's mother and who was highly regarded as a Kariyarra speaker. Elsie, like many others in the Pilbara was born in Mundabullangana Station; she moved with her family to Yandeyarra Station during the strike and spent most of her life there. The area directly south of Yandeyarra Station, even though included within the boundaries of the Kariyarra native title determination, is said to be Yindjibarndi country and directly to the east of *Mumbalunyja* Hill is said to be Palyku country. Tootsie, an Yindjibarndi elder, has stated that the hill is the boundary between Yindjibarndi country and Palyku country and it should not have been included in the Kariyarra claim. She stated that it was only included in the Kariyarra claim because of the political influence exercised by Yankee's descendants on YMAC. Similarly, Jinny Snowball has stated that the area to the east of *Mumbalunyja* Hill is Palyku country and it was the country of her ancestor Snowball. As a descendant of Snowball, she and her siblings maintain rights over his country and would like their interests to be recognised, particularly as they lay within Kariyarra determination boundaries.

The conflict about the area to the south of Yandeyarra Station has affected three different language groups who all claim the area as belonging to them. In more recent times, the name of the hill has been utilised by the descendants of Yankee to set up a corporation to handle the cultural heritage of the area. However, it would be naïve to ignore the claim that the Snowball family has to that country but, nevertheless, they have been excluded from participating in its maintenance or decision-making process in the same way in which they have been restricted from exercising their rights over the area known as *Jinapi's* Run.

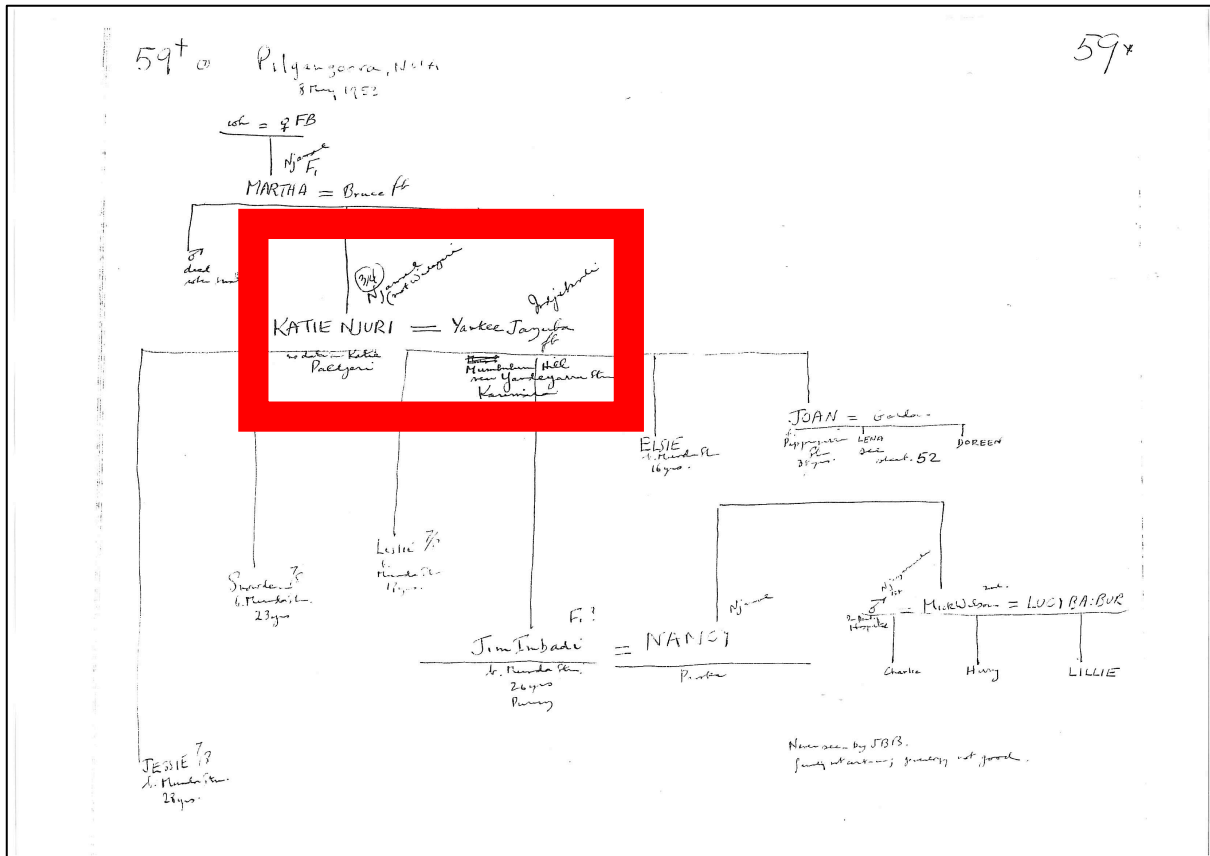


Plate 15: Tindale genealogy sheet 59, depicting the family of Katie Njuri and Yankee Williams (Tindale, 1952-1954).

### The aftermath: what has changed

The aftermath of the Kariyarra native title determination in the Pilbara is a legacy of conflict. The power wielded by the native title industry in the selection of claimants and the acceptance or removal of kin-groups from claims has deprived Aboriginal people from the right to self-determine and has negated the cultural processes involved in the determination of land holding groups. As it stands currently, the Kariyarra people are divided by the conflict which they perceive as been inflicted on them through the mismanagement of their native title claim over the span of two decades. However, these issues have now spilled into the PBC established after determination and despite Barker J’s wish that the issues of membership be resolved post native title, this has not happened. Further compounding this issue is the influence that some of the kin groups have over the NTRP.

The Alec family has been ostracised for its affiliation to the NTRB and the way in which they were imposed onto the claim. The *Jinapi* kin-group which includes the Snowball family who are

the traditional owners of the area which is known as *Jinapi's run*<sup>58</sup> and covers the area of Mundabullangana Station have lost the ability to manage their country as a kin-group because they must include the Alec family. Despite acknowledging that their ancestors were Ngarluma and Nyjamal and their apical ancestors being included in two previously determined native title claims, the Alec apical ancestors are now part of the Kariyarra native title determined area. The Alec kin-group face rejection by the descendants of *Jinapi* which has also severed any social ties that existed in the past. Steven, a descendant of *Jinapi* stated:

They grew up in Munda, but they were there with our permission. We never gave them country, we never said they could have rights. That is our country, and the ancestors are watching, and they know they did wrong.

Indeed, the decision-making process involving the country and the ability to speak for country have been severely compromised by Barker J's (2018) decision as has the integrity of the Aboriginal normative system of laws and culture. When Barker J made the decision, he stated:

What is the basis of the power to exclude the Indigenous respondents from the native title claim group? Ultimately, that question depends on the laws and customs of the Kariyarra people. Do those laws and customs allow for exclusion of those who challenge the constitution of the group? No evidence has been led on that issue. It cannot be assumed that the Kariyarra people have traditional laws and customs which excommunicate dissidents in such circumstances as the present. The future relations between the Kariyarra people and the Indigenous respondents must be dealt with by the Kariyarra people in accordance with the rules applicable to the circumstances rather than by the Court in this proceeding (Barker, 2018:par. 352).

When the process of native title application, research, and determination is considered this statement shows a high degree of irony. The laws and culture which hold the Kariyarra kin-groups together must outline a criterion for the exclusion of any person who is not recognised

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<sup>58</sup> *Jinapi's run* extends from the Boodarie landing in the western outskirts of Port Hedland, through to the northern boundary of Whim Creek.

as Kariyarra. The social isolation and rejection of the Alec kin-group by the majority of the Kariyarra community is evidence of this. Barker J's ignorance of the conflict raises the question of what type of laws and culture were detailed in the connection reports presented to the courts, and whether they were based on sound anthropological research.

In accepting all the groups which had in the past been rejected by the Kariyarra community, Barker J created a conflict which cannot be resolved by the community in the aftermath of native title. The constitution of the claim group prior to the determination should have, ideally, been outlined in the connection report in accordance with the norms upheld by the Kariyarra law-men and law-women. Irene, and Cyril are the only Kariyarra elders who were never under membership dispute. They both agree that to be identified as Kariyarra, a person must be descended, ideally from a Kariyarra father, however a Kariyarra mother is also acceptable, though not 'traditional'. A person must also maintain their relationship with their<sup>59</sup> country and be recognised by the Kariyarra community. As per these norms, Barker J's statement raises the questions of whether he understood the rules of membership and whether they were outlined to the court. Should either of these cases prove to be negative, then the cause for the acceptance of the groups can be explained, however if in both cases the response is positive, then the decision remains baseless.

The repositioning of Aboriginal people into what is deemed 'appropriate' native title claims has withdrawn agency and self-determination which was made available to them by the introduction of the NTA. There is an over reliance on the historical documents in some cases which seems to serve as an instrument of reassurance for non-Aboriginal people who chose not to trust the oral histories. And, confusingly, there was a blatant and deliberate disregard for the historical records of some of the kin-groups such as that of Yankee Williams and Alec. Thus, the Kariyarra claim is atypical.

The doubt placed on kin-groups in relation to the knowledge which is passed down undermines the oral tradition and diminishes Aboriginal cultures. These reductive tools serve to reinforce

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<sup>59</sup> In this case, the term 'their country' indicates the country belonging to the kin-group from which they claim descent.

the colonial instruments with which Aboriginal identity is perceived and artificially constructed within the native title industry. The research framework of the native title industry clearly does not rely on modes of transmission used by Aboriginal cultures and is therefore invalidating the data collected through the interview process. This invalidation of the oral histories serves to demonstrate the errors in theoretical grounding which are at the core of native title research and to highlight the need for an adjustment to the way in which ethnographic research is approached in the Pilbara for native title purposes.

Part Two:  
Aboriginality  
in the Pilbara

## Chapter 5: The Law and the Lore: an ethnography

### 5.1 Introduction

On a hot December day in 2011 at the law-grounds in Yandeyarra I was sitting on a blanket surrounded by predominantly Kariyarra women all of whom were my *karimarra* section sisters. We were busy getting a “feed” ready for the boys to “come in” after initiation. In the Pilbara this is what is colloquially known as ‘law time’ which occurs between the end of November and February each year on designated law grounds. Each year the exact date and time of the commencement of ‘law time’ is decided by the law-men and elders from each language group. It involves an intricate phone, internet and message network which stretches across the region. Yandeyarra is one of the largest law grounds still in use in the Pilbara.



Plate 16: The process of making damper at Yandeyarra in 2011.

I had been assigned the job of mixing ingredients for the damper and once I finished, I approached Irene, a Kariyarra elder and law-woman, asking what the boys would have learned in their time out bush. She gave me one of her signature side eyed looks as if she was debating whether I could be trusted or not, and then continued her task while replying:

The boys need to go hunt and bring back some roo you know? They need to prove themselves to be men. Only then they're taught about the world and the ancestors in the Dreaming. They must show they can do it, then they learn. Bit by bit. Not all at once. Takes a long time to learn it all. It's the stories from back when the ground was soft, the story of us.

The reference to the Dreaming and the ancestors by Irene pertains to the local cosmology, which is manifest experientially in the local landscape, ritual practices, and in everyday life. The cosmological beliefs constitute a fundamental corpus of knowledge which is transmitted intergenerationally through the reciprocity that underpins all social exchanges. The ritual of hunting that Irene referred to as a test of manhood indicates the transactional character of cultural knowledge, namely the exchange of sustenance for knowledge. This also maintains a status hierarchy based on knowledge. At its top are the law-men and the elders who selectively impart this knowledge. While the ritual of hunting during initiation may be superficially seen as simply proof of manhood thus the ability to provide for kin-groups, it is primarily a payment for the transmission of knowledge, and it represents a type of submission to the law-men and elders. The initiate is providing the conduit through which the knowledge will be imparted, that is, the sharing of food. In this case, the meaning of the provision of sustenance and the exchange of food for knowledge solidifies the relationship between the knowledge giver (teacher) and receiver (student). It also substantiates the relationship between the ancestors in the Dreaming and the people. The term 'the Dreaming' is one which is often heard colloquially but its underpinning conception is a lot more complex than the term implies.

*Marlpa* in the Pilbara employ a different name in each of the language groups<sup>60</sup> to refer to the dimension where the ancestors go to after death and from where the spirit of a child comes

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<sup>60</sup> *Jukutarni* in Nyiyaparli, *Kapukarri* in Nyjamaal.

from upon conception. All these names correspond in meaning but the English gloss fails to convey the full range of meanings pertaining to the significance of any given local place in relation to the primordial ever-present dimension referred to as “Dreaming”. An understanding of these implicit cosmo-ontological meanings is essential to the understanding of culture as it provides the intra-cultural contextual backdrop for anthropological interpretation (Elkin, 1932). Throughout the history of contact with Aboriginal cultures, there have been many instances where the concepts which lay at the core of Aboriginal understanding have been haphazardly translated and thus have failed to convey the complexity of a concept. In English, Spencer and Gillen (1899) coined the phrase ‘the dream time’ when referring to the Aranda *alcheringa*. Since then, the concept has been widely discussed and explored by many anthropologists (see Róheim, 1945; Stanner, 1963, 1979; 2001; 2014; Stanner & Manne, 2011; Strehlow, 1947). *Marlpa* refer to this ‘place’ in English as ‘the Dreaming’ or simply ‘Dreaming’. The vernacular names for it in each language group are sacred, seldom spoken outside the law-grounds and as such can only be spoken by men who have achieved a certain level of learning in the law. In this case the law-men sometimes use the English term ‘sacred’ which indicates that the meaning has been mediated by Christianity. Similarly, the term ‘creator’ is one which is often used by them to refer to the Dreaming as an entity who is the author of the landscape, all living things and who gave language to the people and country.

Mathew Sampi<sup>61</sup>, first explained the Dreaming to me while on country in the vicinity of Yaleen Station. With a cigarette hanging from his mouth, Mathew stated:

If you wanna think about it as a place you can. But it’s not a place, or a time. But there is where the creators are, and all the people who came before us and the ones who are going to come after. They all one. Not like whitefella soul, but one whole. They are all there as one, past and future, no difference. And back in the beginning, the creators came and made everything and then they put a piece of the Dreaming inside everyone. Then he gave ‘em language and named all the places around ‘ere. It all comes from the Dreaming and goes back to the Dreaming.

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<sup>61</sup> Mathew has since passed away; he was a respected Kuruma law-man.



Plate 17: Mathew Sampi in the vicinity of Yaleen Station while explaining the concept of the Dreaming and displaying a grinding stone he found in 2011.

The concept of the Dreaming is central for understanding cosmo-ontological meanings of the *marlpa* lifeworld in the Pilbara (Berndt & Berndt, 1964; Myers, 1991). It is equally important regarding the existential sense of the *marlpa* self and *marlpa* identity. As such, the Dreaming must first be considered as a cosmo-ontological reality that undergirds the Pilbara people's experience of and thinking about their lifeworld. Interpreted anthropologically (that is, externally) the Dreaming can be characterized as a symbolic construction which underpins all aspects of Aboriginal culture and which is manifested through the interaction between people and country in everyday social and ritual life (Myers, 1991). The Dreaming is both the origin of life and the ever-present dimension inhering in the country, language, and people. This is expressed through the narratives colloquially referred to as 'the songs' or 'Dreamings', which are divided into different categories based on the social status of the person who is allowed to know them and the level of knowledge which they hold. There are also personal songs which belong to specific individuals upon whom the song and dance were bestowed on by the ancestors during a dream.

Mathew stated that the narratives and names of the creators were sacred<sup>62</sup> men's business, and he could not share them with me as it would be harmful to me, reinforcing the point that he only held men's 'law' and that the 'lore' he did know may not be appropriate to my kinship category and gender. He continued, "There are different types of songs, don't get 'em confused. I know men's law and I know my skin, you're a womens, so what I know is not for you cos we different skin. You need to learn from your own skin and then the women will teach you." These nuances I did not understand until years later while conducting fieldwork when the difference between lore and law was explained to me.

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<sup>62</sup> The influence of Christianity is present in the colloquialisms used by Mathew to describe the cosmological beliefs.



Plate 18: Mathew Sampi, Red Alexander and Leanne Evans in the vicinity of Yaleen Station in 2011.

The lore, as conceptualised by *marlpa*, refers to the sociocultural rules which are embedded, through the reproduction of culture, in the “imponderabilia of everyday life” (Malinowski, 1922: 16). These sociocultural rules are often rendered explicit through narrative and dance. Cyril explained this on one of our last trips together. He was being helped into the 4WD by his nephew while his niece was giving me a long list of instructions about what he was and was not allowed to eat due to his diabetes. Cyril told me that because I was not present at Red’s<sup>63</sup> funeral and had not been able to pay my respects, he was going take me out to see his grave and pay my respects as someone who had spent a lot of time with him and who had been learning from him. Red was buried on-country, that is, his own kin-estate on Kuruma country. Cyril explained that the mining company Rio Tinto had helped Red’s family to be able to bury Red on-country. They also received a funeral allowance from the PBC in the form of a lump sum of money derived from the royalties earned from the mining and exploitation of Kuruma

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<sup>63</sup> Red Alexander was a Kuruma elder, law-man and rain-maker who I had spent a lot of time with and who had passed away at a time when I was unable to travel to the Pilbara.

country. This extra funding had allowed the family to transport Red's remains from Roebourne to the grave site as well as for the mourners to attend. Cyril stated:

Because the old fella was a law-man and he worked so closely with the Rio mob, they helped with the funeral. They all came to pay their respects, Tanya and them.

The contribution from the mining company is a mark of respect for Red and his constant involvement in the management of country. It also reflects Red's social status within the Kuruma community and how he was perceived by Rio Tinto. This perception was not only due to their interactions with Red, but also to his status in the community and the way in which his role as a law-man and elder was defined socially and through ritual.

The trip from Roebourne, where Cyril resided at the time, would be a long one as access to Red's country would take us near the town of Pannawonica, some 170 km west of Roebourne. I asked him why Red had not been buried in Roebourne or Wickham and Cyril began telling me:

You know, there is a difference between the lore and the law in our culture. We always follow the law, but there are stories that we have been told that are not law, but that tell us how to be good people. My father always told me that when you die, you go back to the Dreaming and to the ancestors. But that is only possible if you are buried on-country.

This distinction between 'law' and 'lore' had never been presented to me before in those terms, as I had made the incorrect assumption that the people in the Pilbara use the terms interchangeably. Cyril went on:

If you are not buried on-country then your spirit can't find its way back to the ancestors, it wanders around pining for country. All those people that have been taken away and have no way to get back, the spirit is still pining. It's the ancestors in our blood, they call out to the Dreaming when you finish, it wants to go back.

I asked Cyril to explain what he meant by "the ancestors in our blood", and he stated:

When we're born, the spirit child is part of the Dreaming and it staying inside you, in the blood, and so when we finish the spirit needs to go back, the spirit cries out for country so it can go back to the Dreaming.

This piece of 'lore' is congruent with the need to repatriate the remains which were taken from burials and the bodies which were stolen by the English during colonisation for the purpose of examining them and exhibiting them in the name of Western science. It also provides a link for the physical body and the metaphysical<sup>64</sup> one in terms of blood being the substance which carries the essence of the Dreaming and the body being the recipient and container of that essence. This connection is then carried through to country as it is believed to also be imbued with the same substance as blood which comes from the Dreaming. Thus, the connection is the shared substance in both body and country, with country being a gateway to the Dreaming for the essence within the body upon death. It provides a closure for the cycle of life and death and reinforces the existential sense of the cyclical nature of Aboriginal life.

As we left the bitumen road and drove down a winding track into Red's country, a huge male kangaroo jumped out of the bushes and started jumping alongside the car on my side. Cyril threw his arms up above his head and exclaimed loudly, "'ere, the old *maatha*<sup>65</sup> knows you're coming and came out to greet you! Look at him!" The use of the term *maatha* by Cyril in reference to Red is not just a sign of respect, but also a reference to his position as a law-man and his role during law time. While it can be argued that Cyril was simply avoiding the use of the name of a recently deceased person, he did so by addressing him as someone who was above him in Kuruma law because the term he used was in the Kuruma language. As we continued along, Cyril asked me to slow down a little and as we did, so did the kangaroo, which seemed to confirm to him that Red indeed came out to greet us. For the next few kilometres, the kangaroo travelled alongside the car coming in and out of the bush from time to time. As we approached a bend on the road, Cyril asked me to pull over and to look over to the left. As I got out of the car, I veered to the left and to my surprise, the same kangaroo was laying down

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<sup>64</sup> This is an external analytical description.

<sup>65</sup> *Maatha* is the Kuruma term for boss; Cyril was referring to Red as the law ground boss rather than as a boss in employment.

in the afternoon sun in front of a grave. Cyril called out from the car and told me that Red had been waiting for me all this time and to make sure I was listening because he had something to tell me. I approached the kangaroo and sat next to it. To my complete bewilderment, it didn't hop off but sat there next to me peacefully. I sat next to the kangaroo for around forty-five minutes. After I had finished saying my goodbyes to Red, I stood up and walked back to the car where Cyril had been dozing off. He yawned and asked, "How did you go? What did you hear?" I told Cyril that I heard the bush and that I talked to Red and said my goodbyes to which Cyril responded, "One day you're going to understand what Red was telling you!" With that, we buckled up and set out for Pannawonica.

The belief in the ability of a specific ancestor to present itself to people is a common one among *marlpa*. This refers to the ability of the Dreaming to manifest in corporeal form whether as an animal which had a specific link to the visiting ancestor, or in the form of "little devils" who are mischievous and play cruel and dangerous tricks on unsuspecting people who have not taken the appropriate precautions while on-country. In the case of the kangaroo, Cyril concluded that it was Red's corporeal manifestation because it was one of his totems. Red was a highly skilled hunter and had the ability to select only male kangaroos and perform rituals at the kangaroo *thalu*<sup>66</sup> on his country to make sure that there were good numbers of them available each year. The belief in the manifestation of the Dreaming in the physical world is reinforced by this kind of concrete empirical experience. The relationship between the self with the Dreaming is experienced through the empirical referents and it is entangled with kinship which is dictated by the law. Thus, the lore is, so-to speak, a phenomenological experience and confirmation of cosmological beliefs.

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<sup>66</sup> A site where a specific ritual is performed by the members of a specific section belonging to a kin-group which assists in the increase of the population of an animal, plant, element or human pregnancy. These sites are colloquially known as 'increase sites', and part of the *marlpa* environmental management system which is reproduced through kinship via the section system.



Plate 19: Cyril Lockyer at the old camp in Yaleen Station where he grew up in 2010.

As we drove away from Red's grave, my mind wandered back to the time I had spent with Red on his country because he was the most senior ranking male member of his kin-group, an elder who knew his kin-country better than anyone else. I had spent my first year in the employment of YMAC working almost exclusively with Kuruma people and due to mining activity on Red's country, I was constantly in contact with him. I thought back to the time when Red and I were driving along in his aptly coloured red pick-up truck, at barely 80km per hour back in 2010. Red was pointing out to me the landmarks where the songlines come out of the country so "they can sing", and where they go back into the ground and continue in their journey through country. He told me that songlines are sacred, and that they are part of the law. But Red was careful to caution me not to mistake songlines with Dreamings. He said that a songline may stretch for many kilometres and that every time it comes out, there is a different section to the songline which belongs to a different person, and they belong specifically to either men or women depending on their subject matter. Red also stated that Dreamings are songs which often have a dance associated with them. They are short, can be shared and sung when sitting down with family and friends or at specific times, but can only be sung by the hereditary owners. These specifications then correlate with the law and lore, with the songlines being the law, whether men's or women's and the lore being designated 'Dreamings' although both are a type of narrative.

The songlines are segmented narratives which are shared by different language groups and kin-groups and are transmitted relative to the level of knowledge one has as well as the country one belongs to. They chronicle the movements of heroes who moved throughout the country "when the earth was soft". Dreamings are shorter narratives with a moral significance. The songlines and Dreamings have cosmo-ontological import and as such they constitute the substance of what *marlpa* refer to as 'knowledge'. The validation of this knowledge is grounded in the empirical referents in the country where a statement is said to be visible to all members of the group. This implies that the cosmological statements of cause and consequence are therefore true (Palmer, 1981). The empirical referents can be identified as specific sites within the country, animals, objects, or bodies of water.

A decade later, my discussion with Red about Dreamings and songlines came back to me again while I was out with Loric in one of our first trips across the Pilbara. She was pointing to a hill

and mentioning that a 'songline' runs through that hill and it goes all the way through to the coast and then in the opposite direction into the desert. Unbeknownst to me, throughout that trip, Lorice had been imparting to me the explicit meanings of the teachings which make up women's business or the law which is held exclusively by women. Once we arrived at her house in South Hedland, Lorice stated:

You need to go see that ol' girl Doris now. She is the boss of the women's business, and she can tell you about the Seven Sisters. But remember that it's women's business, women's law.

Up until that point, I had been under the impression that women's business dealt with birth and the section system; I had been blissfully unaware that there was such a thing as women's law in the Pilbara.

I had been told by a senior anthropologist at YMAC, who had lived and worked in the Pilbara for five years that there was no such thing as women's law or initiation and that women played a supporting role during law time. And although I had been to several law grounds and observed the proceedings, I had never really understood the meanings of the knowledge from the perspective of its management and allocation based on kinship relations between men and women. This was detailed to me when, a month later, I arrived at Doris' 'camp' on Nyjamal country where she and her kin-group had set up various demountable containers and transformed them into habitable rooms fitted with power and plumbing. When I asked Doris about the role of women in Aboriginal culture, Doris stated:

You cannot have men's law without the women, and you cannot have women's law without the men. It's more than making babies. It's about how the two come together and make up a whole. You always have a male elder and a female elder from each country. They the keepers of the knowledge and they speak for different sides of the law.

There is a duality in the role of the elders, where a male elder deals with the cosmological and the women with the concrete practical implementation of knowledge. This duality can be

perceived as one based on gender, although it is understood that both the cosmological and the practical have a symbiotic relationship which cannot be separated, and which supports both aspects of the body of knowledge. The transmission of this body of knowledge is underpinned by kinship and the exchange value of knowledge. The transactional transmission of knowledge from the giver (an elder) to the recipient enables the latter to use this knowledge in future exchange transactions (Palmer, 1981). Doris went on to explain that women play different roles during law time based on their level of knowledge which dictates their place and treatment within society. This placement and treatment of individuals sustains a status hierarchy where kinship underpins all interactions, and which can be observed through the designations which are bestowed on specific people as well as the way in which they are treated within Aboriginal society.

## **5.2 Status hierarchy: the role of the elders, law-men and law-women**

The designations 'elder', 'law-man' and 'law-woman' are commonly heard throughout the Pilbara. And while the title of 'elder' is gender neutral in English, it specifically refers to one man and one woman from each kin-group. That is, there is only one pair of elders per kin-group at any one time. Conversely, the terms 'law-man and law-woman' can be awarded to any person who has begun and is continuing their study of the gender specific distribution of *marlpa* law. All three terms refer to particular people who are owed respect based on their level of knowledge and commitment to the community. These designations have been simplified through the cross-cultural translation process and their meaning has been diluted. These designations denoting the knowledge-based age-and-status hierarchy permeate all social interactions and transactions in the Pilbara.

The designation 'elder' is regularly misused by non-Aboriginal people in the Pilbara because of its ambiguous nature in their cultural context. In dealings with the government, resource companies and the public it is often erroneously used to refer to any elderly Aboriginal person. The misrecognition of perceived authority of elderly Aboriginal people as 'elders' delegitimatises the kinship and authority structures upon which people in the Pilbara relate to each other and consequently, their country. Cowlshaw (2009: 180) quoted an Aboriginal man who was speaking to an intoxicated older Aboriginal person: "You are not an *elder*, you are a

*senior citizen.*”, which summarises the appeal to authority some may use when unaware of the requirements for the designation. It also raises the issue of recognition. Because of the intensification of the resource industry in the Pilbara and the official recognition of Aboriginal cultures through native title, the demand for *marlpa* participation in events and ceremonies where ‘elders’ are sought out to perform cultural rituals for a fee has increased. This has led to the misidentification of the elderly as ‘elders’ and much conflict, particularly when those who are engaged for the performance are not recognised as elders among *marlpa*.

The term elder refers to the position held by an individual as one of two leaders of a kin-group based on their practical and cosmological knowledge (Busija et al., 2020; Davidson, 1926; Doolan, 1979). von Brandenstein (1967) discussed the translation of the designation ‘elder’ from the many Pilbara languages into English and suggested that the incorporation of English words was contributing towards a common vocabulary in the region. This is particularly evident where *marlpa* refer to elders by using the English word rather than the word in an Aboriginal language. This, in turn, has contributed to confusion over the identity and roles of elders in the Pilbara, particularly in the non-Aboriginal community. Additionally, this confusion is amplified by native title and the financial gain which may be obtained through engagement with the resource industry and government by people who are not recognised as elders in the community or someone who has connection to a specific tract of country. The moral education within Aboriginal cultures condemns and rejects greed (Hiatt, 1982). Any behaviour driven by financial gain is seen not just as disrespectful but also offensive. Kurtiri elaborated:

Disrespect. That’s what it is. People don’t know that what they doin’ is disrespecting us when they speak out. Those people don’t know their culture and they need to come talk to us and learn. The younger ones, the ones who went to school and they want to run things. They think they know better because they know whitefella law and how things work. But they don’t know their culture. The education at school didn’t teach them about country. They can’t speak for country.

There is a view that participation in the Western education system has resulted in the diminished ability and willingness of younger generations to learn culture. For instance, a Nyiyaparli elder Bonny stated:

The young ones they go to school, and they learn whitefella ways. They come back and don't want to learn about their own people. Native title made it worse. They want to help with it. They think the only way is to learn whitefella ways. They go become lawyers and to be like you and then they speak but have no right. They are young. They don't know.

There is an implication here that since the implementation of the NTA, young *marlpa* have responded to the pressures of the native title process by acting agentively by choosing to study law and anthropology as a pathway into contributing to the community's claim process. This is interpreted by the elders as a neglect of cultural practice by the younger generations, who prefer non-Aboriginal education which provides individuals with an imagined authority within the Aboriginal community. The authority derived from university degrees is perceived as superior to the one based on practical and cosmological knowledge of the elders. The shift in the perspectives of the younger generations can be attributed to the colonial frameworks of institutionalised oppression which Aboriginal people face through the Australian education system where their cultures are dismissed as inferior to Western culture.

Although not used as much as 'elder' within Australian culture at large the terms 'law-man' and 'law-woman' are regularly used in the Pilbara to refer to those who are seen to have reached the higher levels of understanding of the gender specific knowledge colloquially known as 'men's business' and 'women's business'. Specifically, the term *nyambali*<sup>67</sup> is used to refer to the highest-ranking man who leads the performance of 'men's business'. Palmer (1981: 9b) writes, "The Aborigines use the term 'business' because the matter in hand (that is putting on the ritual) concerns the transmission, exchange or withholding of religious knowledge of a specific sort, and this is truly a business" thus reinforcing the transactional nature of knowledge transmission.

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<sup>67</sup> The term *nyambali* is used in the eastern Pilbara, while the term *maatha*, a Kuruma word literally translating to "boss", is used in the western Pilbara.

The term *nyambali* is one which has been applied to both the Aboriginal and the non-Aboriginal context. “That old man there, he my *nyambali*.”, stated Jeffrey, when referring to Kurtiri. On the law-ground he performs the rituals as well as imparts the knowledge. Jeffrey translated the term as meaning ‘boss’ in the Ngarla language, denoting a person who is the keeper of knowledge and has the power to select who this knowledge is given to and when. He knows the location of and function of all the esoteric paraphernalia used during rituals. Jeffrey recalled:

During station times, we used to call the station bosses the *nyambali*, because they knew how all the equipment worked and who was supposed to be working where and all that. But we also call the big bosses, the law-men, they the real *nyambali*, they know everything, they have all the knowledge.

In the case of Kurtiri, he is deemed to have achieved the highest level of cosmological knowledge within men’s law as well as having learned all aspects of practical knowledge and understanding within his kin-group. As such, the majority of the men in the Pilbara refer to him as *nyambali*.

The term *nyambali* has implicit and explicit meaning. The explicit meaning refers to the domain of kinship and other social relations, the way in which the *nyambali* is treated and the deference expressed through behaviour, language, gestures, and rituals which have been learned through inculturation from birth involving verbal and non-verbal cues. The treatment of Kurtiri by *marlpa* is based on the transactional nature of the knowledge he holds and how he imparts it to the individuals below him in the status hierarchy. The transactional character of knowledge in the Pilbara was highlighted to me after a hunting trip I took with Mark, a Kuruma man. In May 2011, he asked me to pick him up early one morning from his home in Roebourne because he wanted to go hunting in his country near Mardi Station, some 113 km south-west. Mark had obtained permission to hunt near the boundary fence of Mardi Station and he brought along his rifle and the rest of his hunting gear. After we arrived at the desired location, Mark and I proceeded on foot to the area where he knew there would be some kangaroos. He uttered a brief greeting to the country in the vernacular and proceeded to position himself in an elevated area where he could look over the terrain. Soon enough, Mark

had spotted a male kangaroo grazing which he shot. We then proceeded to where the animal had gone down, and Mark made sure that it was dead then carried it to the car. Near the car, he found a suitable tree where he hung the kangaroo by the tail and placed a container under it then proceeded to bleed the animal. He said that bleeding the animal would prevent the meat from going off, but the blood will also come in handy later in cooking. After the kangaroo had been bled, Mark proceeded to skin it then butcher it. He set portions of meat aside and packed them into plastic bags to be placed into an esky. As he worked, Mark explained:

I pack 'em all into portions for family. That way I can just drop 'em off and no need to muck around. The tail is the best part. All the marrow, it's good for the stew. The tail always go to the elders. They get the best part. They also want a bit of the good meat with a bit of fat on it. Then the rest goes to family.

Mark's explanation of the division and distribution of the meat represents the way in which resources are shared within the community. In this case, Mark's kin-group takes precedence over everyone else, and the best cuts of the kill were delivered to the elders of his kin-group. The remainder of his kin-group also received a portion of the meat based on their social standing within the community. And while Mark did not express any objection at sharing his kill, he explained:

The meat has to be portioned out to everyone. They got right to it. I get my share when they go out and get a roo, so they also got a right to their portion. It's our way.

This action stems not just from the deference owed to the elder's position, but also is the payment for the knowledge they hold and the way in which they have shared it. Mark continued:

The best bits, they go to the people who have earned it and deserve it. The elders, they have all the knowledge, they deserve the best bits. I've learned from them, they taught me.

This justification of the 'deserving' nature of the role of elder implies that the level of knowledge that an individual has imparted allows them to make demands on the food source. This demand is based on the right that they must claim food after they have imparted knowledge to the food provider (Gomes, 2011; Peterson, 1993). This accounts for the identification of the elder by the food provider as someone who is 'knowledgeable'. It also refers to the level of care and maintenance which the elders must put into looking after country and upholding the law and disseminating the lore. Thus, the portions of meat assigned to the elders can be seen as payment for services rendered to the community.

When this kind of exchange does not take place, the hunter is perceived to have inflicted a great offence against the elders and law-men. Mark stated, "If I don't give them their bit, they will grumble and sing out to me." The term 'grumble', although not one which conveys injury, means 'complaint' in colloquial speech. Similarly, 'sing out' is also colloquially used to depict the act of demanding an answer or response from someone. Reciprocity allows for the transactional valuation of knowledge whereby the elders and senior law-men and law-women are seen to be performing certain tasks, which can only be carried out by them since they have the highest level of cosmological and practical knowledge, in exchange for food. This in turn affirms their status (Adloff, 2016; Gregory, 2015; Mauss, 1954; Peterson, 1993). The selection of an initiate by the elders and law-men and law-women may be based on the promise shown by the student while the service which the student then provides to the teachers is considered a payment for the trust given through their selection and the knowledge imparted to them.

A Nyjamal man, Darren<sup>68</sup> and I were having a chat outside his house in South Hedland while he showed off his new puppy in 2011. He had recently undertaken further steps in his acquisition of knowledge and was preparing to continue the process of what the Pilbara people term 'induction':

I wanna keep goin' in the law. I wanna learn more and see if the old people will teach me more. That's why I missed so much work when I was your CLO<sup>69</sup> you know. I needed

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<sup>68</sup> The late Darren Geary was a CLO assigned to me while I worked in the South Hedland office of YMAC.

<sup>69</sup> Claimant Liaison Officer.

to take care of business for the bosses. I needed to show I was committed so I had make it come first, you know?

Darren's demonstrations of commitment came in the form of service to the law-men and elders and in the provision of kangaroo and emu meat. I witnessed a similar situation the first time I arrived at Doris' 'camp' on Nyjamal country. As I was unloading the gifts I brought for Doris as compensation for offering me shelter and food during my stay, a group of young girls came out to greet me and help to unload the food. Doris was sitting under the shade of a portable pergola, and when the girls walked by her, they all opened the shopping bags to show her the contents and to wait for her to let them know it was ok to go into the kitchen and deliver the bags to Sharyn who was busily putting the items away. I greeted Doris then went to greet Sharyn who asked me to wait for a moment while she finished putting the groceries away. She then escorted me back towards Doris where chairs had been brought for us to sit under the gazebo. The discussions with Doris in relation to women's business always took place with Sharyn present because, as Doris said: "She needs to learn. She is with me to learn, and then when I finish, she can teach the young ones", to which Sharyn responded, "Doris is my sister, but she my boss!" and laughed heartily, echoing the *nyambali*<sup>70</sup> term.

The implicit meaning of the term *nyambali* can only be extracted through analytical explication including the processes which are involved in reaching that status. The body of cultural knowledge is transmitted by the *nyambali* through ritual performances and the bestowing of knowledge in exchange with the initiates. The exchange is mediated by kinship relations built between the *nyambali* and the initiates which strengthen over time. This relationship is marked by the categorisation of different exchanges between the parties, and it is these categories that define the implicit meaning of the *nyambali* role.

Although he is known as the most senior law-man in the Pilbara Kurtiri is also identified as the elder within his kin-group. Therefore, *marlpa* see Kurtiri primarily as a law-man. However, all elders are law-men and law-women because to be identified as an elder, a person must have cosmological and practical knowledge. The more cultural knowledge a person is deemed to

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<sup>70</sup> Although the term is pronounced with a softer ending in the Nyjamal language, thus '*nyampali*'.

have, the higher their status within the kin-group is, and this translates into the way in which people are referred to.

No one is equal. We look like we equal but we not. It all depends on how much you know. The law and the lore, you know? There are different levels of knowledge. If you commit to learning from the elders then you are on the path, but if you don't then you are at least expected to follow the law. But you get chosen, it's not a choice. It's about your potential.

The above statement was made by Tootsi, a Ngarluma law woman. Her status as a 'law woman' is due to her participation in law time and the level of knowledge of Ngarluma law that she achieved. Her specific level of knowledge is assessed through her telling and re-telling the narratives which detail the history of the past and reconcile the present as well as the performance of ritual. These narratives are colloquially known as 'Dreamings' or simply "the stories of the old people" as Tootsi refers to them, and those which Red was referring to when he spoke to me about songlines. And while they have no lexical equivalents in English, they do have specific names in the different languages of the Pilbara which are used specifically during law time. The lack of English designations for them reflects the secret nature of this knowledge domain which excludes non-Aboriginal people.

### **5.3 "Everyone knows about the men's business": men's law**

Sitting on the banks of the De Grey River with Kurtiri, he began to tell me about the time when the world was soft:

Everyone know about men's business. It's secret business, but everyone knows what it's about. We don't talk about it because it goes against our law. So, it's secret. Men's business. But everyone knows about the snake, you know, the warlu, he came first and there was nothing, no light and no hills. So, he set to work. He began travelling and every time he stopped there, he would leave something behind. The ground was soft, so it was easy to make the hills and rivers, and the sky was low down. After the warlu, then came the emu. He also got to work. That's how it was all created, they all came

one after another and they shaped the country. Then came the first men. There was two. And I can't say no more.

The description of the creation of the country given by Kurtiri refers to a group of beings termed *manguny*<sup>71</sup> or as they are colloquially known, the 'creation spirits' or totems (Warner, 1937). Kurtiri explained that the *warlu*<sup>72</sup> was followed by each one of the spirits of the animals which are used as totems within the kinship system of the Pilbara:

Where they come out, that a special place. An increase place. It belong to people through the skins. And they can go there and look after it. That place has the life. The power of them.

A similar story was told to me by Red one day when he took me to a rain *thalu* that belonged to him:

Here, there's a song for the snake. He here, this is his place, and he can hear me because this my place too. So, when there's no water, I come and sing to the snake, I sing to 'im. He listen and he wakes up and then the rain comes down.

Red refers to the creation spirit as a 'snake' in English, the meaning assigned to the term is that of *warlu*. Elkin (1932: 115), although not speaking about the Pilbara specifically, discussed increase sites and referred to them as "ritualised cults" as being the foundation for the "secret" life of Aboriginal people. He characterized them as a body of rituals which affirm the physical manifestation of the Dreaming in the Aboriginal lifeworld (Stanner, 1979). However, No. 2, a Karajarri<sup>73</sup> and Nyangumarta elder and senior law man stated:

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<sup>71</sup>The term *manguny* is a Nyjamal word which the Nyjamal translate to 'creator' however within the lore, *manguny* are a collective of spirits who shaped the land and from whom everyone is descended.

<sup>72</sup> While the term *warlu* does in fact translate as 'snake', the snake itself was only one of the spirits which shaped the country and there is no evidence in the oral histories of the Pilbara to suggest that the snake they refer to is the same or related to the rainbow serpent described by the people of Arnhem Land.

<sup>73</sup> Karajarri country is not in the Pilbara, however Nyangumarta country is. No. 2's status as a 'boss' in Yandeyarra is attributed to the population movement which took place during the Pilbara Strike.

Nah, the thalu is not men's business. It's not secret, women do it too, it's got to do with your skin you know?

Although these rituals may or may not have been part of men's business, they are the foundations upon which *marlpa* maintain and reproduce their culture. The relevance of totemism is particularly highlighted by the fundamental link between the cosmological beliefs and their empirical expression (Stanner, 2014). The shaping of the world was achieved by a multitude of spirits who took on the form of animals. These beings continue to exist in the Dreaming as an amorphous whole or are believed to be 'resting' or 'sleeping' within the features of the country in the place where they were 'born' or where they 'came out' (Eliade, 1967; Stanner, 1979, 2014; Sutton, 2003).

The creation of the first humans is something which Kurtiri did not go into any detail about. It was Red who explained it as specifically thought of among Kuruma people, "The first men, they were tall. They were around when the ground was soft. They brought the law. They were the first, so they set it all out and put it on country." This concept of the law being brought into the country was also echoed by David<sup>74</sup>:

The law travels, like the first men. Like we do. We travel to different law grounds, and we bring the law. The law is given and once you have it, then it stays with you, and you take it with you. But you can't take it to another country without permission, that's wrong. But the law came from the creators, they gave everything, and they gave different language and law to different people. It's always been passed down, but it started with them.

The law itself is not seen as merely something which is learned, but rather something which is placed into *marlpa* through the initiation process during law time and which exists within *marlpa*. This has been the case since the creative epoch and the association between the creators, the people, language, country and law has been passed down from the creative epoch through innumerable generations (Sutton, 2003). The law then is carried by *marlpa* for life

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<sup>74</sup> David Stock is a Nyiyaparli law-man and elder.

regardless of where they go, and it stays with them by virtue of their ancestry and the connection to the creators. The physical representation of the law is then embodied through the dress and adornments worn by *marlpa* during law time, and these vary depending on their level of knowledge.

Men's business, as it relates to the creation of the world and the shaping of the country is the foundational basis for the lifeworld of *marlpa*. A similar version of the creation story exists in every language group in the form of songlines, and it forms the concrete experiential basis of *marlpa* lifeworld. It provides a context for the Dreaming as being a constant which exists out of time and space, and which is manifested in the physical world through the features in the landscape which bear the marks of the adventures of the Dreamtime heroes and provide substance to the songlines. Kurtiri continued:

There places all 'round 'ere and you can see where the creator stopped, those are sacred. Dangerous.

The physical manifestation of the stories which Kurtiri talks about cement his belief in the events and affirms their truth in the actuality of the living presence. The events which took place "when the world was soft" can then be interpreted as the past immanent in the present existential reality, the story being their conduit. This is what Stanner referred to as "signs of intent" from the creator which are then transformed into "signs of *assurances* of life under mystical nurture" (Stanner, 1979: 115). Similarly, the ability of Kurtiri to validate those events in the physical world through the country is how the story is transmitted, and it reinforces the link between person and the country. The details of the story of creation form part of the knowledge imparted to young men during initiation and are not available to me as a woman. However, some of the concepts that pertain to the cosmological beliefs can be disclosed by the law-men, and they form the basis of my observations and experience of men's law. Similarly, my observations of the relationships between the law-men and the younger men also reinforce the view that the transmission of knowledge is based on reciprocity and kinship and it can be seen as setting order to the social relationships and ensuring the continuity and reproduction of culture (Mauss, 1954; Palmer, 1981).



Plate 20: Kurtiri and Jeffrey discussing Ngarla law at Kurtiri's house in South Hedland in 2018.

The ritualised reproduction of culture is particularly evident during law time, when young men are put through the law as an introduction into society. These rituals introduce initiates into the social hierarchy in relation to their generational cycle (Warner, 1937). The generational cycle is relevant here because it indicates the appropriate age for initiation and separates the initiates into moieties based on their section names and age. The relationship of each initiated man within their kin-group is based on their section names as well as his place within the hierarchy relative to his level of knowledge gained. The first stage is referred to as *ugala* business at the Yandeyarra law-ground which is where the Kariyarra people celebrate law time. No. 2, the most senior law-man and acknowledged 'boss' of that law-ground, explained that there is '*bugali*<sup>75</sup> business' and '*midaydi*<sup>76</sup> business'. No. 2 explained that he could not divulge

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<sup>75</sup> The Nyjamal term used to refer to the boys who have reached the circumcision stage of initiation. This term is used at Yandeyarra initiations as well as those carried out on Nyjamal country.

<sup>76</sup> The Nyjamal term used to refer to the second stage of initiation where the esoteric paraphernalia is revealed. This term is used at Yandeyarra initiations as well as those carried out on Nyjamal country. This ceremony is practiced less frequently because it relates to higher levels of law than initiation.

much information, but that the *bugali* business comes first during *marlulu*<sup>77</sup> and the *midaydi* business occurs later. The *bugali* will, if they chose and are selected by a law-man, go through all the stages of *marlulu* and attain a sufficiently high level of knowledge to become the right hand of the 'boss' and manage all aspects of their life, including making all the arrangements for law time, liaising with the community and non-Aboriginal people, and running errands for them.

On one occasion, I went to visit Kurtiri at his home in South Hedland. Upon arrival I was greeted by all the boys who are regularly 'camping' at Kurtiri's house to learn Ngarla culture. They immediately informed me that Kurtiri was resting, and that Jeffrey was not there. One of the older boys quickly pulled out a phone and called Jeffrey who arrived within fifteen minutes. Upon arrival, Jeffrey greeted me quickly and walked inside; a few minutes later the younger boys came out with three fold-out chairs and set them up under the shade of a tree. Only then did Jeffrey come out followed by Kurtiri who was sporting his signature Akubra, and who was followed by another of the young boys with a 'cool drink' in hand for Kurtiri. The reverence with which Kurtiri is treated by the younger boys is expressive of their lower status within the Pilbara. They, being too young to go through the law, live with Kurtiri and learn the foundations of Ngarla knowledge until they are of age to begin learning men's law. But there is a discrepancy between the way the law-men and elders are treated and the value of their input into the business of native title.

Sitting on the carport of Wilfred Hicks' house in Roebourne, I listened as the Ngarluma law-man narrated the story of his exclusion from the Ngarluma community and the lack of respect he is now given:

After we put in the Wong-goo-tt-oo claim, people stopped being respectful. They thought we wanted money, but we wanted to protect country. And after the claim was dismissed, it was worse, because it was as if we didn't exist unless they needed something. The younger ones were the worst, they didn't even respect our knowledge

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<sup>77</sup> The Nyjamaal word for 'initiation'. The same word is used in Nyiyaparli and Palyku languages.

of country. They just saw us as a problem with the hearings and all, so we were excluded from everything.

Wilfred is referring to the treatment he received from the Ngarluma community for lodging a native title claim over an area which covered the *Thaluntha* kin-country, the *Pularra* kin-country and *Mugarinya* on the Dampier archipelago. In Wilfred's view, his status as a law-man was diminished in the eyes of the younger generations because of the delays which this claim caused in the achievement of native title for Ngarluma people. However, the areas claimed as part of the Wong-goo-tt-oo claim are a lot more significant than the younger generations are aware of. Wilfred continued:

The claim area for Wong-goo-tt-oo is full of knowledge, it's not Ngarluma country, no, it's Yaburrara, but the Yaburrara people that are left don't know why it's important. Back then they were too young to know, now they do because they have learned the law, but they learned it from us. The area we claimed has men's business and women's business. It's very important to the Ngarluma, Yindjibarndi and Yaburrara people, all of us. The women's sites, you can ask the women about that, the men's, very very sacred. That's why the people who claimed, we were all law-men. All about the law, and they wanted to develop there. We needed to protect it, but it cost us respect.

Wilfred's statements imply that the nature of the significance of the area in the Wong-goo-tt-oo claim was not common knowledge among the wider Ngarluma community. As such, there was a lack of trust in the claimants who were all law-men. The community until the present day views the original Wong-goo-tt-oo claimants and their families as "troublemakers and money hungry", as Wilfred confirmed:

The Ramirez mob, the Douglas mob and my mob, we all got pushed aside. We were told we needed to provide the PBC with proof of our connection to the apical ancestors to become members. Some never got through.



Plate 21: Ngarluma law-man Wilfred Hicks in Roebourne in 2018.

Wilfred's comments refer to struggle that law-man Tim, Lorice's father and his family, the Ramirez girls and their families, and his own family had in gathering evidence to prove their connection to Ngarluma country despite all being high ranking law-men and recognised within

the law-grounds as having a high level of knowledge. This recognition of their rank within the law-ground and their exclusion from the native title claims created a problematic rift within the community where the law-men perceived a decrease in their status within the community.



Map 4: Detail showing the overlap of the Wong-goo-tt-oo claim over the Ngarluma/Indjibarndi claim and the Yaburara & Mardudhunera people claim (NNTT, 2004).

In Wilfred and Tim's view, men's business, based on the cosmological knowledge is underpinned by the kinship system and it provides the status hierarchy for the men. Once this is disregarded, then there is a break in hierarchy and authority systems which undermines the law. The importance of Western education and the availability of the funds which facilitate it have provided different pathways and furnished *marlpa* with a 'choice'. The choice for the education of the younger generations has opened the doors for *marlpa* participation in the native title industry but it has also greatly diminished the number of *marlpa* who choose to continue learning the law. As such, the status of the law-man and male elder are diminishing in the Pilbara.

#### 5.4 Hiding in plain sight: women's law

There is very little that has ever been written or published about women's law in the Pilbara although anthropological discourse on women's law is addressed by Kaberry (1939), Bell (1987) and Dussart (1988; 2000; 2021) among others. Whether this is because most of the anthropologists who have written about the Pilbara have been men or because the significance and contribution of women<sup>78</sup> was often overlooked when describing *marlpa*, is not clear. As for myself, I had an eye-opening experience while staying with Doris Eaton at her camp in Nyjamal country in 2018 which enabled me to observe the role of women and to ask more questions concerning their position and importance in the Pilbara. It is important to recognise that women's law in the Pilbara has continued from the time of colonisation under unimaginable conditions. It has not only endured, but it is the fabric upon which the Aboriginal societies of the Pilbara have relied on to survive all attempts at their destruction. It has remained in the background perhaps not accidentally or as an oversight, but rather through an active attempt by the women to keep this domain of their societies out of sight (Elkin, 1932).

When I asked Doris why women's law is not something that was more prominently looked at during native title connection research, she simply responded, "No one asked" shrugging while continuing to pour more V8 juice. This response fits with the descriptions of women provided by early anthropologists who were dismissive of the role of women and assumed that a marriage at a young age implied that women were subservient, and their role was simply that of a supportive wife, nurturing mother, or obedient daughter. Indeed, Elkin attributed the reluctance of families to allow their daughters to continue to reside in the missions past puberty as a reluctance to upset the social equilibrium by breaking an arranged marriage, yet at the same time explaining that the reluctance for boys to remain past puberty in the mission was due to their need to begin their progress through initiation (Elkin, 1932). The rationale provided by Elkin (1932) as to the importance of male initiation implies that the role of men is one which exists separate from that of women whose role is fulfilled through marriage and the production of children.

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<sup>78</sup> It is pertinent to clarify that in the Pilbara, the term 'women' is applied to humans of the female sex and that gender is conceived based on sex.



Plate 22: Doris Eaton speaking at the Yule River Meeting in 2018.

I cannot provide an accurate description of what women's law was before native title because there is very little written about it, if anything at all, and I certainly cannot describe all aspects of women's law as it is not only secret business which some women have spent their entire lives learning and applying and, more significantly, guarding, but also it would not be appropriate for me, a non-Aboriginal woman to do so as this can only be carried out by the law-women of the Pilbara. I am merely attempting to highlight the existence of women's law, and to place it in the context of native title and discuss its relevance to the kinship system.

According to Sharyn, knowledge about country and women's law is entwined:

How do Aboriginal tribes know their boundaries? Through their song lines! They'll talk about that hill, they'll sing about that hill, they'll sing about those people. Those skin groups.

However, Sharyn was referring to the songs which are described as:

Travelling through country and they come to rest in some places, then they keep going. They go through other countries too, far away. And we only get sections of the song, a bit of it belongs to this country and then it travelled out and kept going.

Songlines are at times homogenised as simply 'Dreamings', and this may have contributed to their understated value as part of women's law. However, songlines are trans-territorial narratives which contribute to the unification of kin-groups and in some cases, the unification of language groups. This collective consciousness of interconnections and unity based on, one can characterize it as, the cosmological "commons", facilitated in the past the relationships of trade, exchange, and intermarriage. The location of the sites where the events narrated in a songline took place is a sacred location associated with a particular section of the songline. This section itself is learned during women's law teachings and it is passed down from law-woman to law-woman. Thus, these songlines define the country as a life-space through a set of symbolic markers which are embodied on specific landmarks such as hills, stone outcrops, and permanent pools which can only be interpreted by the law-women and through women's law.



Plate 23: Carving of the songline of the Seven Sisters at the place of its beginning along the Pilbara coast. The location must remain undisclosed as this is women's business. The circles represent the position of corresponding stars in the night sky.

Sharyn and Doris agreed that the country is defined by the songlines and language and that the songlines are sung in. The course of the songlines are definite markers on the landscape which were placed there when the "ground was soft" and which delineate a specific event and location during the mythic epoch. The songline of the Seven Sisters which was "written on the land by the seven sisters" themselves in their travels, is also depicted through the drawing of the positioning of specific stars at a specific time during the year which coincides with the time of year when the event took place. The stars and their positioning are then a physical manifestation of the mythical events recounted in the song. This manifestation and its yearly

appearance on the Pilbara sky serves as a reminder of the teachings of the songline and its importance within *marlpa* society.

Doris was given a section of the Seven Sisters songline and she summarised the story as being about the four sociocentric categories (skin-names or sections) of the Pilbara telling people how to behave and how to relate to one another. The story begins on the western Pilbara coast, where there is a particularly sacred site containing petroglyphs which depict the sections and the adventures of the sisters. It is sung across the country all the way through to Alice Springs. The songline is sung in the language of each of the countries that it passes through and each of those places holds specific knowledge and significance which is revealed to women as they embark on the journey of knowledge acquisition. The songline itself is recognised by the women as it is “written on the landscape.”

The reference to writing is an interesting association which may stem from the phrase ‘reading country’ whereby *marlpa* refer to their observation and interpretation of the environment such as the behaviours of animals, the movement of the wind and trees, and of the weather conditions. Song lines “being written on country” also refers to specific land formations in the shape of animals or humans used as markers and boundaries. As Doris said: “You look at the landscape you can’t get lost.” If a land formation associated with a songline or an ethnographically significant area is destroyed or changed in any way, the essence of the place is deemed to have returned to the Dreaming. This justifies the presence of women in native title meetings and their involvement in negotiations. It also supports the observed precedence given to the women during native title meetings and the restraint demonstrated by the men when discussing country. Jane Taylor elaborated on this one lively Thursday night while we sat at the front of Elsie Williams’ house playing cards:

What we know is taught to us by our grandmothers. They teach us all about women’s law and they take us to the places we need to know. We also learn about families and where they belong. That’s our job. In the old days that was about the give aways and setting up the arrangements, but now, our law helps with native title. What I did for Nyjamal is that I got a map of country, and I marked down all the areas that belong to families. I got it all written down, so when someone needs to go on survey, we have it

all in the office and we know who needs to be contacted. It helps the young ones learn too cos they not used to just been told, they like it in writing.

Jane is describing an adaptation of the system of passing down knowledge to the younger generations and of making use of that knowledge to coordinate native title activities with the Nyjamal native title holding group. This certainly presents a new issue for the women as their knowledge is being used daily, and at times by non-Aboriginal people. However, Jane explained:

This map is just a map, the old anthros made maps like this. It's not something that is secret, there's more to women's business than who belongs where, we know why they belong there. But that secret information is not marked down. And no one knows this is part of women's business, you know? The blackfellas know. But no one else does. And blackfellas will stay away, they won't investigate that, they let the women look after that. If someone wants to do a survey near a woman's site, then I'll make sure the right person goes, so the women must go. Not the men, only the right people.

Jane's discussion implies that knowledge is only held by specific women and therefore not widely available; the way men's knowledge is disseminated over time parallels women's.

While sitting at a coffee shop in South Hedland with Doris and Sharyn, the former stated: "Only certain people know law and culture." She was referring to the different levels of knowledge acquired by the women during their lifetime, and the way in which the groups are hierarchically differentiated, such as the names given to the different stages of initiation. Doris explained:

I only know one law, that of my father and grandmother<sup>79</sup>. I go that side, that is the law that is strongest with me. But I have Nyangumarta law in me too, but not as strong, so I sit back and listen there.

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<sup>79</sup> Thus, the patrilineal links, that is F and FM.

Doris acknowledged the possibility of ‘having’ two different laws within her based on her patrilineal connections<sup>80</sup> which was imparted on her over time, but there is also an acknowledgement of her lived experience. Doris highlighted that the law of her F and her FM was strongest with her, implying that she has spent a longer amount of time learning Nyjamal law. She also acknowledges that she has learned some of the law on her M’s side and therefore that she has some knowledge there but is unable to speak for all the sites within her kin-group area. Although, the statement clearly aligns Doris with her F and FM showing the ancestral line which she is following, of particular importance is that her FM is the person who introduced her to women’s law. Thus:

I follow my father’s side, because that’s where the law is strongest and that’s the side, we follow in Nyjamal. We follow the father’s line. So, I learned from my father’s mother.

This would mean that Doris was taught the first stages of women’s law by her FM who was not of the same section as she is. Sharyn stated that “A child is raised by four!” thereby stressing the importance of the influence of the grandparents on a child. This means that the MM is also a significant source of knowledge in the childhood of *marlpa* women and that, at least in Nyjamal country, the acquisition of knowledge is patrilineal as far as it pertains to women’s business. Doris also described her social placement within the Nyangumarta community. There, her cosmological knowledge is not at the same level as that within the Nyjamal community where she is a law-woman and an elder. Despite her rank as a Nyjamal law-woman, Doris must then concede that she does not have seniority within the Nyangumarta community. But this does not diminish her role as a Nyangumarta woman nor her connection to Nyangumarta country. This dual connection to country based on an individual’s ability to acquire knowledge from their grandparents translates into a primary and a secondary connection which in native title is not recognised. Indeed, women’s law is unduly reduced to the matters of childbearing and conception via the mediation of spirit children pools and fertility sites. Although still transmitted as verbal instructions the ceremonies themselves are not practiced any more. However, there are a few women in the Pilbara who still remember these law ceremonies and rituals as they were practiced early in the 1900s.

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<sup>80</sup> F and FM.

Pinikura law-woman, Angie<sup>81</sup> spoke about songlines:

When I was a little girl, my grandmother began to teach me. Us girls went through the law back then, see here, this is from when I was given the law.

She said this pointing to a horizontal scar across her chest below the clavicle. The scar was around ten centimetres in length and about 2 centimetres at the widest point. Angie recalled the pain of the wound when she was young, but she did not recall who had made it and under which conditions. Nevertheless, she did recall it being a symbol of female initiation, and the beginning of her education as a Pinikura woman. She recalled being taught about women's business, and specifically about her section and the songs and sites associated with her section. Angie, who had overseen her grandchildren's education, stated that the same process is no longer followed and that women no longer practice initiation in the same manner, but that they still participate in law business as both men and women are necessary for the law. Doris echoed this statement:

You cannot have men's business without women, and you cannot have women's business without men. We go together, we are equal in all aspects, different type of knowledge but equal.

Regarding the sacred sites which are related to procreation, they also form part of the education provided to women in stages. This type of knowledge is not given to all women but as is the case with men's knowledge it is a sign of status and favour to a woman to be allowed to learn and to be taken to such a site. Of particular importance are the spirit children pools which are present throughout the Pilbara. There are also increase sites associated with children and pregnancy and places dangerous to men. These sites, along with those associated with the songlines, form the bulk of women's law. And while some of the ritual ceremonies which were involved with the transmission of this knowledge have been discontinued, the transmission of

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<sup>81</sup> The late Angie Cox was a member of the PKKP native title claim and determination group.

knowledge and, therefore, of the reproduction of culture remains an essential aspect of *marlpa* cultural existence.

### 5.5 Life cycle: conception, puberty, initiation, and death

In the Pilbara, the cycle of life and death realises in practice the cosmo-ontological beliefs. The purpose of the cycle and the reasoning underpinning the beliefs is the reproduction of humans as social beings and the cultural values which will allow for the continuation of the society. The first stage of this process was described by Joyce<sup>82</sup> one day while we were at her house at Bellary Springs<sup>83</sup>:

There are places on the country, like the one I showed you, where men not allowed. They secret for women. They dangerous for men. Women's business, all about the babies and how to get a baby. My grandmother she been teaching me and took me there and showed me when I was old enough. Not before. There are rules.

Joyce was emphasising that knowledge of the conception of children was relative not just to the level of knowledge acquired by a woman but also to her age which, more likely, indicates physical development. The way in which the people of Pilbara reckon time is measured in seasons, the movement of the sun and moon, and of the physical developmental stages of the human body. In this case, a woman would be deemed ready to learn about conception once she menstruated for the first time as this is the time when she would be considered a woman rather than a child and, therefore, is physically able to bear children.

While we sat in the afternoon shade Joyce was busily peeling the oranges I had brought her, dropping the peels into a heap by her side while the local children were playing nearby. She pointed to them:

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<sup>82</sup> The late Joyce Injie was a Yinhawangka law-woman and the person who gave me a 'skin name' in 2009.

<sup>83</sup> Bellary Springs is an Aboriginal community located some 28km North-east of Paraburdoo and 40km South of Tom Price.

In the old days, them kids they be out learning. But now things change and they go school. But they still learn some, the girls know about the law. They know secret places they can't go to yet. But once they bleed then they learn. Old days, we had giveaways, and once they bled they could go with the man, but now they stay in school.

There is a certain nostalgia to her voice as she recalls "the old days". Joyce was acknowledging the adaptations which the rituals and related practices have undergone through contact with and the imposition of Western culture. The physical changes of puberty are still recognised as markers of the transition into womanhood and acquisition of knowledge is also correlative with these changes. The process is not considered to be finalised until the woman has reached maturity, which today is determined by Australian law. Thus, the woman is seen to be in the ritual liminal stage after she has begun puberty, but she remains unmarried. Joyce elaborated:

When she finish study. When she finish with school then she might go with a man. No more giveaways. But she need to be straight. She need to make sure she follow the law. But she can have children then, and she can go to the sacred place and see if the spirit comes to her.

The week before this conversation Joyce had taken me to some of the women's sites on-country. We had left Tom Price in a convoy of four 4x4 vehicles loaded up with enough sausages, steak, and chops to feed a small army, as well as potatoes, onions, and some salads. We had also loaded up on 'bully beef' which is the vernacular for the product sold by the brand Spam, and all the necessary ingredients for making damper. We planned to be on country for only two nights, but as we enlisted the assistance of Joyce's grandchildren, most of whom were young men, we needed to have sufficient supplies to feed them while we learned from Joyce about the sacred places. The men were only there to assist with driving and setting up camp.

As we reached the area where we would be leaving the bitumen road, Joyce recalled that she had first made this journey on a wagon when she had just become a woman. She recalled that she had travelled with other women and her grandmother, but that there had been no men present in the journey at all, and with a stern look in her face, she reminded the driver, one of her grandchildren: "You stay away! Stay where I tell you", to which he nodded stoically. I was

used to this stoic behaviour from Joyce's male grandchildren. During one of my first fieldtrips on-country while I was working at YMAC, Joyce had made me her daughter to put an end to their teasing and flirting. As such, the young men now treated me with deference and referred to me as "mum" at times, particularly during meals. More importantly, they showed their respect for my social position in relation to them through acts of service which were, often, related to sustenance, such as the fetching of cups of tea, making sure I had enough to eat, and was comfortable. My wellbeing was always second to that of Joyce as she was an elder and a law-woman. This was exemplified in the seating arrangements in the cars, where Joyce was always given the passenger seat rather than the back seat reserved for us younger women, with me being placed in the middle seat because of my lack of knowledge. Precedence was always given to those who held more knowledge.

Similarly, the process of cooking food for the group fell on the younger women, with Joyce overseeing, assigning roles and making sure that the food was cooked correctly. This entailed her sitting in a camping chair by the fire with a steaming cup of tea in hand, while we as younger women unpacked all the food and followed her instructions. A similar process was observed once we arrived at the *thalu*, where Joyce stopped walking at the edge of the area and asked the women to stand in a specific order on either side of her. She then stepped forward and spoke in Yinhawangka: "We women come here to hear you. We come as women of the country<sup>84</sup>". She then walked over to the pool and took some water, put it in her mouth, and blew it out through her front teeth. Then she motioned for us to come and sit by her while she began telling us the story of the pool and the trees around us. The knowledge being imparted by Joyce is secret women's business relating to the spirit children in the pool who are part of the Dreaming. They were deposited in the pool by the creators during the mythical epoch. These children are free to come out of the pool and move around in the country, but only to a certain extent. A similar concept was described by Radcliffe-Brown (see Brown, 1913; 1912a).

The pool itself was described by Joyce as a sacred place where only women who want to become pregnant should go swimming. And while the restriction applies to all men, it also applies to any child who has not undergone puberty. This place is only shown to women who

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<sup>84</sup> The statement was translated for me by one of the younger women at the time.

have undergone the first stage of initiation and who have advanced in their study of the law. Joyce maintains that swimming in the pool without knowledge of its Dreaming and without having learned the nature of the spirit children will result in grave danger and potential death. The above shows how the cosmological aspect of the law is manifested in the continuation of the ritual and the exchange of knowledge. This is equivalent to the exchange relation between the senior law-men and their students.

Women's law has names for its different stages through which the students must go to reach the senior level. One day Diana spoke of one of the higher levels of women's law while we watched her sons pluck the ducks they had hunted in Port Hedland:

Now everyone wants to go have their kids in the hospital. But the women who help with the birth, they are kanamaku law-women. They know all about the birth because it's part of the law and they must help when a baby is being born. Some of the people that live out in the communities, they have their babies at home sometimes. They the kanamaku.

Although the women's law is exclusive, there is also another aspect which is very much public, and which underpins all the social relations and interactions among *marlpa*. The largest and more crucial side of women's law involves learning, understanding, and enforcing of the social norms as prescribed by the kinship system. One day at a beach in Onslow, in early 2011, Angie was talking about the social norms:

The grannies come live with me, I teach 'em. I tell 'em what's right and what's wrong. And I tell 'em what happens if they go wrong. It happened to me. I married wrong. I went with someone that was wrong. And I got flogged. The women took me out and gave me a hiding. He got it too. Big trouble in those days.

Angie contextualised the punishment inflicted on her because of not marrying in accordance with the section system. But she also explained that this lesson is one which she, as a grandmother, is making sure that her grandchildren learn. The teaching of the section system

and all the social norms which are attached to it is a crucial aspect of the education of *marlpa* children learning how to relate to everyone around them.

Each of the roles which are assigned to *marlpa* through the sections system, that is son/daughter, brother/sister or mother/father come with specific duties and obligations which must be fulfilled for the society to function. Sharyn elaborated on this aspect while sipping on a coffee in South Hedland shopping centre: “Funerals, if you are doing traditional funerals, these four skins dictate how a person is buried.” Funerals in the Pilbara are an occurrence which brings the community together on a regular basis. The organisation of the ritual is given to the women kin and consanguineal sisters of the deceased. This allows the spouse of the deceased and the children to mourn without having to concern themselves with the organisational logistics. The responsibility is delegated to the deceased’s sisters after they have all gathered and wept in an act which Sharyn describes as “sorry business”. The term itself is colloquially used throughout the Pilbara to refer to the death of a member of the community in expressions such as, “We have had some sorry business” or “The family is going through sorry business”. However, the term has a deeper meaning as it specifically refers to the action of the section sisters of the deceased when they gather, either sitting or kneeling, with their arms around each other and weeping loudly<sup>85</sup>. The ritual is performed by the deceased’s section sisters twice, once when they gather for the first time following the death and then again after the burial of the coffin, which completes the ritual. The loud weeping does not always include physical demonstrations of grief, such as tears. It is a lamentation for the loss of the deceased that signifies respect and kinship. After the ritual is completed, the women can be observed to make motions of wiping away tears although some of them did not spill any. I saw this at a funeral in Marble Bar for a Niyaparli young man and asked Lorice to explain why they wiped their face. She said:

They don’t really cry. But you are mourning the loss. The life that ended and has gone on to be with the ancestors. So, the wiping is to say, I have wiped it away now, it finish.

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<sup>85</sup> This ritual, with some variation has been observed by anthropologists over time with some reporting bodily mutilation, cutting of hair, and the use of specific words Berndt, C. H. (1950). Expressions of Grief among Aboriginal Women. *Oceania*, 20(4), pp. 286-332. , Howitt, A. W. (1996). *The native tribes of south-east Australia*. Aboriginal Studies Press. , Kaberry, P. M. (1939). *Aboriginal Woman Sacred and Profane*. George Routledge and Sons, Ltd. , Spencer, B. (1914). *Native Tribes of the Northern Territory*. MacMillan.

The expression of grief is therefore symbolic, and it also allows the women to metabolise the loss of the member of the community, while also setting a specific time and place for this to happen. The wiping away symbolises the finality of death via mourning as well as the conclusion of the ritual. It is also important to understand that the kinship bond among siblings, either consanguineal or classificatory, is being severed by death so the essence of the individual returns to the Dreaming.

I have attended many funerals during my time in the Pilbara, and the graveside proceedings have undergone some minor changes, the most significant is the inclusion of Christianity and Christian rites. In 2017, I attended a Kariyarra funeral at a fundamentalist Christian church in Port Hedland. While most of the service was the usual traditional format which is often seen in non-Aboriginal services, the minister also made the following statement:

We must all turn our backs on blasphemous practices which will lead us astray and come disguised in tradition and culture.

This statement was purposely designed for *marlpa* among the congregation and targets their participation in traditional rituals, belief, and cosmology. It also firmly places cultural practices in the category 'sin' so that these behaviours are recognised as such and renounced by the congregation. After the church service, the mourners moved on to the grave side service, where the minister again made another speech, also referencing the ills of traditional practices. Then the service returned to the more usual mode of *marlpa* funerals where some of the people close to the deceased made speeches. This part of the service leads to the lowering of the coffin into the grave which is done by the consanguineal and classificatory brothers of the deceased. This done, they take turns filling the grave. Once the grave has been filled, the consanguineal and classificatory sisters will gather around the grave and shape it into a mound. This practice was referred to by Doris as a final reassurance for the deceased that they can now return to the Dreaming and leave the body behind for the country. It is an adaptation of past practices where the women would ready the corpse for burial and place it in the grave. Then the women will prompt children to hand out silk or plastic flowers to the mourners and a queue is formed where all the mourners will line up to pay their last respects. The flowers will be

placed on to the mound while the women will use the remainder of the flowers to decorate the mound. This practice is a symbolic representation of the country where otherwise the deceased would have been buried. However, the use of flowers is an adaptation which had its roots in Christianity and Western ritual. The use of plastic flowers is a response to the climate in the Pilbara, where natural flowers would have a very short lifespan when exposed to the elements.

Once the decoration process is completed, the women will gather once again, but this time around the mother and/or spouse of the deceased. They will conduct their ritual weeping for the last time. This ritual sequence is intended to provide comfort and support to the bereaved and to show solidarity for their loss. Thus, the rituals of birth and death are firmly ensconced within the realm of women's business. They are the ones who, through the cosmological and ritual knowledge acquired throughout their lives, bring *marlpa* together<sup>86</sup>.

The ritual itself is an expression of the belief that the essence which entered a person at conception, will return to the Dreaming. There are also some rituals which are practiced after the funeral of the deceased, and they ensure that the essence of the deceased has indeed followed the path toward the Dreaming. It is a regular practice for the individuals who co-habited with the deceased to move house to sever the connection with the deceased. Irene stated that if moving house is not possible then the room of the deceased is smoked with leaves from the *Puntuwari* tree to make sure that the spirit has returned to the Dreaming. This practice is also carried out by the consanguineal and classificatory sisters of the deceased as it is their responsibility to ensure that the journey of the essence from the body to the Dreaming is completed smoothly. For this reason, the name of the deceased will become taboo for a period as will the consumption of meat for the kin-group. The term *nyaparu*<sup>87</sup> is used when discussing a deceased person. If someone has the same name as the deceased person, then they will be known as *Nyaparu* until the mourning period has finished.

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<sup>86</sup> Although the Pilbara has many language groups within it, the ways in which the law is practiced is very similar across all of them, as I will show in the next section, this makes the introduction of law from other regions problematic.

<sup>87</sup> *Nyaparu* means 'namesake' in Nyjamaḷ, but it is used throughout the Pilbara now.

There are periods of abstinence<sup>88</sup> from certain types of food following the death of a loved one. However, unlike what Radcliffe-Brown reported, not all meat is avoided (Brown, 1913). While discussing food with Red one day when he took me out hunting for kangaroo, he stated that when someone dies the meat that you avoid is that which has a particular link to the deceased. Red told me that in the past it was the flesh of the totem of the deceased which must be avoided, but that more and more *marlpa* have now stopped eating kangaroo when someone dies. While Red mourned the change in the practice, he stated that it is a very large sacrifice to give up kangaroo as it is the main food in the 'meat' category. I asked him about the beef from either the stations or the supermarket, and he was quick to assure me that while beef is readily available, very few *marlpa* can afford to buy it from the supermarket and that the beef given by the stations as gifts to *marlpa* is not obtained regularly. He laughed and stated, "Everyone know how take down a 'roo! So, you go hungry without 'em! It's hard to give up 'roo." It is not until a family member is able to place a piece of the avoided 'meat' in the mouth of the mourner unnoticed<sup>89</sup> that the avoidance is lifted.

## 5.6 "They bring desert law": the legacy of the Pilbara Strike

The impact of the Pilbara Strike, which took place between 1946 and 1949, can still be felt within the community, particularly during law time. The strike was born from the inequality in pay experienced by *marlpa* workers at the hands of the pastoralists who had settled in the Pilbara after the exploration of the area in the mid-1800s (see Battye, 1915; D. McLeod, 1984; Olive, 2007; Scrimgeour, 2020; Smith, 1966). After the establishment of pastoral stations in the 1860s, station owners encouraged the settlement of *marlpa* on the stations and their surrounding areas as an opportunity to obtain cheap labour and also to prevent potential guerrilla activities within the stations (Palmer, 1981; Rowley, 1970; Withnell, 1901). The strike was an act of emancipation by *marlpa* that quickly spread into the Western Desert and the Kimberley attracting people from these regions into the Pilbara. Along with them came their law, lore, and customs (Scrimgeour, 2020).

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<sup>88</sup> The period of abstinence after the death of a loved one is called *jaji* in the Kariyarra language.

<sup>89</sup> The mourner must be taken by surprise.

The majority of the population movement of Aboriginal people from the Kimberley and the Western Desert to the Pilbara occurred in the period after the strike. They originally came to join the strike then settled in the region (Rowley, 1970). After the strike, the majority of the strikers returned to paid station work and improved conditions while Donald William McLeod, one of the leaders of the strike, went on to lead a group of people from all over the Pilbara, Kimberley and Western Desert into different mining ventures (D. W. McLeod, 1984). Over time this group split into two factions, one led by McLeod himself and the other by Ernie Mitchell, a Nyjamal man and late father of Doris. McLeod and his followers settled at Strelley Station in Ngarla country (Palmer, 2018). It is necessary to point out that the people who settled in Marble Bar, Nullagine, 12-Mile Reserve, Yandeyarra and Strelley were by no means those who belonged to those countries (Palmer, 2018). Indeed, there were many different language groups represented among the new residents of the Pilbara. They can be identified as economic migrants because their migration and settlement there was a direct result of the Pilbara Strike.

Kurtiri has often lamented the influx of these economic migrants into the Pilbara, particularly those who settled at Strelley Station:

That mob, the Nomads, they came to us the Ngarla people to ask for permission to bring their law to our law ground. They desert mob, so they wanted permission, and the elders and law-men said ok, they bring desert law. But then they just kept on doing it! And they have never come 'n spoken to me. I'm the boss there, and they never asked. They think they got the ok forever, but that not right. That law doesn't belong 'ere. That from the desert and it can go back. Country has its law and that's Ngarla law. A lot of trouble they caused. A lot of trouble.

Indeed, the Nomad settlers in the Strelley<sup>90</sup> and Warralong<sup>91</sup> area have been using the law grounds for their law time ceremonies since the end of the strike under the assumption that the permission granted to them by Ngarla and Nyjamal people back then would continue

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<sup>90</sup> The law-ground at Strelley belongs to the Ngarla people.

<sup>91</sup> The law-ground at Warralong belongs to the Nyjamal people and it is known as *Parpakurunya*.

indefinitely. The Nomads group challenged the Ngarla<sup>92</sup> and Nyjamal native title applications for those areas, claiming a connection to the land they occupy through birth, continuity of occupation, and that the country had been granted to them as a permanent bequest by Ngarla and Nyjamal elders after the strike. The Nomads went further and claimed native title by virtue of the bequest and birth by lodging the Warrarn (WAD 82/98)<sup>93</sup> and Birrimaya (WAD 6051/98)<sup>94</sup> native title claims.

The claim of such a bequest would contradict Ngarla and Nyjamal law as well as its cosmological basis. Joe a Nyjamal law-man<sup>95</sup>, spoke to me while we were having a cup of tea at his house in South Hedland:

They desert people. Their law is desert law. They say being born there gives them right to the country. But even desert law says different. I can't go to the desert and claim that country because there is no blood. My ancestors, they passed on the blood to me, and I pass it down. You claim through your grandparents.

Joe's assertion that he has the blood of the ancestors of the Nyjamal people speaks of it as the substance which links people to the ancestors and therefore the Dreaming. The specificity of the locale of the origin of the blood is a cosmological understanding expressed through songs and stories accessed during male initiation. It also provides the rights asserted by the Nyjamal people over country as the country is understood to also have a link to the blood. In the case of the Nomads, Joe stated:

They used to come to Warralong and they know a bit about our law. But knowin' is not having.

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<sup>92</sup> The Ngarla 2 (WAD 0077/05) native title claim had an overlap with the Warrarn native title claim.

<sup>93</sup> The Warrarn native title claim covered the area of the Strelley and Warralong pastoral leases overlapping part of the area which the Nyjamal people claimed through the Njamal 10 native title application and part of the area which the Ngarla people claimed through the Ngarla native title application.

<sup>94</sup> The Birrimaya native title claim covered the Callewa pastoral lease in the north-east of Nyjamal country which was claimed through the Njamal native title application.

<sup>95</sup> The late Joe Taylor was the brother of Jane and Johnson Taylor.

While Joe acknowledged that some of the Nomads indeed partook of Nyjamal law ceremonies and may have been given some knowledge, he clearly makes the distinction between having access to the knowledge and the cosmological concept of 'having' the law exemplified in the elders, law-men and law-women who are seen as 'having' the law within them and the right to impart it to others by virtue of their ancestry and years of learning. The claim to ownership of the country which the Nomads occupy did not reach boiling point until the introduction of the NTA. The Nomads had, according to the Ngarla and Nyjamal people, maintained a type of civility and respect for their authority. Following the lodgement of the Ngarla and Nyjamal native title claims, the relationship between the Nomads and *marlpa* soured and those who had formed kin relationships with them were forced to take sides. Jane, Joe's sister commented to me one Thursday night over a card game:

The people who married into the Nomads, well they had to come back. And the kids, they belong to Pilbara parent not to the Nomads. We need to look after our people, make sure they know the country and the law. The law that belongs in the country, not the one that was brought in.

Similar tales of conflict and the severing of kinship have emerged since the introduction of the NTA which have precipitated several physical and legal disputes among the Pilbara community and the economic migrants from the desert and the Kimberley. In the case of Strelley, Kurtiri, the *nyambali* of that law ground, is not informed of when the migrants will hold their law time. Consequently, he is forced to either use a different law ground or work around their schedule. The lack of communication between the 'Strelley mob' and Kurtiri is considered a lack of respect. It has caused mistrust between Ngarla people and the migrants, resulting in physical altercations as well as the lengthening of the native title application process because of the legal challenge in court. The Ngarla community refers to the Strelley area as being 'hurt' and 'feeling' the impact of holding the law celebrations of an alien law within it. They often ascribe illnesses and deaths within the Strelley community as being caused by the country because of their imposition upon it.

## 5.7 Conclusion

My encounter with the kangaroo and Cyril's words have stayed with me. What I have deduced from it is not necessarily the meaning that Cyril expected me to draw from it which, may still come, but that the 'lore' is open for interpretation although it is based on the 'law' which has been laid down by the creator spirits during the creative epoch. *Marlpa* regard their 'law' as unchangeable. It is a constant underpinning the ritual transmission of songs, socialisation, cultural reproduction, and the oral tradition experienced in concrete life-situations. The existential expressions of the law, for both the men and women of the Pilbara, although significantly different, involve the exchange of knowledge for sustenance. The process through which knowledge is exchanged by the men parallels that of the women in that it is carried out in stages designed to test the commitment of the student while weeding out candidates who do not show sufficient commitment. This exchange of knowledge sustains a status hierarchy where no one member is equal to another because of the level of knowledge which they have been able to acquire. Thus, while there is an equality between the genders, there is no equality among anyone who has not reached the highest levels of knowledge.

The law is the conduit which connects the generations of *marlpa* with the ancestors who shaped the world during the creative epoch and thus with the Dreaming. The adventures of the heroes and the path of the creators are written across the Pilbara in songlines which can stretch all the way into the NT, linking many different language groups who share a common cosmological belief which is then expressed in practice through ritual and the production of culture. The role of women within this belief system, although largely undocumented in the past, is clear and it places them as equal counterparts of the men, where the men's law cannot exist without the women and the women's law cannot exist without the men. It is the women who reinforce the cyclical nature of *marlpa* culture through their involvement and management of the rituals of birth and death. These rituals are also underpinned by the kinship system which is also embedded in the landscape through the songlines, and which is attributed to the activities of the creator spirits. There is a symbiotic relationship between the living beings, ancestors and country which perpetuates the cyclical nature of *marlpa* lifeworld, humans being but one aspect of the intricately interconnected system.

My experience of the experiential dimension of the law and lore is significant in that native title was rarely mentioned when discussing ritual and the transmission of culture. This signifies a clear barrier or divide between two dimensions within *marlpa* lifeworld, one which pertains to *marlpa* experience of law and lore, and one which pertains to native title.

## Chapter 6: Kinship in the Pilbara, a history

### 6.1 Introduction

'We famous innit?' exclaimed Elsie, a Kariyarra woman, while sitting under the carport at her house in South Hedland. Elsie had been chatting to me while her women kin were busy setting up for the card game which takes place every second Thursday. It is a tradition underpinned by the business of 'yarning'. Elsie and Lena had been discussing the evidence presented by one of the other families as proof of connection to Kariyarra country and they had been surprised and amused by the discovery that Radcliffe-Brown had named a kinship system after their mob. Kariyarra people were well acquainted with anthropologists and their genealogical research but their fame around the world had not sunk in until they were made aware of it through native title. "I'll tell you a joke!" laughed Lena loudly, "There was a family sat for a feed at home one day, there is mummy and daddy and brother and sister and the bloody anthropologist!" She let out a loud laugh and everyone around us laughed too. This statement is particularly true for *marlpa* as they have been subjects of anthropological inquiry since the late nineteenth century<sup>96</sup>. Research carried out by researchers and anthropologists in the Pilbara since colonisation has been intensive and it has come to establish anthropologists as a permanent fixture within Aboriginal communities, as affirmed by the joke Lena told.

Lena and her family have come to accept the presence of anthropologists and the native title industry as a fact of life for them, so much so that Lena's daughter Raylene has built a library of documents pertaining to her kin-group, the Gordons. These range from Radcliffe-Brown's genealogies to anecdotes jotted within station diaries mentioning an ancestor and their daily activities. Throughout the night, Lena and the other women tried to fill me in on the contextual details of their casual discussions to make me feel included in the conversation. They also reminded me at times that I should be taking notes:

That woman, she my skin sister you know? And so, she don't listen to me much, but I know more than she does. But make sure you write that down! She my skin sister not

blood, make sure you write that down”, stated Lena as way of explaining her relationship to a woman she referred to as “sister”.

Throughout the night, the women continued to reiterate their knowledge of anthropology through their concern for the accuracy of my notes, but they particularly focused on making sure I was getting the relationships right. Jane, a Nyjamal woman made a statement which clarified her position on the accuracy of anthropological records:

Make sure you get the name of the mummy right, the old fella had more than one woman, you know how anthros get it wrong and then the mess! We don’t want more fights over the genealogies.

The introduction of the term “genealogies” into the conversation re-focused the women on to the topic of native title and the constant in-fighting among native title claim groups based on membership and evidence presented in favour and against certain kin-groups. The women expressed their frustration about anthropological research and the conclusions made by native title anthropologists and the lack of communication of the outcomes of research. Lena was very vocal about the issue:

We tell ‘em and tell ‘em, and the old people told ‘em. And they still come back with it all mixed up and try to tell us that those people are Kariyarra! We know who we are. We always known. They go and talk to the wrong people when they should be talking to the old people.

The process of native title research seems to conflate the construction of genealogies with the research of kinship, and by doing so, it has alienated *marlpa* from native title professionals. The requirement for the proof of continued connection to country would be better demonstrated through the study of kinship relations articulated by the section system because these connections are all linked to the country and the Dreaming. The nexus kin-group and country has long been established in the history of kinship studies in Australia, but it is rarely reflected in the native title industry (see Bates, 1913; Dumont & Parkin, 2006; Finlayson et al.,

1999a; Myers, 1991; Needham & Kuper, 1976; Palmer, 1981, 1991; Radcliffe-Brown, 1912b, 1913, 1930a, 1930b, 1931, 1940; Sutton, 1978, 1998; Tindale, 1953).

## 6.2 The early days: women's business

The study of Aboriginal kinship systems began in the eastern states long before it reached the Pilbara. Morgan (1871) published *Systems of Consanguinity and Affinity of the Human Family* which is now considered to be foundational to the study of kinship in anthropology (Gardner, 2008; Morgan, 1871). Morgan's work piqued the interest of Lorimer Fison, a Methodist missionary who became his correspondent and collaborator. Despite Fison's many publications on the subject, he self-identified as an amateur scholar and developed his own theories grounded on his Methodist faith. Here, it is important to acknowledge that in those early days, the concept of cultural relativism had not been introduced into the methodological tool kit, as such, the perspectives of early researchers are those of outsiders observing<sup>96</sup> rather than of researchers immersed in the culture (Dall & Boas, 1887; R. Lowie, 1917; R. H. Lowie, 1917). Furthermore, the perspectives may have also been influenced by the socio-political worldview of the times, and the ideological frameworks of Western cultures, such as a patriarchal perspective and Christian beliefs.

From those early beginnings, the study of kinship has been the subject of a tug of war between different schools of thought, and the strongest of those schools was grounded in Darwin's (1860) work on the origin of species. Fison's understanding of kinship was influenced by Morgan's belief in the 'natural' system of descent and transmission, that between a father and son, and its central thesis is based on Darwin's theory. This monogenist paradigm fit perfectly into the social context of the American school of thought and was reinforced by the observations of Morgan's missionary contributors in India and Asia but in particular, Hawaii where Morgan identified an evolutionary 'failure' in the classification of brothers and sisters which led to his proclamation of promiscuity (Gardner, 2008). This assumption was the basis

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<sup>96</sup> At the time Morgan was conducting research by sending his correspondents questionnaires to fill out based on their observations.

for Fison's research first in Fiji and then in Australia and also the research of Morgan (Gardner, 2008).

By 1871, Fison had relocated to Newtown (Sydney) and had arranged for an in-depth study into the kinship of Australian Aboriginal people using the idea of human unity as a grounding stone. He was joined by A. W. Howitt (1830-1908) and together they immersed themselves in the study of Australian Aboriginal kinship; the latter's anthropological and geological experience shaped their theoretical framework (Keen, 2000). They were the first scholars to classify the types of Aboriginal kinship systems in relation to Morgan's work. As was the case with Fison's study of Fijian culture, they framed Aboriginal social structures and kinship systems by drawing on evolutionist ideas and geological metaphors which supported them (Keen, 2000). Fison and Howitt based their classifications on locality and marriage regulations while arguing for the existence of 'class-names' and totems. Their formulations and arguments were primarily based on responses to questionnaires they sent to various individuals who lived near and interacted with Aboriginal people rather than on ethnographic fieldwork. They tentatively concluded that 'class-names'<sup>97</sup> were associated with totems although these were not always associated with 'class-names'.

Their classic work on Kamilaroi and Kurnai people (Fison & Howitt, 1880) was dedicated to Morgan who wrote a "prefatory note". There he sketched the development of Aboriginal kinship in terms of his linear evolutionary scheme and, also, introduced the notion of 'tribes' into the discussion. This classification of the structure of Aboriginal groups was refuted by Fison and Howitt (1885:143):

We have perceived that we were misunderstood to affirm in our joint work, "Kamilaroi and Kurnai", that "the members of a class, or totemic division, live in a community apart from those of other divisions." In order to prevent further misconception on this point, it seems absolutely necessary to fix upon some term which shall unmistakably indicate the local divisions as distinguished from the social. In a short memoir entitled "From Mother-right to Father-right", we called them "local clans." But the term "clan" is

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<sup>97</sup> Later re-classified as sections and sub-sections by Radcliffe-Brown.

misleading when applied to people who have descent through the mother, and it had better be kept exclusively for those who follow the other line. The very sight of it suggests agnation, and the mind refuses to remain continually on its guard against old impressions. Too frequently it takes in the report of the eye without testing its accuracy. In the place of "local clan", we therefore now propose the word HORDE for want of a better. This at least is not likely to be misunderstood.

Doris stated while sipping on her V8 juice one afternoon at the block in Nyjamal country:

The women deal with the family stuff, you know, who marries who and why, the men deal with the creation and how it all came to be, that's secret business. Without women's business, there is no men's business, and without men's business there is no women's business. We all work together.

Howitt and Fison (1880: 143) make a reference to descent through the mother, and state that:

Descent being through the mother as the general rule, the child is of its mother's totem, not of its father's. But it belongs to the horde in which it was born.

Fison and Howitt's (1880) reference to women's business is congruent with Doris' statement, and it is perhaps one of the earliest references to women's business within Australian anthropology. However, this brief reference along with the allowance for descent from the mother paints the 'horde' as a community which has a defined and known hunting area, contains associated totems and could be matrilineal in descent (Hiatt, 1996). The classification of the horde as being either patrilineal or matrilineal is in direct contradiction to later accounts, particularly those of Radcliffe-Brown (1913; 1912b, 1915-1951b, 1930a, 1930b, 1931, 1940). Indeed, today, most language groups in Australia are believed to be patrilineal although the identity and rights inherited through both lines of descent should not be ignored.

The role of women in the Pilbara has not been described in detail within anthropology, Doris touched on this:

Women have always been ignored by the whitefellas, and that suits us fine. But they can't say they know anything about blackfellas until they understand that we work together and that men are not the boss. We have women and men and they are boss together.

This assertion by Doris contradicts the long-standing beliefs about the significance of the role of women in ceremonies. Doris continued:

There is women's business and there is men's business. Anthropologists always want to know about initiation you know, so we tell them to speak to the law-men, if someone wants to speak about skin name then they must talk to law-women. That's women's business. And we say who belongs where during law time. The mens, they do their thing, but they can't do it without us.

This statement by Doris highlights the particular interest expressed by anthropologists in the ritual of male initiation, which is considered men's business. This interest has led the women to refer anthropologists to the men to discuss the details, therefore omitting their contribution and avoiding scrutiny. Fison and Howitt may have acquired some information in relation to the role of women as they have tried to mention their involvement and define their contribution within the social structure, however as their access to women may have been restricted or minimal, their ability to accurately describe women's business was hindered.

Subsequent studies of kinship and social organisation across Australia, with a few but notable exceptions (see Berndt, 1950; Cowlshaw, 1986; Cowlshaw, 2006, 2009; Gale, 1972, 1974, 1981; Gale & Wundersitz, 1982; Glaskin, 2007, 2012; Goodall, 2008, 2013, 2017; Kaberry, 1939; Merlan, 1998, 2005), discuss evidence provided predominantly by men with the glaring exclusion of the female voice. Contradictorily, the majority of anthropologists involved in the native title industry are female, however this is the case specifically for in-house anthropologists (McGrath, 2012) whose engagement in fieldwork is often very limited. Consultant anthropologists on the other hand, are in their majority male, and of an older generational bracket (McGrath, 2012). Thus, a lack of experience working in the field and with Aboriginal people, which often is the case with in-house anthropologists, are two issues which

have prevented the inclusion of women's roles and women's business from taking a more central role within the native title industry. In the Pilbara, despite the heavy presence of female anthropologists working in the native title industry, women's business and law is rarely discussed with native title professionals. This in turn has perpetuated the myth of the lack of women's law.

### 6.3 Research in the Pilbara: a tale of kinship in the Pilbara

One of the first to describe the social organisation of *marlpa* as a whole was Yabaroo (1899) who provided an in-depth account of kinship laws and associated words and expressions which can still be observed in the Pilbara. Anthropologist Kingsley Palmer (1981) provides the most detailed analysis of the kinship system of the Pilbara through his work in Yandeyarra. His work draws from some of the information provided by Yabaroo more than a hundred years ago.

Curr (1886) briefly discussed the kinship of Ngarla people<sup>99</sup> and Ngarluma people<sup>100</sup>. His information, much like that of Morgan, Fison and Howitt, originated from a series of questionnaires which he mailed to his contacts in the Pilbara from 1865 onwards. The contributors to the discussion about Ngarla people were Roger T. Goldsworthy, the one-time Colonial Secretary of WA and Mr. Charles Harper. From the data he received, Curr (1886) concludes that Ngarla people fit into four classes, which he understood as a way of controlling and ordering marriage, making incest impossible. Indeed, Kurtiri<sup>101</sup> stated: "Skin system comin' in so you not been a mongrel. You don't marry your sister, you don't marry your aunty, you marry straight." His statement supports Curr's conclusions about marriage laws superficially. However, as with all systems of law, there are exceptions and, in those cases, there are repercussions which Curr does not mention. Curr also did not discuss the role of women in relation to kinship. Thus, while his points are accurate, they lack nuance and detail.

Curr also briefly comments on '*jadgee*', the food restrictions applied to men who have been put through the first stage of initiation. This restriction is men's business, and as Kurtiri stated, "depends on the skin name, some don't eat *mangkuru*<sup>102</sup>, some don't eat goanna, it goes by skin<sup>103</sup>, not everyone the same." This highlights a lack of fine-grained data by Curr, although he does go into a little more detail when describing the food avoidances involved in sorry business.

Kurtiri stated, “everything goes back to the skin,” when discussing the death of a young Ngarla woman and the food avoidances that must be enacted. “Your skin tells you what you can and can’t eat when the people die. You can’t just stop eating all meat, you starve! But you need to follow the skin.” I asked Kurtiri how people know to follow the skin, he simply responded, “Ask your mummy’s mummy.” There is an implication here about the role of women, but more specifically, the role of the MM. While Curr’s data on Ngarla restrictions provides a good baseline from which to build upon, it is clear from my discussion with Kurtiri that Ngarla women are the best source of information in relation to the section system and the rituals associated with it. This presents a problem with the existing historical data because in its majority, it was collected by men from men. The only female anthropologist to discuss kinship in the Pilbara was Daisy Bates. Even in her work, the female voice, and consequently, women’s business was omitted and instead Bates famously described a male initiation ritual (Bates, 1912, 1913).

Curr (1886) describes the Ngarla section system briefly and he limits his discussion to stating the section names and who they can marry. He states that a Poorungnoo<sup>98</sup> male can marry a Parrijari<sup>99</sup> female and their offspring will be Kiamoona<sup>100</sup>, a Banakoo<sup>101</sup> male can marry a Kiamoona female, and their offspring will be Parrijari, a Parrijari male can marry a Poorungnoo female, and their offspring will be Banakoo and finally, a Kiamoona male can marry a Banakoo female, and their offspring will be Poorungnoo. “I’m Purunu, my father is a Karimarra” explained Kundi, which confirms that Curr’s reports were accurate, furthermore, the rules about marrying “straight” coincide with those outlined by Curr. The brief description of the sections used by Ngarla people however does little to articulate the intricacies of the system which influences every aspect of life in the Pilbara.

Male	Female	Child
Poorugnoo	Parrijari	Kiamoona

<sup>98</sup> Purungu or Burung.

<sup>99</sup> Milangka or Paljeri.

<sup>100</sup> Karimera or Karimarra.

<sup>101</sup> Banaka or Pannaga.

Banakoo	Kiamoona	Parrijari
Parrijari	Poorungnoo	Banakoo
Banakoo	Kiamoona	Poorungnoo

Plate 24: The Ngarla section system as described by Curr (1886).

Curr's (1886) correspondents for Ngarluma data were Sir. Frederic Weld, Governor of Western Australia, Mr. Horace Sholl and Mr. A. K. Richardson on whom Curr relies on the most. An off the cuff statement by Curr (1886) deals with the avoidances of young initiates which in this case he describes as an avoidance of animal food or *jajee*. But the term *jaji* in fact refers to the young men who have gone through *wamulu*<sup>102</sup> as clarified by Wilfred, a Ngarluma elder, who stated: "They can't eat the kangaroo on the bush, they can eat the rock wallaby, but not the one on the bush. They must keep away from the emu and bush turkey too. It's got to do with the blood, but I can't say no more." The term *jaji* is the name given to initiates, not their avoidances, in this case Mr. Richardson's information was accurate to a degree.

Curr (1886) states that the marriage age of women is nine, however Tootsi<sup>103</sup> clarified:

I was a give-away, did you know that?' I had a *nyuba*<sup>104</sup>, It was all arranged from the time I was born, my grandmother (MM) set it up. He had to bring food and some of the roo's he got. But he ran off.

This is a description of the ritual and reciprocity involved in the arrangement of marriages in the Pilbara. The man was expected to provide for his future wife and her family as proof of his ability to provide for his future children. And while the child might be promised in marriage at any time prior to reaching maturity, the *nyuba* must provide for that child until she is able to marry, in Tootsi's case, she would not have been allowed to marry until reaching the age of consent in Western Australia (WA): "The girl can't go to her husband till she is allowed by the

<sup>102</sup> The first stage of initiation for men in the Ngarluma language.

<sup>103</sup> Tootsi is a Ngarluma law-woman.

<sup>104</sup> Spouse in the Ngarluma language. This term is gender neutral.

law”, stated Lorice<sup>105</sup>, referring to Australian law, rather than *marlpa* law which implies that there has been a cultural adaptation.

Curr (1886) highlights the age of the men when they marry stressing that they are significantly older than the women. This is because in those days, men could not take a wife until they had gone through *wamulu*. “Back then the mens had to prove they could be there for the women and their kids. They had to prove themselves, you don’t want to give your daughter to man that can’t provide” stated Tootsi. Therefore, the arranged marriages were made when the man was of age around sixteen or eighteen and the woman was a child. By the time the woman comes of age, the man was in his late twenties or early thirties. The arrangement of marriages according to Tootsi, has ceased to be practiced and most couples find each other, but ‘straight’ marriages are still preferable.

The term *nyuba* is one which goes beyond marriage, as it also applies to the role each person has during law time. Pansy, a Ngarluma elder stated:

Back in the day, once you were done with your *nyuba* and find a new man then you go spend time with him, but your *nyuba* is always your *nyuba*, he was chosen for you. Sometimes the woman didn’t find anyone for herself, so she stayed with him and his new woman. But it wasn’t all three together!

She also stated that *nyuba* in the Ngarluma language only refers to a husband who aligns with a wife through the section system. It is never applied to a non-Aboriginal man or to someone who is not “straight” within the section system. “If your brother dies then the family has to look after his wife and children. We are family, we look after each other!” stated Lorice, which suggests a duty based on kinship bonds and reinforces the possibility that a man did not necessarily marry his brother’s widow as suggested by Curr, but rather he brought her in to live with him and his wife.

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<sup>105</sup> Lorice is a Ngarluma woman.

It is necessary to emphasise here that the contribution of women to the livelihood of the group was at times larger or equal to that of men which would have incentivised both men and women to remain within kin-groups. The division of labour within *marlpa* groups follows that generally described for hunter-gatherer societies, however the emphasis is usually placed on the hunting activities and therefore on the contribution of men (Hamilton, 1981; Hiatt, 1978, 1982, 1996; Keen, 2021). But, as Hiatt (in Gale, 1974) concludes, the procurement and subsequent consumption of bush foods, shellfish and fish as well as the hunting of small animals makes up the majority of the traditional foods consumed by *marlpa* in the Pilbara. This would make the labour provided by women equal if not greater than that provided by men thus facilitating widows, single women, ex-wives, and daughters to remain within the kin-group and be economically viable.

The description of Ngarluma people’s section system by Curr (1886) is very similar to that presented for the Ngarla people. He describes Ngarluma people as endogamous and divided into four sections which prevents the occurrence of incest. He names the sections as Booroongoo<sup>106</sup>, Panaka<sup>107</sup>, Kymurra<sup>108</sup> and Palyeery<sup>109</sup>, however he does not comment on the similarity of the names or whether the sections can be translated into the Ngarla system. “The skin names, they change once you cross over the boundary from Ngarluma to Kariyarra. Just one of the names, but it changes. Not a lot of people know that anymore” stated Tootsi, while discussing the difference between Milangka and Paljeri. “They are the same. Same totems, same stories, same thing, just different name. It’s like when you go into the Kimberley, your skin name changes, but it’s all the same.”

Male	Female	Child
Booroongoo	Panaka	Kymurra
Palyeery	Kymurra	Panaka

<sup>106</sup> In the Ngarla system Curr called it Poorugnoo. It is also known as Purunu or Burung.

<sup>107</sup> In the Ngarla system Curr called it Banakoo. It is also known as Banaka or Pannaga.

<sup>108</sup> In the Ngarla system Curr called it Kiamoona. It is also known as Karimera or Karimarra.

<sup>109</sup> In the Ngarla system Curr called it Parrijari. It is also known as Milangka or Paljeri.

Panaka	Booroongoo	Palyeery
Kymurra	Payeery	Booroongoo

Plate 25: The Ngarluma section system as described by Curr (1886).

Mathews (1900) writing at the turn of the century described what he termed as “the social organisation, rites and customs” of Aboriginal people from all over Australia. He also discussed the Pilbara in several of his monographs. He classified the broader social organisation of Aboriginal people as ‘tribes’ and stated that each is an aggregation of groups which he further classifies into ‘sub-tribes’. This is congruent with the definition of language groups bounded together through common language and kinship ties, and each kin group having a defined territory. Diana stated:

My country is Marapikurrinya. That’s my country. It goes from Port Hedland all the way past South Hedland and on to the boundary with Ngarla and on the other side to just before Munda Station. It’s the country of my ancestors and no one can come on here without my permission. It belongs to us.

Here she asserts ownership over a strictly defined area passed down from her father which she and her brother hold as elders and law persons of their kin-group. However, they also assert Kariyarra identity and are members of the broader Kariyarra community with whom they celebrate law time and who recognise them as part of the Kariyarra community. This mutual recognition is imperative within language groups because without it the claim to identity and country will not be acknowledged.

Mathews (1906) also discussed the name by which each language group is identified and asserted that the name of each of the ‘tribes’ is derived from the language they speak. This further reinforces the bounding of the kin-groups through language and cosmological beliefs, and in turn the songlines. “The country is our language, it’s all there, the old people gave us the language and put it on the country for us” stated Lorice during one of our many drives between South Hedland and Roebourne. The country, Lorice told me, also tells people where one country begins and the other ends, which is also discussed by Mathews (1906). He stated

that language group boundaries are not specifically defined as they 'melt' into one and include small tracts of land which are seen as "no man's land".

This definition of boundaries has caused a lot of discussion and dissent among native title anthropologists and its interpretation has been widely discussed and argued (Mathews, 1906). The "no man's land" to which Mathews refers was discussed by Irene, one day when I visited her in Yandeyarra:

It's not shared country! I don't know what they talking 'bout! If you got no permission to come into country, then they walk along the track of the boundary. There is always a track along the boundary. Boundaries are marked by rivers or hills so they don't move often and there are walking tracks along them for ones who can't come in.

Irene argued passionately when I asked about the idea of a 'shared country' between Ngarluma and Kariyarra land. The often cited idea of 'fluid', 'indefinite' or 'shifting' boundaries in terms of the territory occupied by language groups (Thompson and Turpin, 2003, 1998) is refuted here, however it is important to take into account that while boundaries may not have been defined in the past, the influence of Western notions of territoriality as well as the rigid boundaries introduced by cartography may have influenced Irene's views (Sutton, 1995; Tindale, 1974; Tonkinson, 1975-1976). However, Kariyarra people conceptualise their territory as being a defined area which is marked by landscape features which are not fluid, indefinite or shifting.

Mathews (1910) divided WA into river areas without naming the language groups and without marking set boundaries in accordance with his data. He concludes that the four-section system, or a version of it, is prevalent from the Murchison River right into Glen Cumming in South Australia (SA) and north into the Pilbara. He describes the Ashburton, Fortescue, Yule, Shaw, De Grey, Lower Fitzroy River and Oakover River, as well as the area between Roebourne and Broome and inland into Derby as areas where the four-section system is prevalent. He names the sections as Butcharrie, Karrimurra, Burronga and Banaka and concludes that they are variations of the system he has observed elsewhere. He also states that save for a small section from Geraldton to Onslow, all language groups circumscribe. This small section of land would

include Thalanyi people and Kurrama people. Although he seems to have intimate knowledge, Mathews (1900) limits his discussion to the physical aspects of the process ignoring the spiritual aspects of the rituals and the connection between country, people and ancestors.

Cycle.	Wife.	Husband.	Child.
A.	{ Booronga	Palchari	Banaka
	{ Banaka	Kaimara	Booronga
B.	{ Palchari	Booronga	Kaimara
	{ Kaimara	Banaka	Palchari

Plate 26: The section system of the Fortescue, Ashburton and upper portions of the Gascoyne, Murchison and Sanford rivers (Mathews, 1910:130).

In his second monograph about the Pilbara, Mathews (1910) discusses the language groups in more detail, the kinship system, descent, and customs in a more positive light than in his previous papers using an informant, A. E. Clifton, who Tootsi immediately recognised, “Awww *marnu*<sup>110</sup>, that old *juju*<sup>111</sup> was my *maahubajee nyuminy*<sup>112</sup>! He went way north and married a woman from a place called Frog Hollow.” In this monograph, Mathews elaborates on his findings in relation to the section system and brings forth a discussion about marriage and descent. He argues that descent is always reckoned through the maternal line which is consistent with some of the data of recent times, however it contradicts all early ethnographic accounts in the Pilbara. This may be because there was a dearth of information relating to the role of women in the cultures of the Pilbara.

<sup>110</sup> The term translates literally to ‘shit’ however it is used as an exclamation of awe among Ngarluma people like ‘Oh wow’.

<sup>111</sup> Old man in the Ngarluma language.

<sup>112</sup> FFFB in the Ngarluma language.

Cycle.	Wife	Husband.	Child.
A.	Kaimara Banaka	Palchari Booronga	Banaka Kaimara
B.	Palchari Booronga	Kaimara Banaka	Booronga Palchari

Plate 27: The section system from Roebourne through to Broome (Mathews, 1910:128).

In 1904, Daisy Bates was appointed by the WA government to research the Aboriginal people of the state (White, 1981). By this time, she had already carried out considerable fieldwork in Roebourne and Port Hedland and other parts of WA. Bates was in contact with Andrew Lang in England and had been corresponding with him in relation to the book she was working on. Lang is said to have shown Radcliffe-Brown parts of Bates' manuscript which sparked his curiosity as he was known to have an interest in kinship (White, 1981). In 1910, after Bates had already published a series of newspaper articles in relation to Aboriginal kinship, John Forrest, the former first premier of WA asked her to assist Radcliffe-Brown in his inquiries into Aboriginal kinship (Blackburn, 1994), Bates agreed to assist under the condition that her material would be included in the reports of the expedition with a view to publish with Cambridge University Press. There seems to be a lot of contradictory information about Bates and Radcliffe-Brown and their expedition to the Pilbara. However, it is clear that Bates came to the assistance of Radcliffe-Brown and obtained funding for his expedition (Blackburn, 1994). She also provided him with at least some information and data which she had collected during her earlier expeditions in WA, including some material about the Pilbara groups (Blackburn, 1994).

It is also a well-documented fact that Bates asked Radcliffe-Brown to look over the manuscript for *Aborigines of Western Australia* which, at the time of their first meeting in 1910, was complete and ready for publication (Blackburn, 1994; Eagle, 2011; Needham & Kuper, 1976; White, 1981). Bates also used her connections to launch the expedition with Radcliffe-Brown. However, this did not produce the expected volume of data which Radcliffe-Brown needed for his research and the model of fieldwork methodology was changed. Radcliffe-Brown and Bates then went to hospitals and reserves where there would be a greater variety of 'informants'

available in one place. Bates described the experience of conducting research at the hospitals in Dorre and Bernier islands with Radcliffe-Brown as horrific and stated that:

To question the poor shuddering souls of these doomed exiles was slow work and saddening...Of all the tribes there so dismally represented, from Hall's Creek to Broome and Nullagine, from the Fitzroy River to Winning Pool and Marble Bar and Lake Way, I learned much of infinite value in vocabularies and customs and pedigrees and legends. (Bates, 1944:101).

The famous Bates versus Radcliffe-Brown conflict arose six months into the expedition and they parted ways citing incompatibility in their approach to research (White, 1981). In his autobiography, their companion Grant Watson stated: "She was made for his exasperation and he for hers"<sup>113</sup> (Watson, 1968:105).

Writing almost 30 years after Curr (1886), Bates (1913) divided the Pilbara into three regions: East Pilbara, West Pilbara, and Ashburton. She listed Nang'a murda<sup>114</sup>, Kar'adhari<sup>115</sup>, Ngala<sup>116</sup>, Nyamel<sup>117</sup>, Widagari, Bailgu<sup>118</sup>, Ngadhari and Ibarrga as identifiable and cohesive groups. While some of the groups included in her article are not considered to be part of the Pilbara cultural block today, it is possible that they share the same kinship system. Further Widagari, Ngadhari, and Ibarrga people are not the names associated with any of the Pilbara language groups today. Martu people, Nyiyaparli people, Yinhawanka people, Banyjima people, Ngarlawangga people and Jurruru people are also missing from her list of the Eastern Pilbara. However, at times, *marlpa* will also exclude the Ngarlawangga and Martu people when referring to the Pilbara because they are considered 'desert people' with a different law.

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<sup>113</sup> It is not clear why they were unable to work alongside each other although Bates left the expedition for several months and later returned to work for a short period of time. This conflict did not come to an end there, but rather it lay dormant for some years until a very public incident in Melbourne during the British Association meetings in 1914 where Bates publicly accused Radcliffe-Brown of submitting her work as his own. Of this accusation, it is generally agreed by anthropologists that Bates was referring to the 'Kariera system' which provided Radcliffe-Brown with a significant prestige in his career. These charges against Radcliffe-Brown have not been proven.

<sup>114</sup> Nyangumarta people.

<sup>115</sup> Karajarri people.

<sup>116</sup> Ngarla people.

<sup>117</sup> Nyamal people.

<sup>118</sup> Palyku people.

Male	Female	Child
Boorong	Paljari	Kaimera
Banaka	Kaimera	Paljari
Kaimera	Banaka	Boorong
Paljari	Boorong	Banaka

Plate 28: The section system from the Eastern Pilbara as described by Bates (1913).

Bates (1913) discussed moieties, totems, and ceremonies specific to each moiety. The use of the term ‘moiety’ is interesting here because it is usually associated with the division of a section into sexes but there is no moiety division of the sections in the Pilbara. Nevertheless, the level of detail provided by Bates paints a more thorough picture of social interaction in the East Pilbara. It also opens the discussion about the link between the section system the *thalu*<sup>119</sup> sites and songlines. She also makes a brief yet significant note on the role of women in *thalu* ceremonies, which is the first time that women have been discussed as active in ritual performance. However, Bates’ statement does not provide any insight into the connection between *thalu* sites and associated ceremonies, and she does not discuss the reason why women might be involved.

“*Thalu* are sacred places. It has to do with totems and the knowledge is passed through the skin names. I learned about my skin totem from my grandmothers, and they told me where to go and how to do it” confided Natalie<sup>120</sup> while we were chatting at the Auski roadhouse on our way to Newman. Natalie belongs to the same section as her MM, and it was her duty to teach her about the section totem which she acquired at birth. As a member of her section, she has duties and responsibilities relating to that totem and how that totem is managed through ceremony and ritual performed at the *thalu* sites. The membership to a section is not dependant on sex, and therefore women are included in the management and ceremonial

<sup>119</sup> Increase site in the Ngarluma language.

<sup>120</sup> Natalie Parker is a Nyiyaparli woman.

activities of that totem. However, Bates' brief note diminishes the role of women and implies their participation is minimal.

In her description of the West Pilbara, Bates (1913) only discusses four groups, Karriara<sup>121</sup>, Ngaluma<sup>122</sup>, Mardatunera<sup>123</sup> and Kau'arndhari. The name Kau'arndhari is one which is not associated with any of the language groups of the Western Pilbara today, and as with the Eastern Pilbara, Bates also missed West Pilbara groups, namely Thalanyi people, Pinikura people, Kurrama people, Yaburara people and Yindjibarndi people. Bates (1913) says that the distinction between the East and West section systems is due to the practice of circumcision during the first stage of initiation. This statement is supported by Tootsi who stated that the section system changes on the boundary between Kariyarra and Ngarluma. Similarly, Bates (1913) asserts that the change in the section system occurs at Balla-Balla, which is a creek located near the boundary in question. However, Tootsi did not talk about circumcision, so I broached the subject with Wilfred<sup>124</sup>. He just said that circumcision is still practiced in the Pilbara but since the topic is men's business, he quickly asked for another cup of tea to avoid further discussion.

<b>Male</b>	<b>Female</b>	<b>Child</b>
Boorong	Banaka	Kaimera
Banaka	Boorong	Paljari
Kaimera	Paljari	Boorong
Paljari	Kaimera	Banaka

Plate 29: The section system from the Western Pilbara as described by Bates (1913).

Bates discussed adoption and incorporation into language groups, writing that adoption is a possibility and provides the example of a man from an uncircumcised language group being

<sup>121</sup> Kariyarra people.

<sup>122</sup> Ngarluma people.

<sup>123</sup> Marthudunera people.

<sup>124</sup> Wilfred Hicks is a Ngarluma law-man.

adopted into a group which circumcises. She further suggested that this has been witnessed many times and that she has been made aware of several instances where adoptions have occurred. She does not provide further detail as to why these adoptions took place and how the concept of 'belonging to country' was managed by the groups. Adoption is one of the major issues being debated by the language groups in the Pilbara with native title anthropologists. In contrast to Bates, *marlpa* assert that adoption is not and has never been possible.

In her description of the Ashburton region Bates discusses Tallainji<sup>125</sup>, Burduna<sup>126</sup>, Biniguru<sup>127</sup>, Baiung, Maia and Targari. The last three groups are not associated with any of the language groups of the Eastern Pilbara today. The area which Bates describes as 'Ashburton' takes its name from the Ashburton River but today is part of the Western Pilbara. Another reason behind Bates' distinction between the Ashburton region and the Western Pilbara may be because groups in the Ashburton region do not circumcise during the first stage of initiation although there is no indication that this was a reason in her writing. Bates does not change the spelling or order of the section system in her Ashburton area from the one she provides for the Western Pilbara. This coincides with the close relationship between Kuruma people and Marthudunera and Pinikura peoples which can be seen today and is expressed through the celebration of 'law time' together. These three groups have also lodged several native title claims together and although there is conflict, I have observed them to have a more amicable relationship than most native title claim groups.

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<sup>125</sup> Thalanyi people.

<sup>126</sup> Kurrama people.

<sup>127</sup> Pinikura people.

Male	Female	Child
Boorong	Paljari	Kaimera
Banaka	Kaimera	Paljari
Kaimera	Banaka	Boorong
Paljari	Boorong	Banaka

Plate 30: The section system from the Ashburton region as described by Bates (1913).

Bates discussed what she termed the 'Boorong - Kaimera moiety':

Totems are hereditary, and certain ceremonies are performed by the Boorong-Kaimera moiety (fathers and sons), and by the Banaka-Paljari moiety (also fathers and sons), for their hereditary totems (Bates, 1913: 391).

Bates (1913) also linked the Karimarra section and the Purungu section with the *Thalu* of rain, kangaroo and what she termed as 'other' totems. She also divided the section system into phratries stating that a male in possession of an emu totem is called *Wariara*, while a woman in possession of the same totem is called *Ngogoji* in the Kurrama language group. Bates also argued:

Certain hereditary totems are localized, and in these local centres there are special places called thalu, which may be mound, pool or hill, where the ceremonies for the increase of the totem are performed by the moieties of such totem. Some totems are eaten, others are abstained from. Women may assist and take some part in the ceremonies for the increase of the totems of their moiety (Bates, 1913: 391).

#### 6.4 A. R. Radcliffe-Brown: the 'Kariara System'

After his falling out with Bates, Radcliffe-Brown made his way north from Carnarvon crossing over Kariyarra country which completed his research. The result was the introduction of the

Kariera system to the anthropological community which is a typology of social organisation (McConvell & Hendery, 2017). Radcliffe-Brown contended that the Kariera system was a widespread system thereby overruling the universalist categorisations previously presented by Fison and Howitt (Fison & Howitt, 1880). The system made the Kariyarra people famous throughout the world because of the description of restricted exchange and his use of structuralism (Levi-Strauss, 1969; McConvell & Hendery, 2017).

When outlining the Kariera system, Radcliffe-Brown left behind previous evolutionist and diffusionist diachronic structures and framed his work through structural functionalism (McConvell & Hendery, 2017; Radcliffe-Brown, 1937b). However, it was not only Radcliffe-Brown who contributed towards the framing of the system over time, Elkin (1938), Keen (2013), Leaf and Read (2012), Scheffler (1978), McConvell (2015), McConvell and Keen (2011), McConvell and Hendery (2017), among others, have discussed Radcliffe-Brown's work and the Kariera system at length and built upon and contributed to its understanding.

It is important to consider Radcliffe-Brown's perspective. When he refers to the 'Kariera System', he is referencing a whole system of relatedness which includes marriage rules, kinship terminology and the relational rules between individuals. Radcliffe-Brown perceived kinship in the Pilbara as an underpinning concept that bound *marlpa* societies together and connected the cosmological and phenomenological together. As such, the complexities of the system described by Radcliffe-Brown and his successors are seldom able to be studied or understood in the short periods of time which are available to in-house native title anthropologists.

#### **6.4.1 System of relatedness**

Standing outside Coles in South Hedland, Darren<sup>128</sup> was smoking a cigarette while we chatted about the price of lettuce when a middle-aged Aboriginal man approached us. He nodded at Darren, I asked Darren if he knew the man by name. Darren responded that he did not, the stranger approached and both men broke out in smiles. The stranger asked Darren who his mother was, to which Darren responded with the first and last name of his mother. The

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<sup>128</sup> Darren Geary was a Nyjamal law man.

stranger stated that Darren's mother was also mother to him and stated his section name. The men then smiled and shook hands, and as soon as they released their hands, the stranger asked Darren for a cigarette. Darren immediately reached for his pocket and handed him a cigarette and lit it for him. The man then said his goodbyes and left. I asked Darren about the interaction, and he explained:

Not blood brothers, but he's skin brother. So, he's my brother through skin that's why I had to hand over the smoke. We're family.

This exchange brings forth the mutual recognition of the men who have been able to identify and place each other within the *marlpa* lifeworld through the acknowledgement of normative kinship categories. The kinship categories allow for *marlpa* to establish the ties which bind them to each other by the simple act of identifying a common link, in this case Darren's mother. The identification of their sections allowed both men to plot their positions within the kinship system and, correlatively, how they should behave in relation to each other. As a normative pattern, their relationship is codified in the section system and concrete bonds between individuals are built through these types of exchanges. The link thus provided both men with a blueprint as to their relationship to each other and how to apply societal norms. The section system is therefore a system of relatedness based on filiation.

The example of Darren's encounter demonstrates the way relationships are enacted on the bases of mutual recognition via the section-names which categorise kin-relationships; they have normative value and, indeed, coercive power and significance. It also establishes the importance of genealogical knowledge within the societies of the Pilbara, where consanguineal and affinal relationships are plotted within a system of relatedness where those relationships are pre-determined. In English, these relationships translate to 'brother, sister, mother, father, etc', which, arguably, do not convey the depth of these relationships and the obligations associated with them.

Radcliffe-Brown (1912b: 152-153) spoke about *marlpa* systems of relatedness at length and provided the gendered terms used by Kariyarra people to position themselves within the kinship system and therefore within all social exchanges. Each of these terms is loaded with

known duties and responsibilities which are transmitted orally from the time of birth. These duties and responsibilities form the basis for social interactions and imbue the exchanges with a coercive power implied, rather than stated, which presents itself as obligation as was the case with Darren's interaction with his skin brother.

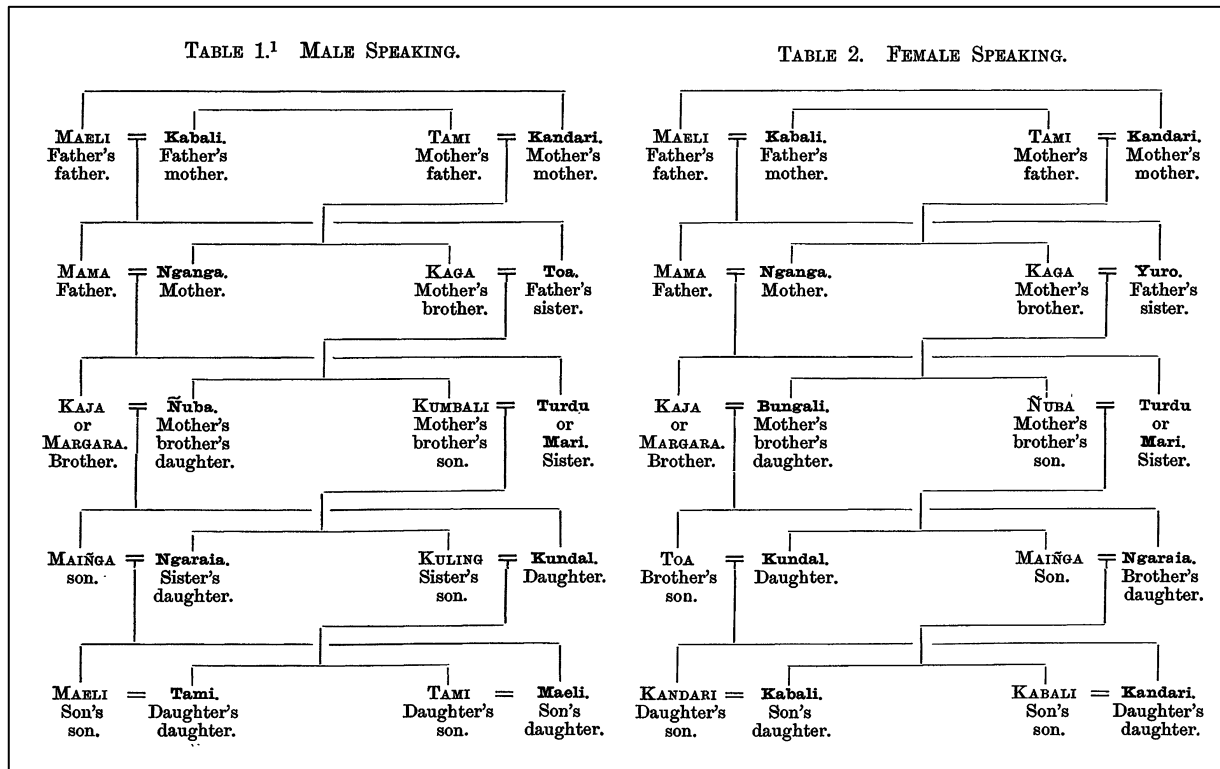


Plate 31: Radcliffe-Brown's Kariera System of typology (Radcliffe-Brown, 1912b: 152-153).

The coercive power of the exchange in Darren's interaction invokes the reciprocal aspect of the kinship system where all social exchanges are based on the unspoken expectation of reciprocity. The stranger invoked this power by requesting a cigarette based on the sibling relationship, which was deduced through mutual recognition, with the unspoken implication that at some later date, the cigarette will be repaid in some manner. The obligation is then placed on Darren to provide for his sibling, which he did with the justification that the relationship they have, although unknown to them previously, will assure reciprocity in future (Mauss, 1954).

The knowledge of these categories is implied in the request from the stranger to Darren to name his mother. The implication here is that if Darren had not been able to plot himself and

the stranger within the kinship system, the exchange of goods would not have taken place, that is, the coercive power of the exchange would not be present. As such, the necessity to know one's positioning within the kinship system is imperative to social exchanges, brief or intricate, among Aboriginal people in the Pilbara. It allows for individuals to identify how to relate to each other and what their role is within the society. However, Darren's exchange was punctuated by the statement "We're family", which is one that is often spoken by *marlpa*. The word 'family', while in English, has a more nuanced implication here.

Radcliffe-Brown (Brown, 1913) states that his map of the division of the 'tribe' into 'local groups' is incomplete. He states that the only information contained in the map is that which came from his genealogies. This acknowledgement indicates that Radcliffe-Brown was aware of the limitations of his research, and he clearly stated so. This acknowledgement must be understood and considered by the native title industry as a whole. And while consultant anthropologists do acknowledge these limitations, it is also necessary to communicate them to presiding judges and those in the legal profession. The historical records which are relied upon in native title are not immune to distortions, errors, etc., especially in this type of context. However, there is a consistent theme between the genealogies and the data, that consanguineal bonds are central to the connection to country. Radcliffe-Brown made his position clear by boldly stating that adoption or incorporation into any other 'local group' is impossible. He included in his writing a phrase which is often heard in the Pilbara, "the country belonged to him, so he belonged to it." (Brown, 1913:146). This statement is true for every member of a 'local group' that I have ever met with the notable exceptions of the Alec kin-group and the descendants of Pontroy<sup>129</sup>. From this statement Radcliffe-Brown (1912b) concluded that there cannot be adoption or incorporation due to the absence of consanguineal bonds. The blood is then seen as a conduit of identity, and it is also a link to the ancestors and the country. Blood is identity and connection.

The sentiment about adoption and incorporation is echoed by *marlpa* today where the consensus is that birth, marriage, and time spent on Kariyarra country does not imbue an individual with rights over country. "Can you imagine! All them white fellas born in the hospital

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<sup>129</sup> See Chapter 4 for the details about the Alec kin-group and the descendants of Pontroy.

and all the black fellas from all over can say they claim my country! That's just ridiculous!" laughed Diana at the thought of anyone claiming rights over Marapikurrunya<sup>130</sup>, which is where Port Hedland hospital is located. The birthplace of a person is of great significance to *marlpa*,

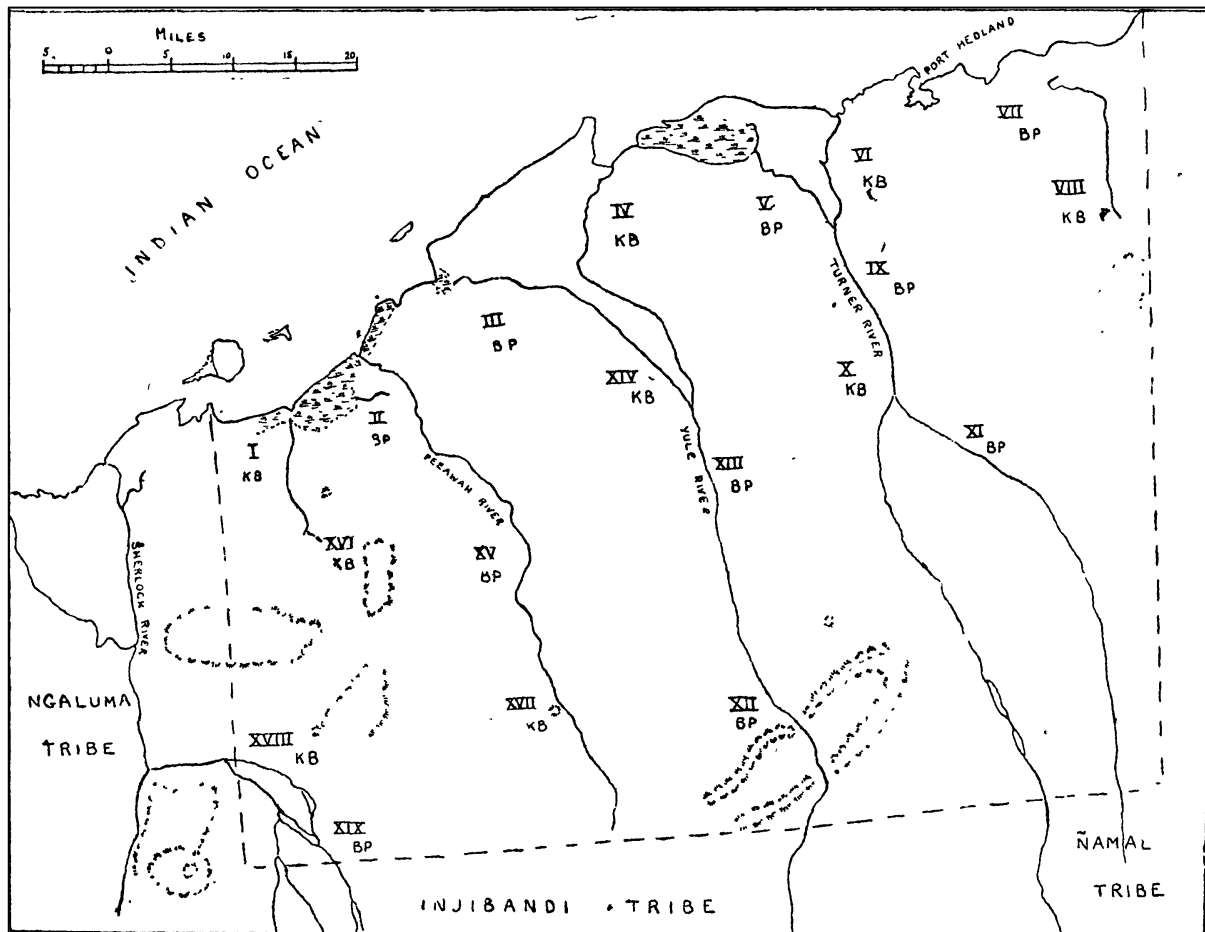


Plate 32: Radcliffe-Brown's map depicting the distribution of kin groups in Kariyarra country (Brown, 1913:144).

where birth in a specific place and under specific conditions may provide the child with a totem or a Dreaming. However, birth at a hospital has been ruled out as having the potential to produce a totemic link or a Dreaming as it is a Western institution where country has been disturbed. However, the issue of membership of a language group or a kin-group is multifaceted, and it begins with the identification of the language group of origin, which Radcliffe-Brown referred to as the 'tribe'.

#### 6.4.2 The segments of the 'tribe'

<sup>130</sup> Marapikurrunya is the kin-state claimed by Diana Robinson within Kariyarra country.

Radcliffe-Brown describes the Kariyarra people as being a 'tribe' distinct from other groups through their name, their language, and a defined territory. In his map of the distribution of tribes Radcliffe-Brown (1912b) does not draw specific boundaries; instead he places the language groups within their countries and uses landmarks as a guide. This reflects the way in which *marlpa* approximate their own countries to an extent.

Radcliffe-Brown stated that there is no tribal chief or any other discernible type of government:

The fights that formerly took place were not wars of one tribe with another, but of one part of one tribe with one part of another, or at times of one part of a tribe with another part of the same tribe. Thus there was no unity of the tribe in warfare (Radcliffe-Brown, 1912b: 144-145).

This speaks to the sort of dynamic segmentary field of interaction in evidence. Given his clear statement as to what a 'tribe' is: "possession of a name, a language and a defined territory" (Radcliffe-Brown, 1912b: 144), and that it is by no means a unified polity, the segmentary nature of the tribe is then expressed through what he terms the 'local groups'. This description means that the 'local groups' are autonomous from the whole and this reinforces their importance. Similarly, Vincent, a Kariyarra elder spoke about his 'local group' while sitting in the garden of his house in South Hedland:

We all grew up together, we all knew each other, and we all stayed close. We know all the other Kariyarra people, they are also family you know? But our little group, our family, we always stayed in our country, that's from Mallina Station to Whim Creek and on to the coast and including the islands. I know all that country; my father showed me our country.

This statement by Vincent reinforces the primary importance of the 'local group' over the language group itself and it also speaks to the autonomy of the group. Vincent claimed Kariyarra identity, but he did not claim all Kariyarra country. He also agreed with Radcliffe-Brown's assertion of patrilineal descent, stating that he inherited his country from his father, and that, "Unless your father has no country, then you get it from your father." This statement

contradicts the use and application of 'cognatic descent' by the native title industry as applied to Kariyarra people in the native title claim and determination.

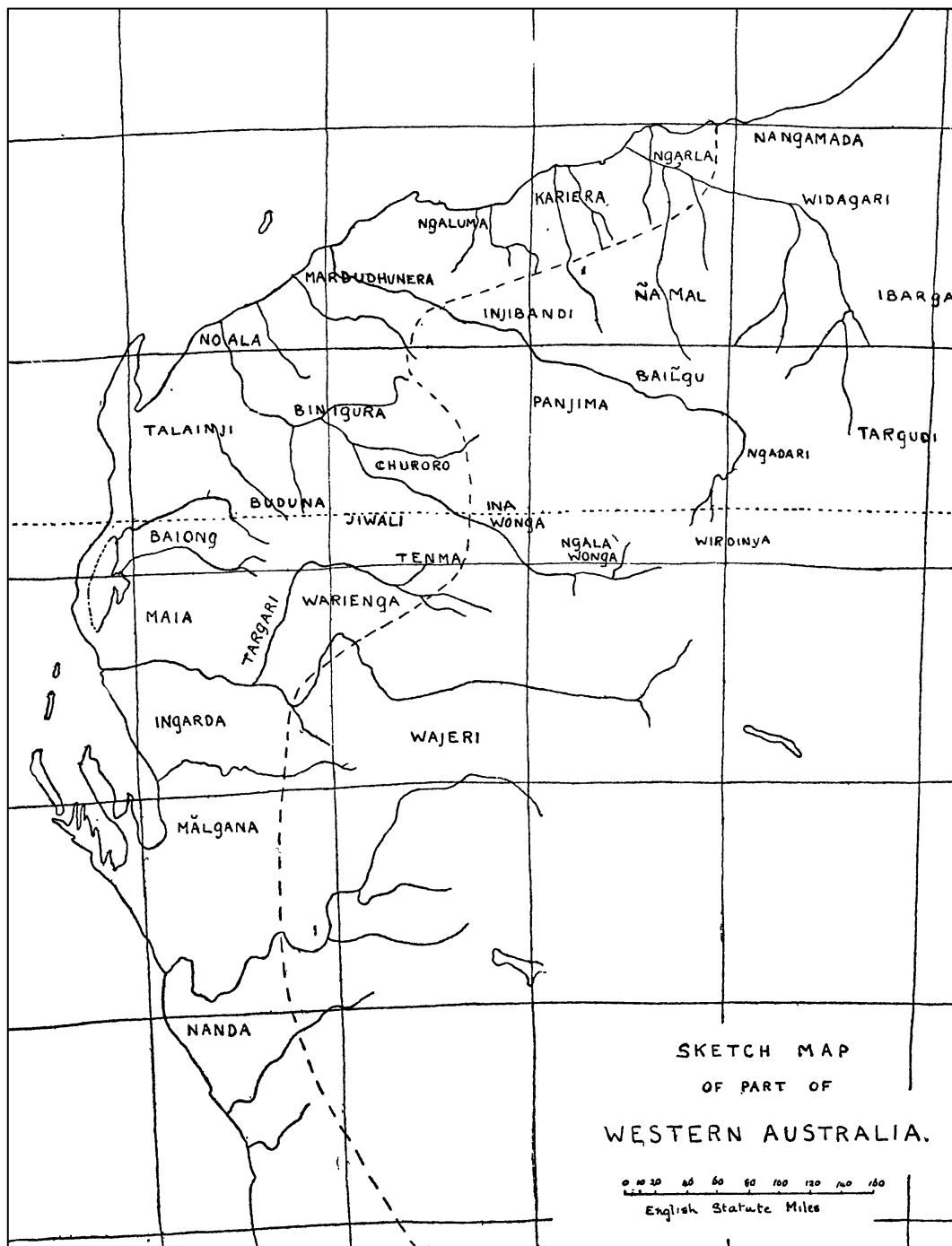


Plate 33: Sketch of the distribution of language groups in the Pilbara (Radcliffe-Brown, 1912b:145).

Vincent also claimed membership to the Ngarluma language group through his paternal grandmother:

We all have grandparents. Some of our grandparents are white fellas, but those of us who have Aboriginal grandparents also have a claim to their country. We also belong there by blood and it belongs to us. So, I am a Kariyarra and Ngarluma man. That's where the confusion comes in. Some people think we are Ngarluma, but we are Kariyarra and we also have Ngarluma.

Vincent's acknowledgement of his FM country is a common one among *marlpa*. For instance, Lorice stated:

My mob is Ngarluma, we are all Ngarluma, but through my dad's mother we are Yindjibarndi, we have country there and song lines. But we are Ngarluma first.

This does not imply double descent, but rather a secondary line which holds secondary importance within the identity of *marlpa*. The importance of membership to secondary 'local groups' or kin-groups is not equal to that inherited through the paternal line, but rather one where the individual takes a more passive role. Cyril stated:

When I go on Yindjibarndi country, I know the law, and I know the stories, but I stand back and let the elders talk. I'm an elder somewhere else. I am Yindjibarndi, but I speak for my Kuruma country, and I speak for the Kuruma ancestors, in the Kuruma language. I only speak for my mother's country when there is no one else around who can.

The statement by Cyril explains the relevance of his M country, while also explaining his role as part of the kin-group. As such, a double descent system is not applicable, and neither is cognatic descent as Cyril had no choice of which country he inherited.

#### **6.4.3 "We are family": the social structures**

Radcliffe-Brown (1930a) described his study of Australian Aboriginal culture as the study of social structures and put forth two basic elements to this social structure, the family and the horde. The concept of the 'horde' was not introduced in his preliminary description of the Kariyarra people, instead he used the term 'local groups' (Radcliffe-Brown, 1913). The concept

of the family was introduced by Radcliffe-Brown in 1913, where he stated: “A single family, that is a man and his wife or wives and their children, often travelled and hunted by themselves.” (Radcliffe-Brown, 1913: 146). However, when referring to ‘family’ *marlpa* often say “We are family”. This statement is constantly invoked to justify specific social interactions. This is particularly so within membership disputes in the native title context. However, the statement relates to the kinship relationships imposed by the section an individual is born into, rather than the consanguineal bonds which form the basis of descent and therefore the basis for the inheritance of rights over country.

Radcliffe-Brown (1913) stated that the ‘tribe’ is divided into ‘local groups’ which he defined by their territory and also stated that their membership is determined by descent through the male line. The offspring belong to the ‘local group’ of the F and inherit proprietary rights over the land, including flora, fauna, and mineral rights. This definition is reminiscent of that provided by the native title industry. The concept of ‘cognatic descent’ has been applied in relation to proprietary rights over country in all native title claims throughout the Pilbara thereby contradicting the anthropological findings which have been recorded over time, as well as the oral histories. Cognatic descent describes a form of bilateral descent unlike patri or matri lineages which are forms of unilateral descent (Glasse & Barnes, 2018). Cognatic descent allows for the reckoning of inherited proprietary rights from both the male or female line, however this does not mean that individuals have equal rights to two different countries, rather it allows for the individual to select which line they will follow, therefore when applied to the Pilbara, it would allow individuals to select which country they will inherit those rights from (Caplan, 2018; Glasse & Barnes, 2018; Hanson & Ghasarian, 2007; Stone & King, 2019).

The use of cognatic descent has proved particularly problematic in the Pilbara because very few members of the Aboriginal community say they understand its meaning (see further, Chapter 2) and it is now used colloquially to describe their rights to country. Gladys<sup>131</sup>, while discussing identity and descent once stated to me, “We have cognatic descent you know. So that’s how we pass down the rights to country.” However, when I asked Gladys what cognatic descent meant, she stated, “Oh that’s when you get your country from your father and him

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<sup>131</sup> Gladys Walker is a Yinhawangka woman.

from his father. But if you don't have a blackfella father, then you get it from your mother." After Gladys concluded her statement, I asked Gladys how she knew what cognatic descent was, and she stated, "I read that somewhere. But that's how our descent was described in the determination you know? So that's what we have." This last statement by Gladys highlights the main concern with the use of cognatic descent in native title - the definition of the term has been re-imagined by *marlpa* and is now used colloquially, but more concerning is that their trust has been broken by anthropologists who have not accurately described their culture and who have not explained terminology during their conversations with *marlpa*, reinforcing hierarchies and unequal power dynamics (see further, Chapter 1).

There has been much discussion among anthropologists about the 'clan', 'horde' and 'local-group' in relation to the social unit which is referred to as a 'kin-group' (Berndt, 1955; Elkin, 1953; Elkin et al., 1951; Radcliffe-Brown, 1930b, 1956). Radcliffe-Brown stated:

The clan is corporate in the sense that its adult male members can and so engage in collective action, and that as a clan they have collective ownership and control of a certain territory with its food resources and its 'totem centres' with their associated rites and myths. The horde is a collection of parental families which regularly co-operate in the food quest, a parental family consisting of a man with his wife or wives and their unmarried children. The unity of the horde and its connection with a certain territory results from the fact that all the married men of a given horde are members of one particular clan. A woman belongs to her father's clan but to her husband's horde. The horde can be described as a 'quasi-domestic' group (Radcliffe-Brown, 1956: 365).

The parental family unit referenced here is then based on consanguineal (blood) and affinal (marriage) bonds. And while the kinship bonds based on the section system are emphasised through the works of early anthropologists, the parental family bonds have an implied relevance which at times is overlooked. The women, while being a part of the parental family unit, are active members of their kin-group with some spending significant amounts of time with their elders to learn the law. This is exemplified through Doris and Sharyn's relationship where Sharyn spends much of her time residing with Doris and learning from her, and away from her parental family unit. This implies that the role of women is a lot more complex than

its portrayal over time. The duties and responsibilities of being a member of a parental family unit as well as being separated from the kin-group of origin would necessitate constant travel between kin-countries and the strict management of time and resources to fulfil societal demands. Thus, the consanguineal bond is again at the core of the connection to country as well as the expression of self whether in the kin-group or the parental family unit.

#### 6.4.4 The sections: the skin names

Radcliffe-Brown described the sections as “classes” which are all named, and which regulate marriage forming a cycle in terms of their pairing and the resulting offspring (Radcliffe-Brown, 1913). This cycle was exemplified through his kinship diagram (Plate 34) which depicts the section pairs and their children and the resulting cyclical nature of the generational progress.

In the Kariera tribe Banaka and Karimera form one cycle and Burung and Palyeri the other. The children of a woman always belong to the same cycle as herself, but the other class of the cycle (Radcliffe-Brown, 1913:147).

Father.	Mother.	Child.
Banaka.	Burung.	Palyeri.
Burung.	Banaka.	Karimera.
Palyeri.	Karimera.	Banaka.
Karimera.	Palyeri.	Burung.

Plate 34: Diagram showing the section pairings and their offspring (Brown, 1913:148).

The cycle is prominent throughout the anthropological discussions of *marlpa* cosmology and phenomenology, where the cyclical nature of the Aboriginal lifeworld is often highlighted. The inter-generational cycle of the sections in the Pilbara; is represented through the relationships between grandparent and child. “My old grandmother grew me up. She taught me the

stories.”, stated Johnson <sup>132</sup> while we drove from Marble Bar to South Hedland one day in 2011.

The way in which the sections are arranged also provides context for the way in which kinship terms are used by the Kariyarra people to relate to each other. The cyclical nature of Kariyarra kinship also provides an insight into who can be identified as the ‘immediate’<sup>133</sup> family. The Kariyarra cycle does not exist in isolation, it exists through its connectedness to the cycles above and below, that is, to the three-generational groupings, thereby creating a chain of cycles which create kin groupings.

Radcliffe-Brown divides kinship terms according to consanguinity and affinity, and he goes on to list them from both the male and female perspective (Radcliffe-Brown, 1913). The assertion here is that by following this system, the list of relatives of one person can be extended indefinitely. This is supported by the statement repeated throughout the Pilbara: “We are family”. Radcliffe-Brown highlights an adaptation of this system stating that a Kariyarra man will always name his biological father rather than all those who fit the category “father” within the kinship system with death being the only exception. He attributes this to a ‘primary’ meaning:

At the same time each of the terms in the above list is used by the natives in a sense corresponding to our own use in English of the terms “father”, “mother”, etc. Thus, although a given person applies the name mama to a large number of individuals, if he is asked “Who is your mama ?” he immediately replies by giving the name of his actual father, unless his own father died during his infancy, in which case he gives the name of his foster father (Radcliffe-Brown, 1913: 150).

This statement demonstrates that people have no problem distinguishing between an actual father (genitor) and the classificatory ‘fathers’; the former is the ‘primary’ meaning in contrast to its extension to all those other relatives subsumed under the given kin-term/category. Thus

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<sup>132</sup> Johnson Taylor was a Nyjamal law-man and elder.

<sup>133</sup> The term ‘immediate’ being a Western concept does not accurately describe the relationships within the cycle, however it is used here as a way of contrasting the Kariyarra cycle with the past use of a ‘nuclear family’.

*mama* = F (primary meaning or focal) > FB, MZH (classificatory extension). This pertains to the well-established problematic of the logic of kinship classification and the meanings of kinship terms.

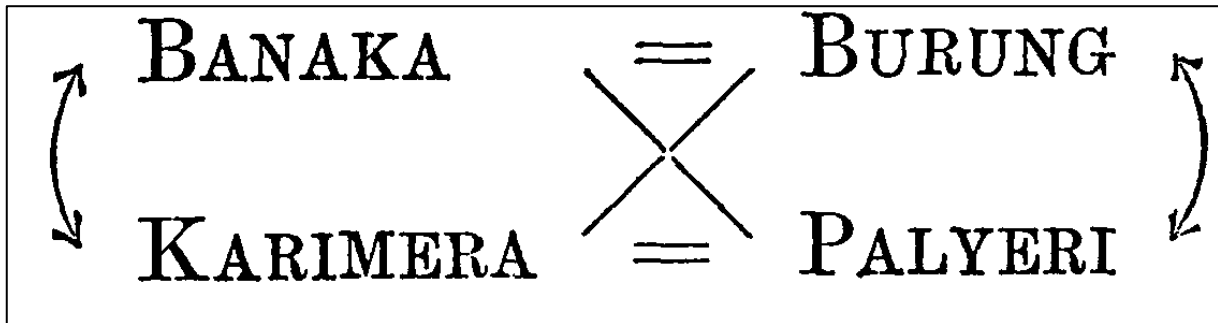


Plate 35: This diagram depicts the binary, dialectical, intergenerational and cyclical nature of the system rather than any lean towards the patri or matri sides (Brown, 1913:148).

It is rare to hear the English terms ‘great grandmother’ or ‘great grandfather’, instead people in the Pilbara use the appropriate term in the cycle. Similarly, it is rare for an individual to remember the name of a great grandparent instead using the terms ‘old man’, ‘old woman’ or ‘the old people’. This is because those relationships sit in a different kinship ‘cycle’. Although, genealogical information is imperative to the determination of an individual’s position within the section system in relation to oneself, the recollection of this information is generally relegated to within three generations. This is of particular importance when using the genealogical information in the native title context where an individual is expected to provide a family tree which dates to sovereignty. This is simply not possible within *marlpa* oral tradition; however, *marlpa* have adapted to this requirement over time using the genealogies compiled by anthropologists and some can now name all the ancestors back through to sovereignty. This is an adaptation to native title, and it is a definitive departure from what would be deemed ‘traditional’.

Peter<sup>134</sup> recalled his great grandfather, Snowball, and the stories he had heard about him from his mother one day while sitting in the shade near Abydos Station:

<sup>134</sup> Peter Stevens was a Kariyarra man.

They called him Snowball because he had fuzzy white hair, that's what I heard. He never wanted to live like the whitefellas and stayed out bush with his wives and kids until they made him come in. But I don't know much about him, it was too long ago, that old man was around a long time ago. I only know his name because I was a kid when all this native title started.

This statement places Snowball outside of Peter's cycle and well into the 'old people' category. The process of native title brought forth the ancestor for Peter and the term 'old man' is thus applied to him. But 'son' should also be used. The designation of Snowball as an 'old man' rather than 'son' by Peter places Snowball outside of the kinship system and conveys respect and reverence which could not be conveyed if 'son' was applied. Radcliffe-Brown (Brown, 1913) in his discussion about great grandparents stated that he had not come across an instance where a person and their great grandchildren were alive at the same time and the kinship terms were applied.

#### 6.4.5 Marriage in the Pilbara

The marriage rules are discussed at length by Radcliffe-Brown (Brown, 1913) in the same manner as his predecessors (see Bates, 1912, 1913; Calvert, 1894; Clement & Schmeltz, 1903; Curr, 1886; Fison & Howitt, 1880; Howitt, 1891; 1996; 1883; 1885; Mathews, 1900, 1906, 1910; Morgan, 1871, 1877; Roth, 1897; 1914; Spencer & Gillen, 1899; Withnell, 1901; Yabaroo, 1899)<sup>135</sup>. Radcliffe-Brown speaks of a man's application of the term *nuba* to the daughter of any *kaga* and any *toa*. However, he does not speak of a woman's application of the corresponding terms to men. He speaks of a man's choice of wife; however, a man may not have had a choice at all. Indeed, the woman's M and MM were the ones who selected a suitable man to become the husband according to the elders of the Pilbara. The suitability was determined not only on the relationship of the pair to each other, but also on a man's status within the law and his level of initiation. Elsie clarified:

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<sup>135</sup> See section 6.2 above for further detail on the marriage rules recorded by early anthropologists.

When you have a give-away that's woman's business. The women were the ones who picked a husband for the give-away, you gotta make sure he is good, he gone through the law and all. And he got to be straight with her. That's for us women to decide, it's women's business and then we go talk to the man and set it up.

This statement reinforces the discussions which I had with Tootsi in relation to her arranged marriage, and it also contributes to the clarification of the involvement of women in the selection of husbands.

Radcliffe-Brown (1912b, 1913, 1930a, 1930b, 1931, 1940) does clarify that as the marriage among kin-groups is exogamous, the woman is thus expected to reside with the man's kin-group, however that this does not confer upon her any rights through marriage. This is also echoed throughout the Pilbara today, except for statements made to me by Sally Mack and the claims made by George Pitt in relation to Kariyarra membership. The connection to the country of an individual is exclusively reckoned by consanguineal patrilineal links and fostered through continuous presence on country and the learning of the law and lore.

Doris, while sipping her V8 juice at her residence on 'the block' stated:

The young ones today, they don't pay attention to the skin much. We tell them and tell them, but some don't care. They go and get into kangaroo marriages<sup>136</sup> and have kids with the wrong person. Some of them, they know they're not straight. But they don't listen.

This lament was echoed by Joyce some ten years earlier where she described her "pains" at witnessing young Yinhawangka people disregarding the section system and getting involved with someone they are "not straight" with.

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<sup>136</sup> The term 'kangaroo marriage' is one which is used colloquially throughout the Pilbara, and it describes a de-facto relationship with the implication being that 'people hop in and out of bed' without the complication of marriage.

The concept of “not straight” or “straight” is one which is used colloquially by *marlpa* to describe an incestuous relationship in accordance with the section system. This type of relationship was a punishable offence in the past, however now it is simply frowned upon. This change in attitude towards the selection of *nyuba* or ‘kangaroo marriage’ partners is one of the most obvious to come about since colonisation. The Stolen Generation produced many people who are unaware of their section, or their place within *marlpa* social structures. As such, their marriage into kin-groups induced confusion once those kinship links were discovered and the groups had to make allowances and adaptations to their norms as was the case with Sharyn Derschow. Sharyn is of the Stolen Generation and married “wrong” because she was unaware of her section name:

Me, I was wrong married. So, when my son participated in law, Milangka is my marriage, so for my sons, Milangka is who sits, and they don’t break that four skins and their father has to sit aside because he is my nephew in the skin group. Those four skins will come back into place. And the mother is the life giver, so the skins right themselves.

Sharyn described how during a specific phase of the initiation ritual, when the men and women are required to sit in accordance to their kin categories, Nyjamal people assigned her a symbolic *nyupa* who stands in as her husband. This is referred to as a “tribal father” to her son in English. Although “tribal father” is often used to refer to a man who is not a blood relation of the offspring, or who has “grown up” the individual, in this instance, as the symbolic *nyupa* of the mother, it can also be applied. Sharyn is exempt from punishment by the ancestors or the country for her marriage as she is not seen as having broken the section system rules on purpose. However, according to Doris, the lore<sup>137</sup> surrounding a “wrong marriage” is still considered when the marriage laws are broken.

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<sup>137</sup> See Chapter 5.

#### 6.4.6 Genealogical relationships

Radcliffe-Brown outlined his model of the Australian Aboriginal kinship system in his 1930 paper. In his discussion on the named divisions of Australian 'tribes' into seven groups, Radcliffe-Brown states:

A closer examination of these divisions reveals that they are composed of persons who are or who regard themselves as being related to each other by certain family relationships, and it appears that the named divisions – moieties, sections, subsections, etc. – are in each instance part of a larger whole, which will here be spoken of as the kinship system of the tribe. To discover what is the nature and function of the named divisions in any instance it is necessary to study the whole kinship system.

By kinship is here meant genealogical relationship recognized and made the basis of the regulation of social relations between individuals. Genealogical relationships are those set up by the fact that two individuals belong to the same family (Radcliffe-Brown, 1930a: 42).

He focused attention on three kinds of dyadic relationships, that is, (1) parents and children, (2) siblings, (3) husband and wife (Radcliffe-Brown, 1930a). Although, these relationships are not equal to a kinship system, they did allow for Radcliffe-Brown to determine the basis of the Kariara System. For Radcliffe-Brown, the section system emerged as the mode through which relationships are recognised and identified through the social experience and at the same time, these relationships have determined the socialisation of individuals within each language group.

In his discussions about methodology, Radcliffe-Brown (1930a) stated that the compilation of genealogies, requiring patience and time, allowed him to overcome the difficulties of studying the social organisation of Aboriginal Australia. He further stated that the task was made more difficult because the local organisation was commonly destroyed by colonisation. He places the blame of the dearth of complete accounts of the social organisation in the Pilbara on colonisation and a lack of skilled ethnographers and their misunderstanding of terminology.

These statements by Radcliffe-Brown are a critique of his colleagues and a condemnation of colonisation on the surface (Asch, 2009; Kuper, 1977, 1983, 2005; Needham & Kuper, 1976; Stanner & Barwick, 1979).

Leading Article reprinted from

**THE**  **TIMES**

Thursday November 25 1937

**AUSTRALIAN ABORIGINES**

Last month a pathetic petition reached the GOVERNOR-GENERAL of AUSTRALIA. It was addressed to the KING, and signed by over 1,800 "blackfellows," who asked HIS MAJESTY to save them from extinction and to allow them to be represented, directly or indirectly, in the Federal Parliament. In an article which is published on this page of *The Times* a well-informed Australian Correspondent draws attention to the needs of these unfortunate people. Their fear of extinction is only too well founded. It is believed that Victoria had 12,000 black inhabitants when white settlement began a century ago. It now has fifty. Tasmania may have had 2,000 aborigines in 1803 when the first settlers landed on the island. The last of them died in 1876. In the unsettled or thinly settled parts of Australia the same process of tribal decay and racial decline threatens the few score thousand surviving blacks. Its causes vary from district to district. A restless drift into areas of white settlement endangers some tribes; others are decreasing in numbers through diseases brought by Europeans and the physical weakness and sterility which they cause; many seem simply not to possess the power to adapt themselves to change and to be dying out partly through their inability to understand their real interests. It is unfortunately true that the obstinate preferences of too many aborigines who like overcrowding, break all the rules of health, and work for poor whites in return for cheap tinned food, tobacco, alcohol and cast-off clothes, tends to drive their friends to despair. Still the fact remains that the great majority of the blackfellows are underfed and get little medical attention. Their condition is the more surprising when it is remembered that the Australian administrators of

British and Mandated New Guinea and the Melanesian Islands have shown a skill and humanity that has aroused general admiration. The immediate cause of this deplorable state of affairs has been the lack both of trained administrators and of the funds which any comprehensive scheme of native administration requires. PROFESSOR WOOD JONES, an eminent scientist, recently ascribed its ultimate cause to official and popular indifference. In his opinion neither the Australian Governments nor the Australian people had ever desired to preserve the natives. His farewell address to the Victorian Anthropological Society, a summary of which is also published in *The Times* this morning, is a scathing indictment of official neglect. At the same time recent measures taken by the Federal and State authorities of Australia indicate that sections of public opinion are beginning to be disturbed by the decline of the aborigines and by the emergence of a half-caste problem. A little over a year ago the Government of Western Australia introduced a Bill providing for the better control and protection of natives, the revision of enactments dealing with their estates and property, and the establishment of native Courts. Last April a conference of Federal and State authorities at Canberra discussed measures for the preservation of the aborigines, and by a majority recommended the absorption of the increasing proportion of half-castes by the whites, with education and employment at white standards, as the only solution of the half-caste problem. A few days ago the South Australian Government appointed an Aborigines Advisory Committee to examine the whole problem. Other schemes devised by Churches and humanitarian organizations are also under consideration. It is to be hoped that the Australian Governments and the Australian people will support a more constructive native policy than that of *laissez-faire*. Nearly a century ago a South Australian newspaper warned its readers in a leading article that the speedy extinction of the whole race is inevitable, save by the introduction of means for their civilization on a scale much more comprehensive and effectual than any yet adopted. These words are even more applicable to-day.

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Plate 36: Letter to the Editor by Radcliffe-Brown in 1937 discussing the impacts of colonialism and outlining the eminent danger of extinction (Radcliffe-Brown, 1937a).

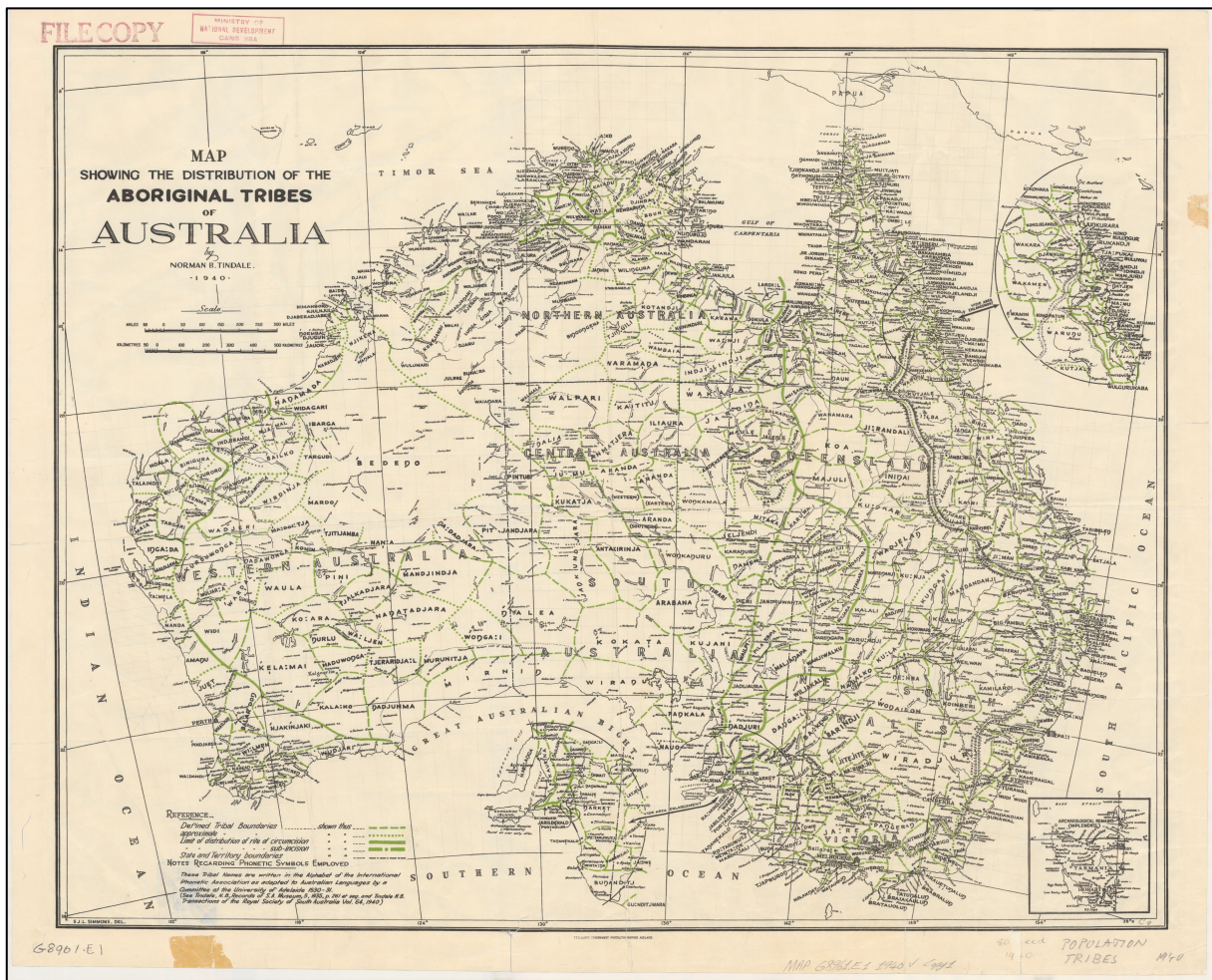
Upon closer inspection, the idea of the 'destruction' of social organisation, and therefore culture, becomes more transparent, particularly considering Radcliffe-Brown's Letter to the Editor of 1937<sup>138</sup>. He sees changes within the social structure of Aboriginal people as "destruction" rather than Aboriginal agency in response to the new colonially imposed environment. This reluctance to accept adaptation as a trait of social structures and cultures has cascaded down through the decades and is reflected in the attitudes of the native title industry towards any type of social structure or culture which does not fit the 'pristine' ideal which is imagined through the concept of 'continuation'.

### **6.5 The Tindale effect**

Norman Tindale is a name which has become synonymous with native title research and indeed, any type of research into the family history of any Aboriginal person or people (see Bagshaw, 2003; Bauman, 2010; Bauman & Macdonald, 2011b; Dauth, 2011; Finlayson et al., 1999a; Gara, 1996; Smith & Morphy, 2007; Weiner, 2007a). Tindale carried out fieldwork in 1953 in the Pilbara in an expedition led by his life-long associate Joseph B. Birdsell (Tindale, 1974).

In 1940, Tindale published a preliminary 'Tribal Map' which, contrary to the work of his predecessors, contained rigid and specific boundaries for each 'tribe' in Australia. Moreso, the boundaries which Tindale produced contained right angles, which do not exist in nature and lines which did not follow any specific land feature. However, were he to remove the boundaries, Tindale might have been left with a compilation of all the locations of groups provided by all his predecessors and a few new ones.

Given that the boundaries of the groups are presented as well defined, in relatively straight lines, the accuracy of the map comes into question when seen from the perspective of the ethnographic body or work in relation to boundaries produced by Tindale's predecessors. Criticism of Tindale's work was widespread with Tonkinson calling it 'disappointing' with very few valuable insights although he did have a bias against Tindale's critical stance towards younger anthropologists (Tonkinson, 1975-1976).



Map 5: Map published by Tindale in 1940 showing static boundaries of 'tribes' (Tindale, 1940).

Similarly, there was, and to some extent there still is some strong criticism about the inaccuracy of Tindale's boundaries and the inclusion of 'tribes' which have never existed. Prophetically, Tonkinson laments the possibility that Tindale's mistakes, such as the inclusion of 'Bailgu', would in future be taken as a fact (Tonkinson, 1975-1976). This group is today seen as a 'language group' in the Pilbara despite strong evidence against it and the agreement of Niyiyarparli elders who argue that the group is part of the Niyiyarparli language group and that there is no Palyku language; the people who constitute the Palyku native title holding group in fact speak Niyiyarparli. Further to this criticism is the history of how the Palyku native title claim was born. *Marlpa* claim that the Paliku native title determination group was formed in response to a newspaper advertisement asking for families with a connection to the claim area to come forward for a community meeting. These events, as related to me are said to have taken place while the NTRB of the Pilbara was still called Pilbara Native Title Service (PNTS). It

was later absorbed by YMAC. It is possible that Tindale's map, in untrained hands, could have led the NTRB to call for a meeting to lodge a claim based on the label in that area of the Pilbara. However, there are other names which feature on Tindale's map which have not been used in a native title claim which suggests that the creation of the Palyku native title claim is potentially, problematic.

One of the main criticisms of Tindale's mapping, centres on the process which he followed when he translated Aboriginal concepts into Western cartographic representations. Early anthropologists, in their majority, agreed that the landscape, specifically land formations and features are of importance to Aboriginal people and they are usually related to Dreamings, songlines, and boundaries (see Aiston, 1937; Bates, 1912; Battye, 1915; Calvert, 1894; Clement & Schmeltz, 1903; Curr, 1886; Davidson, 1926; Elkin, 1932, 1934a, 1934b; 1938; 1938; Fison & Howitt, 1880; 1891; Howitt & Fison, 1883; 1885; Kaberry, 1939; Mathews, 1900, 1906, 1910; 1912a; Radcliffe-Brown, 1912b, 1913, 1930a, 1930b, 1931; Roth, 1897; Smith, 1913; Spencer, 1914; Spencer & Gillen, 1899; Warner, 1937; Withnell, 1901; Yabaroo, 1899). Tindale acknowledged some of the limitations of his research when he noted the "absence of correspondence between English & native names" (Tindale, 1966: 193). Tindale's statement is further complicated by the inherent assumption that boundaries, within the Western construct of the term, exist. Pilbara languages lack a term for 'boundary', 'territory', 'fence' or 'frontier', with the closest approximation being the term *ngurra*, which has been translated as "my country" or simply "country". The term is used across the Pilbara as well as the Western and Central Desert regions, and it is used in all language groups today. However, it's meaning cannot simply be explained by direct translation.

When they use the term *ngurra*, *marlpa* are referring to their kin-country and are referencing the connection which exists between them, as descendants of the original people who were given the country and who passed on rights to it through blood. Here, we revert to the previous discussion of blood being the conduit between Dreaming and country. Blood resides within the human body, thereby creating the cycle of connection which is maintained through the practice of law and culture. Goddard (1996: 102), speaking about the term "*ngura*" as used throughout the Central Desert, stated that it is a polysemous concept which has notoriously been recorded as having a variety of related meanings, such as that ascribed to it in the Pilbara.

Similarly, Myers (1986) describes the meaning of this term in the Western Desert. He says it is not rigidly defined and is a variable and negotiated space.

The application of Western cartography has been discussed at length by anthropologists trying to come to terms with translating one lifeworld into another, as is the case here where the abstraction of special conceptions within Aboriginal culture are translated, poorly, into bounded space, straight lines and right angles (Layton, 1986; Myers, 1986; Wilkins, 1993). It is therefore a problematic approach which produced a map which has, at least in the Pilbara, proved to have various mistakes, as well as incorrectly mapped boundaries. However, this map is still the main point of reference used by native title professionals when, (1) deciding to support a group of claimants in their bid for native title, and (2) mapping out the boundaries of a native title claim.

Tindale, as part of his research also compiled a comprehensive set of genealogies across the Pilbara which captured a large percentage of *marlpa* at the time. His genealogies are used within the native title industry to demonstrate continuity, as in some places, families can be traced back to sovereignty. However, Palmer (2018) argues that Tindale's genealogies vary in their quality and clarity and he reflects on the sparsity of the information in some genealogies and the intense overcrowding of others. The way in which Tindale presents the information is inconsistent, with the capitalised English names of women and lower case for men being one of the few consistencies (Palmer, 2018). Tindale would, at times, provide information about the language group of individuals recorded in his genealogies, using "of" or "at". The use of the preposition "of" indicates the country or language group of the individual while "at" indicates the place the individual presumably resided. Tindale also recorded information such as percentage of Aboriginal blood of the people listed, location sighted, approximate age, etc. He used the descriptors of FB, F1, half cast,  $\frac{1}{2}$  and other fractions to describe Aboriginal descent.

Where labels attached to ancestors have contradicted oral histories, resulting claims to membership of a native title group have led to legal action being taken by the rejected party and evidence being put to a judge for a final decision. One such case was that of the Lockyer family, descended from Fanny, daughter of One Arm Dick (see also, Chapter 4). Tindale (1952-1954) lists Fanny as being Ngarluma and being a widow of Sam Lockyer, a Ngarluma man.

However, the descendants of Fanny, as well as their family on Sam Lockyer's side all agree that Fanny was a Kariyarra woman, daughter of a Kariyarra man.

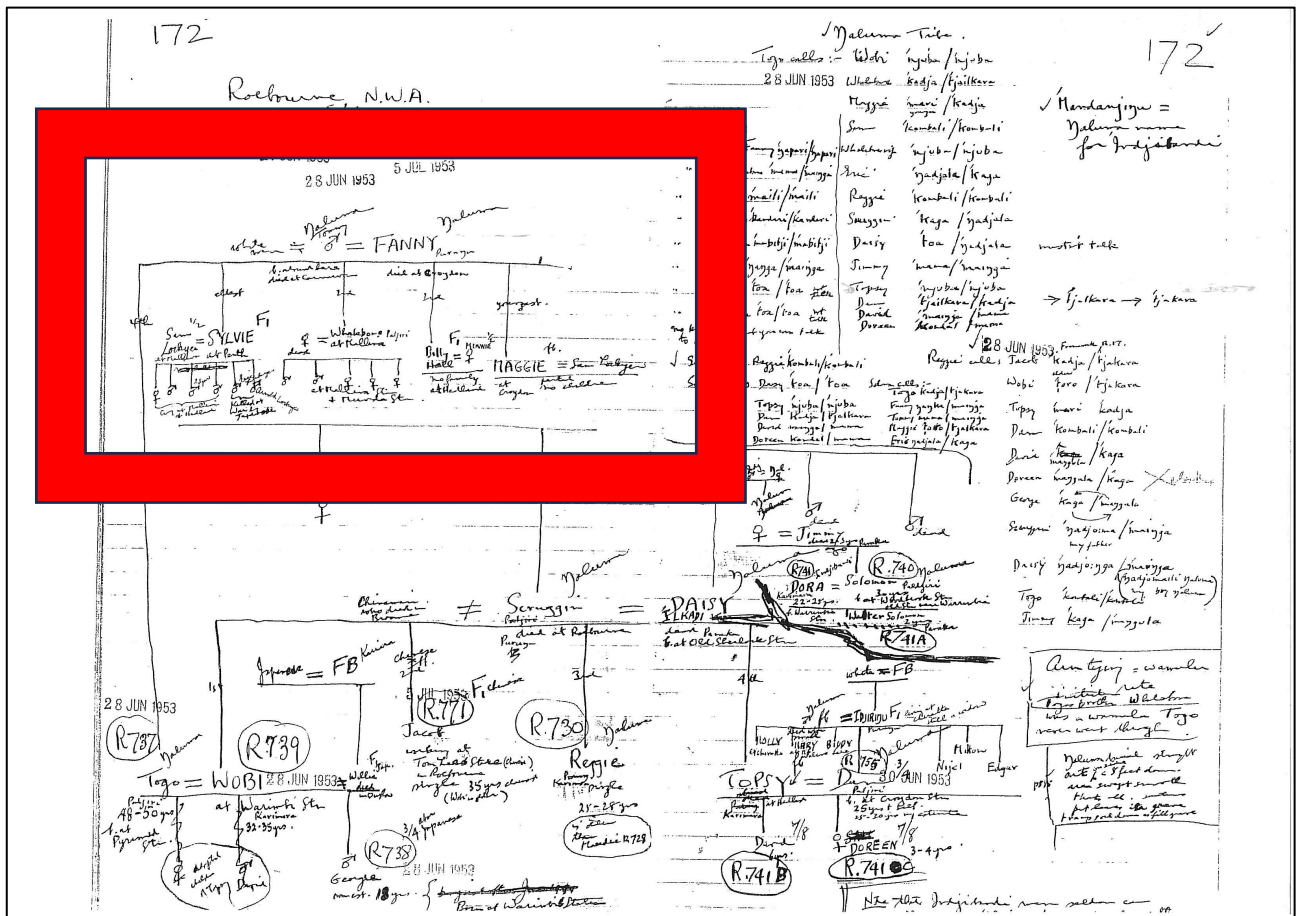


Plate 37: The Tindale genealogy sheet depicting the Lockyer ancestors (Tindale, 1952-1954: sheet 172, Roebourne).

This seemingly small mistake by Tindale has cost the Lockyer family nearly twenty years of court appearances and battles, as well as countless hours of research that they themselves carried out. It also led to several verbal and physical confrontations with other Kariyarra people who resented their claim. The vindication for the family came during the last few years of the native title claim, when a genealogy sheet from the Radcliffe-Brown archives confirmed that One Armed Dick was indeed a Kariyarra man and the brother of some well-known Kariyarra apical ancestors who were already recognised and accepted in the claim. This evidence from Radcliffe-Brown proved sufficient to override Tindale's mistake in court and in the eyes of the Kariyarra community. The damage caused by the confrontations has caused lasting impacts on the relationship between the Lockyer family and the Kariyarra community.

## 6.6 Conclusion

Since the introduction of the NTA, ethnographic research in the Pilbara has been carried out daily, sometimes by several anthropologists simultaneously. However, most of this research is not published as it is the foundation of many financial negotiations for compensation stemming from the NTA in relation to mining and resource industry activities. As a result, ethnographic research for academic purposes has taken a back seat to native title and cultural heritage. Despite the constant presence of anthropologists in the Pilbara, very little detailed ethnographic material is produced. But there seems to be a native title hang over which has taken precedence in the area where the identity of families and individuals has been challenged after native title claims have been determined.

The enquiry into kinship since the time of colonisation in the Pilbara has produced a wealth of information which is seldom applied to native title research. Instead, the documents and notes produced by early researchers have been co-opted to satisfy the native title industry's requirement to prove continuity through the tracing of consanguineal bonds to the time of sovereignty. Similarly, the requirement for proof of continued practice of culture has resulted in the imposition of demands for what can only be described as the unintended or unwitting "revival" of what was in fact part of the oral tradition of their ancestors and has since changed because of colonisation and the cultural adaptation processes.

The names of prominent and eminent anthropologist such as Radcliffe-Brown, Tindale, Curr and others, are often invoked by the native title industry as requirements for definitive proof of connection. Human error is seldom considered when compiling genealogies for native title purposes, and if errors are identified, they must be assessed not through the oral histories, but rather by means of comparison with other historical documents deemed reliable. This echoes the Yorta Yorta decision where Olney J found Curr's evidence more credible than that of the Yorta Yorta people (Olney, 1998).

As was the case with the Palyku claim, the misuse of historical documents by the native title industry has manufactured new realities for *marlpa* where their country and indeed their identity has been re-named and re-framed to fit the evidence. This co-option of historical

documents has not only manufactured a new 'language group' via the lodgement of the Palyku claim based on Tindale's map, but it also provided people whose country is part of that determination area with a new identity, Palyku. Whether the term was a kin-group name or the name of a specific site prior to Tindale's expedition, the people who make up this group do not constitute a normative society as they do not possess a language of their own, but rather speak Nyiyaparli. The group also practices law with Nyiyaparli people and Nyiyaparli elders and law-men and law-women are all in agreement that they are one and the same language group.

## Chapter 7: Perceptions of Identity

### 7.1 “I’m a blackfella”

Vincent, a Kariyarra law-man and elder of his kin-group and I were sitting in his front garden shortly before his death, when he stated:

I am an Aboriginal man, but that is what whitefellas call me. I am Kariyarra-Ngarluma. That’s what I call myself. There’s a difference you know. Whitefellas think Aboriginal people are one, but we are not. Blackfellas in other places, they are not the same as me. We are different, we may all be blackfellas, but they are not Kariyarra and they will never know what that is. They haven’t lived in my country or been raised by my elders and family and the stories of the country and the ancestors. They don’t know what I know. My blood knows this country.

In Vincent’s view, identity is based on the connection to his family, elders, and knowledge of country transmitted by word and mouth across generations. This is his lived experience expressed through ritual and transmitted through blood that is recognised by the country, where blood is symbolic of the knowledge of genealogical connections demonstrated by *marlpa* (Radcliffe-Brown, 1930a). Ontologically, a piece of the Dreaming entered the womb of Vincent’s mother creating the link between the flesh through blood and country and the Dreaming. Thus, Vincent is describing his Kariyarra identity as a process of interaction and differentiation which is steeped in cultural symbols and embodied through cultural practice (Hollinsworth, 1992; Merlan, 2005).

Vincent described different layers which made up his identity and he referred to himself as a ‘blackfella’<sup>139</sup> rather than an Aboriginal or Indigenous man. ‘Blackfella’ being a term that has its roots in colonial history and racial discrimination and was appropriated by *marlpa* as a self-identificatory label. It is used colloquially to assert and self-identify as a group separate from the rest of the residents of the Pilbara. The term ‘blackfella’ is not a pan-Australian

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<sup>139</sup> The term “whitefella” is often applied to non-Aboriginal people, regardless of ethnicity or race.

homogenisation of Aboriginal people but, rather, a homogenisation on a smaller scale. Vincent's reference to the knowledge and the experience of living on country as well as learning from elders provides him with an exclusivity which indicates the rootedness of the kinship system in the country. From Vincent's perspective, the term 'blackfella' cannot be applied to all people who claim Aboriginal descent, but rather to those who have experienced Aboriginal lifeworlds. This leads to the conclusion that Aboriginal identity is multi-layered and cannot be homogenised but rather it must be understood in reference to context, experience, kinship, and cosmo-ontological meanings made explicit through interpretative work.

The term 'Aboriginal' is relegated to specific situations such as dealings with the government or government agencies. It is a category rarely used by the people themselves, but one which is validated through recognition and inclusion of all people who claim blood descent from a 'blackfella'. Vincent's assertion that 'Aboriginal' is a term applied to him by 'whitefellas' indicates that in his understanding he is not just being categorised as 'Australian' but as something other than those who claim that identity.

There is an implied exclusionary aspect to Aboriginal identity which goes beyond the physicality of people. It is centred on their placement of the self within the Aboriginal lifeworld. In the case of Vincent, he placed his identity in the cultural domain and anchored it to country and the ancestors via blood. His primary concern and purpose for being involved in native title was to ensure that his father's country was safe, which implies that the connection between the physical body, country and Dreaming is more nuanced. The country here is seen as an extension of the self, conceptualised as part of his identity:

I want to make sure that it (the country) stays safe. I don't want all my story and my ancestor's story to be destroyed by mining. I know that out at Mallina they (the owners and workers) respect the country, and they know to talk to me first. But they won't be around forever, and neither will I.



Plate 38: Image of a *marlpa* child at Mallina Station in 1912, believed to be a member of the Lockyer-Clifton kin-group (courtesy of V. Lockyer).

Vincent's conception of self-identity is structured along the lines of what C. Berndt (1961) described as the inward-looking socio-cultural worlds of the kin-group unit whose primary concern is with the transmission of their domain. To this end, the assertion by R. Berndt (1977) that Aboriginal language groups are 'intensely localistic' suggests that the domains in the Aboriginal lifeworld are intertwined with their country, Dreaming, and underpinned by the kinship system which in turn furnish their sense of self and identity. This sense of identity clashes with the labels, descriptors, and categories which have been applied to Aboriginal people by non-Aboriginal people thereby creating identities which change depending on the domain. These labels, descriptors, and correlative categories are used in legislation and create and perpetuate erroneous identities of Aboriginal people.

During the early days of colonisation, what began as the belief that Australia was sparsely populated by Indigenous people, who were thought to lack a concept of land tenure, quickly turned into the homogenisation of all the language groups under the category 'Aboriginal' as well as an acknowledgement of them as the original inhabitants of the land (Banner, 2005). The etymology of the word being from the Latin *ab origine*, 'from the beginning' and used as a noun in the Greco-Roman tradition 'the original people of a location' (Mattingley & Hampton, 1988). The term itself, used in its capitalised form, became the category under which all the Indigenous people of mainland Australia and Tasmania came to be known: Aboriginal. However, this recognition of Aboriginal people as the original inhabitants of Australia precipitated and encouraged a belief among the colonisers that their identity was based on race and descent without any acknowledgement of sovereignty and Aboriginal concepts of identity. The use of race is problematic in and of itself as a socially constructed category based on the adaptations of groups of people to their environment over time. However, in light of the use of the term in the process of colonisation and its aftermath, it is necessary to acknowledge it and to understand its impacts and use (Crenshaw, 1995).

As Vincent stated, the term 'Aboriginal' is applied to Indigenous people, it is not one which they apply to themselves unless they are forced to do so under governmental legislation. Subsequent understandings of Aboriginal difference throughout the colonies came through the identification of different languages among Aboriginal people. Aboriginal languages were assumed to be of less value than English (Walsh, 2007). However, identification of different

languages did not provide an acknowledgement of any type of cultural identity, nor did it provide much of an understanding of Aboriginal cultures. Rather it was interpreted by the colonists from the Western perspective where a specific language is spoken by a specific group of people who live in a specific area. This assumption resulted in Aboriginal identities being linked to one language group only and one area thus limiting them (Rumsey, 2007).

Through its policies and particularly through the NTA, the Australian government has applied a framework which seeks to categorise Aboriginal peoples based on language, locality and consanguineal descent.<sup>140</sup> It has also instilled the idea of 'inauthenticity' (Sartre, 1964) where the construction of what is perceived as 'authentically Aboriginal' is based on a distorted notion, rather than the reality of being Aboriginal. In doing so, it has produced an homogenised Aboriginal identity constructed from the perspective of the coloniser, which ignores not just kinship and Aboriginal cultures, but also their different experiences of colonisation, migration, diaspora, and agency.

However, experiences of colonisation across Australia are markedly different and have influenced self-identity based on the situational and shared experiences of groups of people who did not originate from the same area or language group. This includes their history of marginalisation through forced re-location and the concentration of people from different language groups coming together and experiencing subjugation, isolation, and oppression through classification and perceived notions of what constituted identity (Andrews et al., 2022; Fink, 1957; Montalvo Chaves, 2021; Yamanouchi, 2010). The individual realities of these experiences can be examined but this would not provide a sufficient grounding for deducing the intensity of the impact that they have had on Aboriginal perceptions of identity.

## **7.2 Pan Aboriginality: the historical categorisation of Aboriginal people in Australia**

The idea of nation-wide identity uniting all Aboriginal people was introduced into the consciousness of non-Aboriginal people during colonial times and has since been termed 'pan-Aboriginality'. European colonisers identified people through a single racial identity to create a division between themselves and those they sought to colonise. This was done through social

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<sup>140</sup> See, Keen, 1988; Crown Solicitor's Office 2004; Office of Native Title 2004, 2006; Aboriginal and Torres Strait Islander Land Services 2016; Regulatory Support and Performance of Georesources Division 2022.

exclusion and subordination based on the perceived inferiority of Aboriginal cultures (Fesl, 1990; Yellow-Bird, 1999). At the time of colonisation, this idea was reinforced and supported by the theory of evolution and the belief that people with white skin were innately superior (Darwin, 1859, 1981; Gould, 1996; Rothenberg, 1998). This belief created a racial divide for Aboriginal people which played a central role in colonisation and subsequent policies inflicted upon them. There are large volumes of varying discourses about Aboriginality, however the notions of what constitutes the 'traditional' have heavily influenced conceptions of 'Aboriginality' since the mid-1900s. The cultural conceptions of 'tradition' and its relationship to Aboriginal identity have produced what Cowlshaw (1988) terms 'Aboriginalism', as well as the notion of 'pan-Aboriginality'. The term 'pan-Aboriginality' has also now taken on a political dimension where Aboriginal activists have attempted to unite all people of Aboriginal descent under one umbrella of trauma.

*Marlpa* experienced colonisation from a pastoral perspective where their participation in the economy was needed and they were able to co-exist, to an extent, with the colonisers. While there was violence, dispossession and oppression, from the inception of the pastoral industry, *marlpa*, as workers, were actively sought out by station owners. There was also a relatively high level of intermarriage between the colonisers and *marlpa* because of the scarcity of European women.

In contrast, south-eastern Australian Aboriginal peoples' experiences of colonisation were not just lengthier than that of the people in the Pilbara, they were also markedly more physically and structurally violent because Aboriginal people were not seen as necessary to the colonisers. The influx of settlers brought with it the need to manage the Aboriginal population and the need for them to be categorised rather than identified beyond the early reductionist labels applied such as 'native' or 'savage' (Cowlshaw, 1988). Although identification always has an element of categorisation, overt or covert, the categorisation here supports the belief in Aboriginal inferiority and thus justifies the denial of language group identity and their ability to self-determine (Yellow-Bird, 1999).

Even though there is historical evidence of the existence of cultural and linguistic diversity throughout eastern Australia, as well as difference in ritual and practice, these differences

were ignored in favour of pan-Aboriginal identity. Based on their experience in the Americas, it is reasonable to attribute an understanding of colonisation and its impacts on Indigenous peoples by the English colonisers, although it is not possible to speculate as to their conception of Aboriginal identity beyond the basic understanding of different spoken languages used by different groups and a rudimentary association of Aboriginal people and land use and tenure (Dirk, 2012). The labels assigned to them feature in the diaries of the explorers and colonists even before Captain Cook, with Dampier stating:

The inhabitants of this country are the miserablest people in the world...and, setting aside their human shape, they differ but little from brutes. They are tall, straight-bodied, and thin, with small long limbs. They have great heads, round foreheads, and great brows. Their eyelids are always half closed to keep the flies out of their eyes...They have great bottle-noses, pretty full lips, and wide mouths...They are long-visaged, and of a very unpleasant aspect, having no one graceful feature in their faces (Dampier, 1697: ch 16).

Dampier's description and labelling of *marlpa* is in fact the first European description of Aboriginal people in the historical record. Dampier does not use the label 'native' on his first encounter with them on the mainland. It is not until he has provided sufficient argument for their characterisation as inferior to Europeans and he moved on from the mainland to one of the nearby islands, that he describes them as 'natives':

I do believe there were 40 on one island, men, women, and children...The lustiest of the women, snatching up their infants, ran away howling, and the little children ran after squeaking and bawling; but the men stood still (Dampier, 1697: ch 16).

Conversely, Captain Cook's journal entry for 22 April 1770 provides the first description of Aboriginal people by colonisers, although there is still no reference as to the identity of the people he observed, save for physical descriptions:

and we were so near the Shore as to distinguish several people upon the Sea beach they appear'd to be of a very dark or black Colour but whether this was the real colour

of their skins or the C[l]othes they might have on I know not- (Cook, 1768-1771: Apr 22 1770).

This description by Cook hints at the racial undertones which the explorers were operating under at the time, although it should be noted that he refers to them as 'people' thus including them within the same category as himself. A later entry by Cook on 29 April 1770 is the first reference made to Aboriginal people as 'natives':

I went my self in the Pinnacle to sound and explore the bay – in the doing of which I saw sever (sic) of the natives but they all fled at my approach- (Cook, 1768-1771: 29 Apr 1770).

This reference to 'natives' is the first categorisation applied to Aboriginal people by the colonisers. The label 'native' comes from the Latin and Old French *natif*: natural or hereditary. The use of this term was exclusive for non-European people, imbuing it with connotations of inferiority. It is possible that Cook was simply referring to the people he observed as being born in that place, and thus made use of the label 'native'. However, his further descriptions of Aboriginal people are of a comparative origin, and they focus on the perceived inferiority of their lives:

The Natives do not appear to be numerous neither do they seem to live in large bodies but dispers'd in small parties along by the water side. Those I saw were about as tall as Europeans of a very dark brown colour but not black nor had they woolly frizled hair, but black and lank much like ours- no sort of cloathing or ornaments were ever seen by any of us upon any one of them or in or about any of their huts from which I conclude that they never wear any - some that we saw had their faces and bodies painted with a sort of white paint or Pigment (Cook, 1768-1771: 6 May 1770).

The absence of clothes for Cook ends his attempts to compare the people he observed on the shore with Europeans from his previous attempts at relating to them. However, Cook in the entry which describes his first face-to-face interaction with Aboriginal people, states that "their features were far from being disagreeable, the Voices were soft and tunable." (Cook, 1768-

1771: 10 Jul 1770). At no point in time did either Dampier or Cook attempt to establish the name that the Aboriginal people gave themselves, being thus satisfied with providing classifications based on their own observations.

This type of engagement and first encounter with Aboriginal groups was repeated, as described by the colonists themselves in their diaries and journals, which created a need for a term through which they could refer to the people they were colonising. As the colonisers failed to identify one unifying term with which to refer to all Aboriginal people (Berndt, 1961), and under the guise of this being a lack of complexity in their cultures, they sought to categorise them and name them through the capitalised term 'Aboriginal'. The people who Dampier refers to in the mainland are Ngarluma people and the people of the islands were Kuruma people. Similarly, the people Cook first encountered face-to-face were Gwaegal kin-group of the coastal Dharawal people. Thus, the category 'Aboriginal' with a capital 'A' is an invention and a product of colonisation created to homogenise six-hundred plus language groups, all of whom practice their own unique culture in Australia (Reece, 1987).

### **7.3 The context of Aboriginal identities**

There is no one specific anecdote which can be said to mark the birth of Aboriginal resistance to colonisation. Aboriginal cultures did not write or record their history thus the written record of the colonisation of Australia is based on the interpretations of non-Aboriginal people. However, one common trend stands out in sources which document the contact between Aboriginal groups and colonisers: Aboriginal people continuously signalled for colonisers to leave and at no point did they cede any part of their land to them. From the arrival of Dampier, Aboriginal groups expressed their dislike of European presence on their land. Cook observed people on the beaches and shoreline signalling for them to leave and he documented the fact that they did not accept gifts presented to them. Aboriginal groups, to their credit did not attack either Dampier or Cook, however Cook did fire at them on several occasions which, by all intents and purposes was a declaration of intent to harm.

The fishing activities, collection of water and plants and the hunting of animals were all acts which are seen by Aboriginal peoples as requiring permission and worthy of punishment if

carried out without it. The acts themselves can be interpreted as being colonising acts where the rights of Aboriginal people were disregarded. But at this point in history, Cook did not attempt to establish what those rights were. The only type of compensation provided to Aboriginal people for their intrusion were nails, beads, and string, which can be interpreted as determinations of cultural supremacy based on the trivial types of compensation provided. The testimony of Joseph Banks, who had accompanied Cook on his voyage, provides more insight into the characterisation of Aboriginal people by the English, where Aboriginal people were described in 1799 before a Committee of the Commons, as “naked, treacherous” (Banks, 1803: 311). Banks further stated that in his opinion, there would not be much opposition from them in the settlement of Australia because of their cowardice (Stanner, 1977). It is clear from this statement that all sentiments expressed by Aboriginal people at time of Cook’s arrival were misinterpreted by the English, and they were inevitably perceived as not having opposed colonisation.

The experience of the Gwaegal kin-group of the coastal Dharawal people is completely unique in Australia. There was no one to interpret the languages: both parties were completely in the dark about each other’s intentions. The arrival of the first fleet would have undoubtedly caused alarm and perhaps panic among the Gwaegal kin-group, but there are no records of the feelings or reactions of Aboriginal people at the time, save for some descriptions of them brandishing spears at the ships and the general perception of the English and French of being on hostile territory. If this is an accurate perception of the reaction of Gwaegal people, then it can be deduced that Aboriginal people rejected the intrusion of the colonisers but were heavily outnumbered and outgunned. Nonetheless, some early interactions between the colonisers and Aboriginal groups around what is now the Sydney area were interpreted as signs of friendship by the colonisers where the idea of the ‘noble savage’ comes into play in early descriptions of Aboriginal people (Cowlshaw, 1988). The English reported in their descriptions of Gwaegal kin-group that they were:

to all appearances the Lowest Rank among the Human Race (Blackburn, 1934:319).

I think, the most miserable of the human form under heaven (Home, 1893: 747).

more like monkeys than warriors (Southwell, 1893: 669).

altogether a most stupid insensible set of beings (Bowes, 1787-1788: 389).

how tractable these people are, when no insult or injury is offered, and when proper means are employed to influence the simplicity of their minds (Collins in Stanner, 2001: 99).

While Phillip was under strict instructions not to harm the inhabitants of Australia, this quickly fell to the wayside when conflict between Phillip's men and Aboriginal people broke out as well as between de La Perouse's men and Gameygal people (Stanner, 1977). The relationship between the colonisers and the Aboriginal people of the Sydney area was based on complete misunderstanding and lack of knowledge about each other's customs and beliefs as well the challenges involved in not speaking each other's language (Goodall, 2017).

The process of slow dispossession and encroachment on their system of beliefs, land use, and tenure continued through the early years of the colony and escalated with the death of Bennelong, who was eulogised by the Sydney Gazette:

His propensity to drunkenness was inordinate; and when in a state he was insolent, menacing and overbearing. In fact, he was a thorough savage, not to be warped from the form and character that nature gave him by all the efforts that mankind could use (Anonymous, 1813: 2).

This assessment of the former captive who Phillip considered a 'friend' contributed to the categorisation of Aboriginal people as 'drunkards' and the end of the illusion of the 'noble savage'. Bennelong's consumption of alcohol can be attributed to many factors, including some which can be linked to his time in captivity. By the 1820s, the identity of the people of Sydney, particularly that of Bennelong had been interpreted as being 'Eora'. This was also a misunderstanding as the word itself is of Dharug origin and it means 'people'. Therefore, when asked who they were, the people responded, as many Aboriginal people do, by stating that they are 'the people', meaning those who belong to the country, thereby providing the

colonisers with information that was misunderstood, causing them to mistakenly impose identity on the people of Sydney. Today, they are still known as 'Eora people', meaning they are known as the 'people people' (Stanner, 1977).

Around this time, the category of 'Aboriginal' was also introduced within colonial documentation, particularly in relation to the monitoring of Aboriginal resistance activity. It is a term which was used to formalise their existence within the colony, and which demonstrated the 'good will' of the colonists towards them. What is now known as the 'Australian frontier wars' were not reported as being acts of violence against Aboriginal people, but rather they were said to be acts of violence by 'savages' on to innocent settlers. The co-existence between the early colonists and the people of Sydney, as well as the pressure placed on the sources of food by the growing colony and the smallpox epidemic of 1789, led to an influx of Aboriginal people into Sydney Town and by 1798 racial violence was in full swing (Goodall, 2017). The ability of Aboriginal people to come into the towns and the policy of attempting to settle as many Aboriginal people as possible into towns led to the creation of the cleft within the Aboriginal lifeworld, where they existed within the colonial context and the Aboriginal context simultaneously (Attenbrow, 2002; Bourdieu, 2007; Araluen in Heiss, 2018; Stanner, 1977). This cleft placed Aboriginal people within a new social environment where their conditions of existence changed significantly (Bourdieu, 1977, 2007). At the same time, their experience of self was split between the cultural domain and the new political domain imposed by laws and regulations of colonisers.

Part of the reality of being an Aboriginal person in the eastern states was and still is that all the people who grew up knowing they were of Aboriginal descent are part of a socio-political web of interconnectedness which is supported by kinship. This is not the type of kinship which is based on the section system, but rather the adapted version which has imbued the category 'Aboriginal' with a new meaning which has resulted in a new type of self-created and self-determined identity. Further, awareness of policy and shifts in the political environment was something which Aboriginal people living in the 1800s became quickly attuned to because of the way in which the socio-political status of the colony impacted them. It created a cleft within their lifeworld where they had to exist within two distinct domains subjected to contradictory socio-cultural pressures which fracture the self (Bourdieu, 2007). These two distinct domains

within the Aboriginal lifeworld intersect and coexist, forming a new sense of self despite the contradictions. In the case of the post-colonial Aboriginal lifeworld, this intersection manifests as the desire for recognition within both domains, that is, recognition as an Aboriginal person by the community and legal recognition by federal government. This desire for recognition within both domains is then verbalised by Aboriginal activists although their activities have been manifested in different ways throughout Australia. As I show in the section that follows, the habitus cleft is an imperative when discussing the Aboriginal lifeworld.

#### 7.4 A habitus clivé: the fracture of self

Habitus clivé or cleft habitus refers to a particular experience of habitus where there are socio-cultural pressures on the self, causing it to fracture and divide (Bourdieu, 2007). This fractured self can then be interpreted in its experiential intersubjective context wherein the self has been developed. The experiences themselves are described as ‘clefts’ or splits which inhere in the Aboriginal lifeworld due to the experience of colonisation. The *marlpa* lifeworld of today has two main ‘clefts’, one which stems from experiences of colonial subjugation, isolation, and oppression and one which is a response to the experience of the native title industry. These clefts are integral to the experience and conception of identity in the Pilbara as they are integrated within the social space through which culture is reproduced. These experiences combined with the power which in-house anthropologists and judges are granted and the ability to tell Aboriginal people “who’s in and who’s out” of native title claims based on genealogical research has precipitated a crisis of identity which has in turn produced numerous conflicts throughout the Pilbara, several of which I discussed in earlier chapters.

My first meeting with Tim’s daughter, Lorice, highlighted those clefts. One day in July 2019, I was visiting Vincent<sup>141</sup> and Hazel<sup>142</sup>, in their home in South Hedland. Hazel told me that she had given my number to her friend, Lorice<sup>143</sup> who wanted to know about my research. Later that night I received a call from Lorice, and she asked me to come and see her at home in South Hedland. The next day I went dutifully to Lorice’s home at the agreed time. She had a very neat

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<sup>141</sup> Vincent Lockyer was a Kariyarra law-man.

<sup>142</sup> Hazel Dhu was Vincent’s wife, she is a Banyjima woman and a member of the Dhu and Derschow kin-group.

<sup>143</sup> Lorice Douglas is a Ngarluma law-woman.

yard fully fenced and I was eagerly greeted by her huge dog dissonantly named Puppy Dog. I had grown used to seeing a lot of tiny Chihuahua dogs around as they are the preferred breed for many of the women in the Pilbara. By contrast, due to his enormous size and enthusiasm, Puppy Dog was an over whelming surprise. Lorice was reserved and shook my hand with what I call the 'Pilbara shake', where only the fingers are held by the other person and a firm shake is given once, then the hand is withdrawn. She avoided eye contact, as did I, which is a typical behaviour among *marlpa* when first meeting someone as it shows respect. However, I have come to interpret the avoidance of eye contact on first meeting a 'whitefella' as apprehension rather than respect.

Lorice quickly ushered me into her home which is unusual because when visiting a *marlpa* household, the usual place for the 'visit' ritual is the porch or an outside area. However, at the time I followed Lorice, who led me through the house and into the open plan kitchen and dining area and invited me to sit down at the table. Her dining table was covered with neat piles of paper which seemed to be arranged in a specific order. The writing on the top of one of the piles indicated that they related to native title and specifically, the Ngarluma people.

Lorice sat down diagonally from me with a notepad and pen in front of her. Then she looked straight into my eyes and asked: "So, you working on native title then?" Lorice's question was not what startled me, but rather the way in which her entire manner and body language changed. The question, although relevant to my meeting with her is relatively insignificant in view of the change of her comportment. The way in which she quickly shed her 'everyday' persona and became the 'native title Lorice' signified the instant when Lorice transitioned from the *marlpa* cleft into the native title cleft and exposed the fracture and divide of the self.

The ability of humans to understand the environment around them as well as their intersubjective milieu is based on their ability to communicate with each other (Habermas, 1975, 1984, 1987; Husserl, 1970; Moran, 2012). The introduction of native title into the *marlpa* lifeworld was shaped by their understanding and interpretations of the integrated framework of meaning created through the NTA. The understanding *marlpa* hold of native title plays an important role in how they navigate between the *marlpa* cleft and the native title cleft. The neat piles of paper, the poised notepad and pen, and the way in which Lorice levelled me with

her eyes indicate her code-switching which took place as soon as she sat down (McConvell, 1988). These clefts are existentially separate, have different rules and demands, yet coexist, albeit segmented, in a single consciousness (Schutz, 1945, 1962, 1973 (1970)). Taking a step into the native title cleft means putting on an armour and confronting the issues at hand. In Lorice's case, her armour is piles of paper, combined with her notepad and pen and she is ready to engage in battle using her knowledge as a weapon. She was armed to the teeth with her paperwork and expected to engage in battle in the experiential intersubjective context.

The battles for which *marlpa* arm themselves are all related to native title. The reality of inhabiting a cleft duality in the Pilbara is obvious during weekdays in the city of Karratha or major towns such as Port Hedland, South Hedland, Tom Price, and Newman where 'professional claimants/native title holders' can be observed leaving their homes armed with paperwork at around nine in the morning heading to the innumerable meetings with PBCs, non-profits, mining companies, NTRBs or lawyers. The term 'meeting' has become synonymous with the discussion of native title, culture, and cultural heritage. Frequent participation in 'meetings' is a necessity if they want to maintain some semblance of control over their country and how it is managed, thereby making the fracture of the self a necessity of the experiential intersubjective experience. Therefore, the term 'meeting' is not just a gathering of people, but rather a statement of agency which conveys an active involvement in the practice of *marlpa* culture and is worn as a symbol of the *marlpa* self. The statement "I have a meeting" conveys an urgency about the matter which is to be discussed; it also displays a person's commitment to cultural practice and continuity.

### **7.5 The socio-cultural basis of identity in the Pilbara: "I am *marlpa*."**

The experience of *marlpa* is not better or worse than that elsewhere in Australia, but rather, it is different. And while the Pilbara cannot be seen in isolation from all other regions in Australia, my discussion of how *marlpa* think and talk about their identity pertains to the native title community. As Doris stated:

There are lot of different people that come live here. The whitefellas, but also the blackfellas from all over. They marry in, and we have people with country from all over.

But marrying in gives the kids country, not the ones who married in. The kids can speak. They have blood.

It is within these exclusions which are embedded in the kinship system of the Pilbara, that the notions of identity draw from. The relationships which Doris describes are affinal bonds, This affinity does not confer any rights to anyone (Radcliffe-Brown, 1930a); rather, the rights are passed through filiation. Anthropologically, there is a metaphysical connection between the Dreaming and blood, which links the individual back to the Dreaming through a consubstantial bond. From the interpretive perspective it can be said that it has cosmo-ontological meaning for an individual and therefore influences identity. As discussed previously, the Dreaming provides a piece of itself to form a person which forms part of the individual's consubstantial identification with the Dreaming. As such, this Dreaming component which forms an individual is the same substance as that which the supernatural entities used to create and shape the country and from whence language originated and was given to humans. This interconnectedness accounts for the interpretive concept of cosmo-ontological beliefs and practice. Stanner (1963) refers to this interconnectedness as 'oneness', and relates it through inherent bonds to the body, spirit, ghost, shadow, name, spirit-site, and totem. The term "consubstantiality" (Bagshaw, 1998) is thus applied to this nexus of different components of human embodiment, country, and their Dreaming matrix.

One night, during my last block of fieldwork in the Pilbara, Sissy Ramirez and I were standing outside talking. While she was discussing her family tree with me, I looked up at the sky and pointed, "Oh look, a shooting star!" Sissy looked up and exclaimed, "Oh *marnu!*" I looked at her as this expression does not usually come accompanied by good news, and she quickly grabbed my arm and ushered me inside. She started gathering her paperwork and bags while saying: "Quick, quick! I need to go and see what this is about!" I asked what the falling star meant, and she quickly explained, "The yellow ones are danger. Whenever you see a yellow falling star you know that the ancestors have been wronged and that they are on their way to punish someone. You watch, someone has offended country! Someone is going to be hurt!" With that, every hair on my body stood on end and I watched her as she gathered all her things: "You get a towel and put it under the door. Don't go outside. Stay inside till the morning. You'll

be right, but just stay inside!” she warned, and she walked out the door and left me in absolute terror of even looking out the window.

The concept of ‘payback’ as explained by *marlpa* is an experiential existential impact of the actions of the eternal supernatural entities which form the Dreaming (Bagshaw, 1998). In the case of the shooting star, Sissy included me in the experiential cleft of *marlpa* lifeworld and we, together, experienced the existential impact of the actions of the Dreaming. Stanner (2014: 105) refers to the “self-understanding” which accompanies myth and its place within the cosmo-ontological beliefs and practice. This self-understanding is not just learned through the narration of myth, but rather through the lived experience of it. Sissy’s recognition of the ancestors travelling in corporeal form from the Dreaming to enact “payback” demonstrates the interconnectedness between the cosmo-ontological beliefs and *marlpa* cleft. It is their physical manifestation which validates the consubstantial identification with the Dreaming.

The ability for an individual to request payback from the Dreaming or the eternal supernatural entities rests on the individual’s legitimate connection to country based on filiation. The legitimacy of the connection to country resides within the oral histories and Aboriginal understanding of genealogies, however in the native title context, it is within the historical record. These historical records enter the *marlpa* lifeworld through native title and rather than validate their own experience of their cosmo-ontological beliefs, they cast doubt over it. This is exemplified though the case of Niyaparli people.

## 7.6 Doubting the cosmo-ontological

At a small gathering in South Hedland, Bill Dhu, an elder of the Dhu and Derschow kin group recalled his grandmother, Daisy, who, he asserted, was a Banyjima woman born near Mulga Downs Station. Bill recalled that she was born in the bush, outside the boundary of the station. He said that he could picture her face, but he was very young when she died at the law ground in Ethel Creek in 1934. He went on to say that she was a Banyjima speaker and that her “black fella name” was *Idjiangu*. Daisy is the apical ancestor of the kin-group, having had four children to three husbands in her lifetime. This information from Bill, a direct descendant of Daisy, was corroborated by Alec Tucker, a Banyjima elder, No. 2, a Ngarla law man and elder, Bonnie

Tucker, a Nyiyaparli elder, and Diana Robinson, a Kariyarra elder. Nevertheless, this corroboration was not sufficient for the Dhu and Derschow kin-group to be accepted into the Banyjima native title claim or determination group. According to Bill, this invalidation of their oral history originated; from a few questions in relation to their association to some areas in Nyiyaparli country.

Daisy had three children with James Swan, a white man who worked at Mulga Downs Station, Billy Swan (d.o.b. 1895), Ivy Swan (d.o.b. 1902) and Susan Swan (d.o.b. 1906). All three children were born at Mulga Downs Station, and having only one Aboriginal parent, they identified as Banyjima, like their mother. The youngest, Susan Swan, is Bill Dhu's mother, and he is one of ten children she had with her husband, Teddy Dhu, who was said to have been a white man. Bill showed me their marriage certificate which states that Teddy and Susan were married on 31 January 1929 in Roebourne. The certificate depicts Susan as being a "half caste" from Mulga Down and a daughter of Daisy. While being designated as being "from Mulga Downs", does not provide the specific language group to which Susan belonged, there is a possible implication in the fact that her mother was said to have been a Banyjima speaker, born in the vicinity of Mulga Downs Station which is known Banyjima country, and then remained in the area after the birth of her children. However, a similar assumption in the negative might also be drawn if one considers that Daisy's husband worked at the station and thus it would be an incentive to remain in the area although this is very unlikely. Nevertheless, the descendants of Susan Swan and her husband Teddy Dhu do not have any cosmo-ontological beliefs with Nyiyaparli country although some of them have married into Nyiyaparli families.

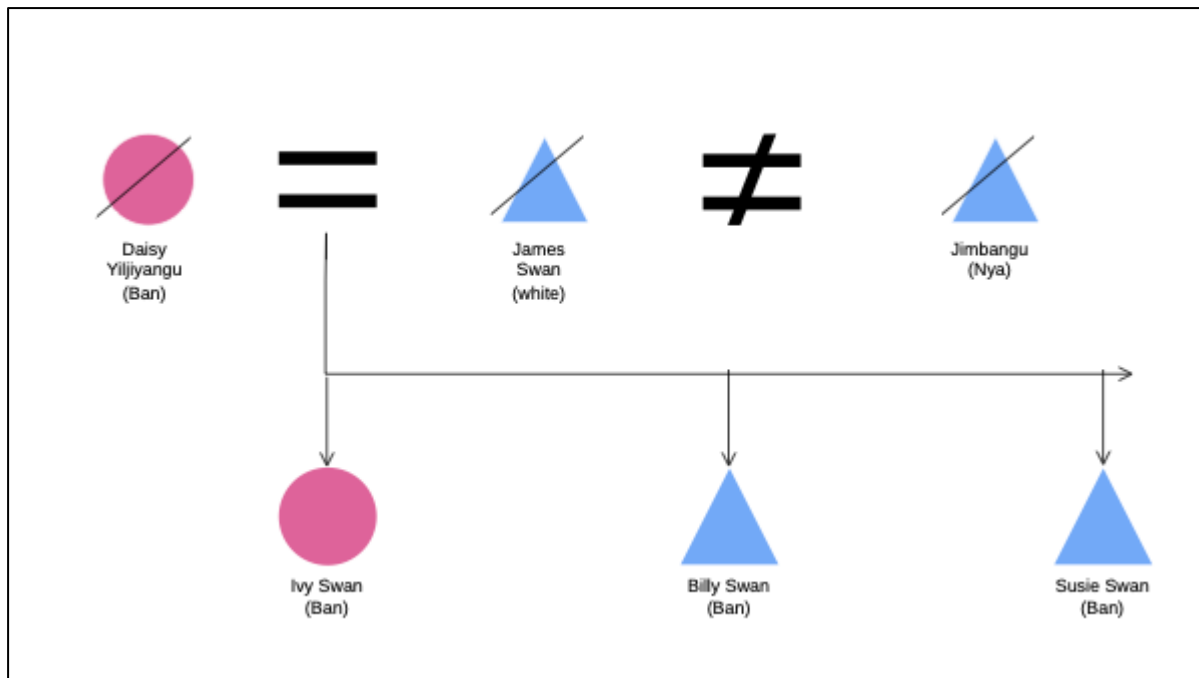


Diagram 5: Daisy and her children as related by the Dhu and Derschow kin-group.

The children of Ivy Swan and her husband Frank Derschow (Snr) are, according to Bill Dhu, also Banyjima. Both, Bill and Hazel Dhu agree that Frank Derschow was a white man who married Ivy Swan in Roebourne. Here, Bill also produced the marriage certificate of Ivy and Frank stating that they married on 28 January 1928. Ivy is listed as being “a half caste” and Frank as being “white”. Frank and Ivy are reported to have had nine children: Violet, Frank (Jnr), Hardy, Edgar, George, Frederick, Gladys, Richard and Edward. Ivy is reported to have married a second time, to Clarence Rodregius and had a child, Leslie Derschow. And a third marriage to Kip Stock produced Felix Derschow. Bill Dhu stated that the only member of the Dhu and Derschow kin group who identifies as Niyaparli is Peter Derschow who is a son of Leslie Derschow and Amy Coffin. Leslie Derschow is Ivy’s son by Clarence Rodregius, although Bill states that Leslie claims that his biological father was Bill Coffin. However, this is the only connection which I was able to find between the Dhu and Derschow kin group and the Niyaparli language group through oral accounts and the historical documents.

The Dhu and Derschow claim to Banyjima identity is supported by their cosmo-ontological beliefs, their oral histories, and the knowledge of their genealogical origins based on filiation. The cosmo-ontological beliefs of the kin-group are somewhat aligned with those of the Banyjima people but since their rejection from the Banyjima claim, Bill stated that they had

abstained from participation in Banyjima law celebrations. This is a direct consequence of being rejected from the claim and it reflects the break within the social fabric which is observable in the Pilbara.

With little financial resources, the kin-group self-funds their attempts at recognition, having in the past employed a former YMAC lawyer to argue their case in court. As they have now been included into the Nyiyaparli claim, they are unable to fund a second legal dispute as they have no access or wish to access the Nyiyaparli trust. Bill stated that to access financial compensation given to Nyiyaparli people by the resource industry for the use of their country would cause harm to Nyiyaparli ancestors and they could face their wrath through payback. This assertion affirms that there is a definite understanding that Nyiyaparli country is not their country, and it also reinforces the belief in retribution. Bill further stated: "I am a Banyjima man, that is my country, Mulga Downs. I am *marlpa* from around Mulga Downs." With this statement, Bill further reinforced his position within the native title cleft and his identity as *marlpa* reinforces his cosmo-ontological beliefs. The language group identity which Bill claims is based on language and shared cosmo-ontological beliefs, the oral histories, and kinship.

However, through the imposition of the Dhu and Derschow kin-group into the Nyiyaparli claim, the NTRB has prevented exercise of agency of all Aboriginal parties involved. They have also dismissed the oral histories, the cosmo-ontological beliefs, and the existential experience of those beliefs. By doing so, they have denied the Dhu and Derschow-kin group the ability to access their country as well as re-classified them as Nyiyaparli people and deprived them of their identity as conceptualised culturally.

### **7.7 Who's in and who's out: the genealogical conundrum**

Sitting on a chair under the shade, outside of Wilfred Hick's house in Roebourne, he looked calm and relaxed, but his voice held a lot of anger. He was recalling his interactions with YMAC anthropologists and lawyers in the past:

The whitefella came to our land and took it, then they tried to give it back but before they give it back, they are going to take everything else and destroy it. And then what's

left will be written down in whitefella papers and then everyone will think that what is written down is right. But it's not. You fellas got it all wrong. And no one can tell me who should or shouldn't be in my claim, only we can tell you that. That's our law.

Wilfred had always been seen as a 'rebel' and even an 'outcast' by YMAC staff. Indeed, I did not meet Wilfred until my last period of fieldwork in 2018. Wilfred had been part of the infamous Wong-goo-tt-oo native title claim where some of the Ngarluma law men initiated a native title claim over *Thaluntha* and *Pularra* which were acknowledged to be Yaburrara kin estates and which they claimed had been given to them for maintenance and protection in the 1930s by Maitland and Island, the last two remaining Yaburrara men. This claim had some overlaps with the Ngarluma/Yindjibarndi native title claim, and as a result, was dismissed during *Daniel v Western Australia* [2005] FCA 536. As one of the main claimants for Wong-goo-tt-oo, Wilfred was excluded from all research by YMAC as per the instruction of the legal team, despite his senior position as a law man.

Wilfred was recounting his experience as a native title claimant and being present during a community meeting where anthropologists had informed the Ngarluma and Yindjibarndi people who was to be a claimant and who had been found to have no connection to the claim area. Wilfred stated:

The decisions are made based on what? The stories that the whitefellas wrote down while a blackfella told it? So why is it that when we tell you something now, you must confirm it with Tindale and if it doesn't match then you tell us we are not who we know we are?

Wilfred laughed at this and continued:

We know who we are, we have lived here all our lives, we know each other. We know our families and we know which country is ours. No anthropologist should have the power to decide if I have a connection to country or not. That's our decision.

Wilfred's statement is echoed throughout the Pilbara. It is perhaps the one thing that every single member of the Pilbara native title community agrees on. Only *marlpa* have the power to determine if someone has a right to be a member of a native title claim. However, this process of the selection of claimants was one which rested on the outcome of the genealogical research carried out by in-house anthropologists. The research carried out is ancestor-oriented genealogical research of the people who wish to become members of the claim group. This is problematic since this does not include all the people who have a primary and secondary connection to country as described in the laws and customs of *marlpa*. As such, research carried out with only the group who wishes to be a member of the native title claim would produce an incomplete picture of the society as a whole and would also lack in detail as was the case for the Nyiyaparli and Palyku native title claims.

## 7.8 Conclusion

Vincent commented:

Here (in the Pilbara), even the whitefellas know who we are, they know your mother, your father, grandmother, everyone. They know I am Kariyarra and that I am Ngarluma. If I go to Perth, I'm just another blackfella.

The relatively small population of the region in the Pilbara has provided *marlpa* with the ability to assert their identity as conceived by them among the non-Aboriginal community. There was a sense of relative intimacy and comfort of knowing that non-Aboriginal people knew what Vincent's country was to him and in being able to assert his Kariyarra identity within the 'pan-Aboriginality' which was imposed on him by the government (Attwood, 1989; Yamanouchi, 2010). It is the case that *marlpa* can assert their identity, as culturally conceptualised within their lifeworld, however the introduction of native title has impacted their own perception of identity and how it is reckoned. The interaction between *marlpa* identities and native title has created a cleft where the identity is created and conceptualised through what is perceived to be anthropological research, and it is justified by the need to achieve a positive native title determination. Thus, anthropologists working in the native title industry have imposed a new

type of identity which is tied to historical documents and justified through the legal system. Validation of these identities is then realised through the acknowledgement of the courts.

Historically, Aboriginal identities Australia-wide have been determined through the understanding of non-Aboriginal people. A variety of assumptions and ideologies have been imposed onto Aboriginal people based on the socio-cultural climate of the time, however it has not been until recently that Aboriginal people have been asked how they conceive their own identity. It is contradictory then, that through native title, the identity of *marlpa* has regressed into being dictated by non-Aboriginal people and legal frameworks.

*Marlpa* identities are multifaceted and vary depending on the historical situation and lived experience of a given community. The identities of *marlpa* are grounded in their cosmological beliefs and underpinned by the kinship system. The different aspects of identity are linked through the reciprocal relationship which an individual has with their country, and these can be primary or secondary. But the latter has proved problematic within the native title context because it is not adequately understood by the practitioners of that industry. Consequently, this lack of understanding has resulted in identity and connection being doubted and people being excluded from native title which, in the *marlpa* lifeworld, now equates to losing all rights over country.

There is an inherent inability within the native title community to accept *marlpa* identities as conceived culturally. The rejection of different levels of connection to country reflects this inability, as does the Western conception of ‘double dipping’ where *marlpa* have been rejected for expressing different levels of connection to country. The use of terms such as ‘cognatic descent’ by anthropologists can be interpreted as an attempt to include different aspects of *marlpa* identity, however this has impacted on kinship and has resulted in accounts of *marlpa* kinship which are not accurate. These flawed descriptions of *marlpa* kinship, coupled with the rejection of culturally conceived identities have now been entered into the legal record and thus upheld as accurate descriptions of normative societies, reinforcing colonial structures.

## Chapter 8: Conclusion

The question “who’s in and who’s out?” exemplifies the impact which the native title process has had on *marlpa* where they have been denied the agency to exercise their cultural processes and determine membership of their own groups. The question itself was the spark which ignited my research interest in native title and its impact on the lifeworld of *marlpa*. However, even now that most claims have been determined throughout the Pilbara, the question is still being asked and it has prevailed post-determination because of the way in which membership to native title claims was managed by the NTRB. The endurance of the question has produced a shift in its meaning and contextual framework. The new context being the continuous search for historical documents to prove their Aboriginality and connection to country and gain recognition in Western legal terms. And while the logic of membership to native title claims may be included within the connection reports, those reports, and associated documents are not available to the Pilbara native title community.

The changing meaning within the question “who’s in and who’s out?” is one which has precipitated not just cultural change, but also an assertion of agency on the part of *marlpa*. The question was once directed at anthropologists and other native title professionals as a source of confirmation of Aboriginality and membership to a native title claim allowing for third parties to decide their fate and identity and thus reinforcing the structural violence which had been instated through the colonial processes. This dependency on the authority of the NTRB stripped claimants of their agency and placed them in a position where they were powerless to exert their right to identify as members of a language group, a kin-group, and as the traditional owners of their country, as well as assert their connection to more than one country and/or language group. This changed through observation and an emphasis on access to Western education systems, where *marlpa* have taken back some of their agency and begun to conduct research on their own, although certain aspects such as ‘double dipping’ have remained within their lifeworld.

Adaptations to native title and the development of the native title cleft have led to historical documents becoming a type of currency which is imbued with the power to grant them access to their country to practice their culture. However, these adaptations have also produced a high level of resentment towards the local NTRB because it has withheld these documents from them and thus partially obstructed their ability to practice culture and assert their identity. This is an adaptation which is now maintained culturally through ritual.

These adaptations made within the *marlpa*-lifeworld of the Pilbara stem from production of the native title cleft and are underpinned by the notions of understanding of their own culture through the unofficial requirements of the NTA and legal precedent (Bourdieu, 1977). They also form the basis of a socio-political ideology which was conceived in the Western context and is not grounded in Aboriginal knowledge. The ideology is based on distorted assumptions made about Aboriginal cultures and practices which have been projected on to Aboriginal people through the process of colonisation and its impacts on non-Aboriginal people's perception of what is 'traditional'.

The native title industry is, as Attwood states, part of a "denial settler society" (Attwood, 2017) because the impacts of colonisation are overlooked and dismissed in favour of the imagined pre-colonial past. Wolfe (1999: 1) eloquently voices this attitude:

For all the homage paid to heterogeneity and difference, the bulk of 'post'-colonial theorizing is disabled by an oddly monolithic, and surprisingly unexamined, notion of colonialism.

The imagined or romanticised notions which are pervasive and invasive within the native title industry have produced a legacy of erroneous descriptions and impositions of identity and stereotypes upon *marlpa*. Thus, the native title industry serves as an echo chamber where the legal field remains blissfully ignorant of its mistakes while the anthropological field cedes its methodology in favour of playing a supporting role. This supporting role is thus exemplified

through the promotion of the stasis of culture which rejects cultural adaptation and change in favour of a pre-colonial imagined past.

This pre-colonial past is constructed subconsciously through imagery presented in historical documents which is interpreted as depicting 'traditional' cultures where in fact, it depicts cultures in crisis, faced with colonisation and invasion. This is a response to the foundations of Australian nationhood which lay in the "dispossession, destruction and displacement of aboriginal peoples" (Attwood, 2017: 24) and the post-modern revisionism and awareness of the role of the coloniser (Bongiorno, 2000). As such, the idea that historical accounts of *Aboriginal cultures* at the time of colonisation and in the years immediately after, have come to form a type of determining factor within the national consciousness which creates a false sense of what 'traditional' Aboriginal cultures were like pre-colonisation. Rarely are those documents contextualised and seen as snapshots in time, depicting people undergoing dispossession, destruction and displacement, but rather, the people being described are now framed as 'traditional' echoing the Yorta Yorta decision where historical documents were legitimised as accurately depicting 'traditional' Yorta Yorta society and the oral histories were deemed to be potentially distorted or biased.

The characterisation of Aboriginal cultures as 'traditional' based on accounts in historical documents has produced a notion of stasis where cultural change and adaptation are seen as detrimental and labelled as a 'loss of culture' which cannot be 're-learned'. In the face of the threat of a negative determination, that is, a decision that finds that native title has been extinguished, the native title community in the Pilbara has responded by adopting cultural practices which may have been discarded in the past or those which are seen as 'traditional', such as the use of dots in the art of *marlpa*. This change resulted in the native title cleft being created within the Pilbara Aboriginal lifeworld.

*Marlpa* lifeworld in the Pilbara encompasses two dimensions. These two dimensions have an intersectional quality where both, the *marlpa* dimension and the native title dimension coexist in a single consciousness (Schutz, 1945, 1962, 1973 (1970)). This coexistence is exemplified

through the continuous search for historical documents to prove and substantiate identity and connection to country. While there is a clear split between the clefts, they intersect in their purpose, which is to maintain connection and to self-determine through their continued performance of culture and ritual. The native title cleft was thus the product of external factors, but also created as a vehicle through which *marlpa* have sought agency. These two clefts were shaped by the understanding and interpretations of the integrated framework of meaning within their everyday life and the NTA. The *marlpa* cleft, one which is used in all matters concerning everyday life, includes cultural practices, social understandings and interpretations and the meaning ascribed to their cosmological beliefs and ritual. The native title cleft intersects the *marlpa* cleft through the everyday ritual of attending meetings and participating in cultural heritage surveys and the constant research which is necessary to obtain historical documents to prove connection to country. The native title cleft also includes Western education and the act of sending children to boarding schools and tertiary institutions in capital cities depriving young *marlpa* of a cultural education. Thus, the absence from country has now become a ritual within the *marlpa* lifeworld.

The absence from country does not sever the connection to country as was suggested in the Yorta Yorta claim. Indeed, *marlpa* have demonstrated that even when living in a different state, the connection to country remains through the essence from the Dreaming which is contained within the body and symbolised by the substance of blood. This is echoed through the need for the body of a deceased person to be buried on-country to allow for the essence to return to the Dreaming. Absence from country has often been cited as a reason for the extinguishment of native title and the exclusion of victims of the stolen generation from native title claims and determined areas citing that culture cannot be learned or re-learned. However, this is not the case as can be seen through Sharyn's experience, where she did not grow up within her kin-group or culture as a consequence of the stolen generation, and who is now considered a law-woman through her learning process with Doris. Thus, the most important requirement for the membership of an individual into a kin-group and consequently a language group, is blood.

The native title process, in particular connection research seeks to determine 'connection' to country, however there is a lack of specificity within the native title industry as to what constitutes 'continuity' and 'tradition'. Thus far, the concepts of 'continuity' and 'tradition' have been described through legal precedent using methodologies which respond to legal briefs and are built around legal parameters. This has imbued the concepts with a degree of ambiguity and room for interpretation which has produced evidence to be used in the native title context which does not fit the requirements of an ethnographic account. Indeed, native title anthropology does not seek to produce or build upon ethnography or ethnographic accounts, but rather to present a comparative report which determines whether there is a normative society in existence and whether said society still practices and observes the same culture documented by colonisers and observers as close to the time of colonisation as possible. However, due to the lack of a written history pre-colonisation, the only available evidence is the oral histories, which, though legal precedent, has been deemed insufficient. Therefore, the only accounts which can be utilised as a base line are those contained within the historical records created during colonial times by settlers.

The type of evidence which is believed to be necessary to meet the requirements of the NTA, as determined through legal precedent, is that which constitutes historical documents, particularly, documents which make up the collections of ethnographic research of Radcliffe-Brown and Tindale. These historical documents have been used as proof of continuous unbroken connection to country through the identification of an 'apical' ancestor. This identification or location of an apical ancestor within the historical documents has become a task that, for some families and kin-groups, has taken decades to achieve or has never been achieved, as is the case of the Ramirez girls. The necessity to produce proof of connection in the form of family trees which are substantiated by historical documents has produced an urgency which has led some people to conduct their own research and obtain copies of the genealogies produced by both Radcliffe-Brown and Tindale. The process is fraught, because a lack of historical proof is seen as a lack of connection or a mere "historical connection" by native title professionals. It has also left the historical documents open to misuse or misinterpretation when used outside of the anthropological context. This has at times created

conflict among claim groups and impacted the way in which people relate to each other through kinship, as well as the authority of the elders.

The research conducted by native title professionals, overseen by the local NTRB was mainly conducted by in-house anthropologists who did not have sufficient field experience and who were, in their majority, recent graduates. This lack of experience produced research which *marlpa* deem as being “wrong”. This has led to a general lack of confidence in native title professionals who “don’t know what they doing”. This is particularly the case where the genealogies which accompany the connection report are concerned. Consequently, membership of native title claims and PBCs is fraught with conflict which the people themselves state originated through connection research and their inability to self-determinate in accordance with their laws and customs. The compilation of the genealogies using historical documents as the grounding evidence has at times, overruled the knowledge of elders and thus usurped their authority.

During connection research, the NTRB included families and kin-groups into native title claims, consequently, they are not acknowledged or excluded from others. This has been the case specifically with Kariyarra people and their native title claim, and to a lesser extent with the Nyiyaparli and Banyjima native title claims. The rejection or acceptance of an individual, a family or a kin-group into a native title claim or determination group can precipitate adaptive change in the daily interactions of *marlpa*, where a rejected party will be ostracised from the community, inciting resentment and suspicion as well as potential conflict. Similarly, the acceptance of an individual, family or kin-group to a native title claim or determination group could have the same effect, with the suspicion about the type of evidence they presented to be accepted.

In the case of the Kariyarra people, the native title determination by Barker J has thrown the group into further conflict than that created through native title research. Through the inclusion of all parties to the native title claim, Barker J has ensured that the group is no longer a normative society because the members of this group no longer adhere to the same set of

cultural norms and values. The inclusion of the Alec, Barker, Pontroy and Todd, Dann and Attwood families, overrules membership based on consanguineal bonds which could be linked to the ancestors and the mythical beings who form part and are of the Dreaming. The cyclical nature of the cosmology of *marlpa* imbues blood as a substance which carries the Dreaming, the ancestors and the mythical beings. The blood within a human is thus seen as a conduit which carries culture within it and which, upon death, “calls out for country” as this is the only way for this essence to return to the Dreaming.

The Alec family has in the past acknowledged their primary identity as Ngarluma, and their apical ancestor within the Kariyarra determination is in fact listed as an apical ancestor in the Ngarluma determination. The elders of both Ngarluma and Kariyarra people all agree that this family is Ngarluma and should not have been included in the Kariyarra determination. The case of Alfred Barker is similar; however, Alfred has never acknowledged any other identity than Kariyarra. In his case though, the historical accounts agree that his ancestry is not Kariyarra, similarly the Kariyarra and Nyjamal elders all agree that he is not of Kariyarra descent. The Pontroy family has clear ancestry as recorded by Tindale and acknowledged by some of his descendants. However, this family has also been accepted into the Kariyarra determination. The Todd, Dann and Attwood families have never presented any clear historical evidence to substantiate their claim to Kariyarra ancestry, and the Kariyarra people have never acknowledged them as Kariyarra either, thus their acceptance into the determination constitutes a breach in Kariyarra law. These decisions by Barker J are seemingly contrary to the norm in native title where historical evidence has been favoured over oral histories. In these cases, historical evidence excluded those families. Barker J left the decision of how to identify membership within the Kariyarra native title determination group to the PBC.

There has been a clear breakdown in the relationship between the NTRB in the Pilbara and most of the native title community. The mistrust stems from a perceived mismanagement of the native title claims, particularly connection research, and what *marlpa* perceive as a deliberate act of withholding evidence from them in the form of the connection report and genealogies. The majority of the native title community has expressed ignorance about what is contained within the connection reports and claim they have never seen the reports, despite

asserting ownership over the information contained within them. Similarly, the native title community of the Pilbara claim they have not seen the final genealogies and are unsure as to where they fit which leads them to carry out their own research and seek tertiary qualifications which may assist them in their quest.

Among other information, most connection reports will detail how a native title group reckons membership. These membership rules in the Pilbara, and in other parts of Australia, include cognatic descent, however this is incorrect based on the accounts of *marlpa* and on the research of anthropologists since colonial times. Inclusion of the concept 'cognatic descent' is not justified within the native title industry; it is a contradiction of the historical evidence and the oral histories of the Pilbara. Nevertheless, the connection reports contain this information which, in theory, would assist the native title determination groups establish the rules of membership should the connection reports be made available to them. However, during my fieldwork I spoke to several people who are members of the board within their PBC and who claim that YMAC has never handed over the connection research, connection reports or genealogies to the PBC. As such, the rules of membership have been drawn up arbitrarily, rather than supported by evidence presented and accepted by the court.

The norms of the formerly cohesive societies of the Pilbara have been shaken and forcibly changed into those that the industry required them to demonstrate to fit 'traditional' culture and for native title to be recognised. In doing so, the native title industry demanded that *marlpa* demonstrate those norms and practices which had in the past been described in historical documents. In doing so, the Pilbara community adopted and adapted those norms and practices and performed them for native title professionals, which produced a cleft within their lifeworld. The cleft marks the stark contradictions which they must navigate in their everyday life.

The native title cleft has produced changes within the authority and hierarchy systems of the *marlpa* lifeworld. The once valued opinion of elders and law-men and law-women has been replaced by advice and input of younger members of the kin-group who have attained higher

levels of Western education which can also be interpreted as a demonstration of agency. The obstacles placed by the native title industry in the path of *marlpa* attempting to obtain native title has led to choose higher Western education. The impacts of native title have thus, and rather ironically, produced a change in *marlpa* lifeworlds. *Marlpa* have responded both agentively and through adaptation but must live with the conflict and ruptures native title has produced.

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