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Salt water, fresh water and Yawuru social organisation

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This is a case study of the customary rights in 'sea country' of the Aboriginal people of the Broome region, who nowadays live mostly in the town itself. Broome does not immediately present itself as a town where Aboriginal culture, in all its richness of myth, ritual, language and group relationships, has an unbroken link with pre-colonial practice. It is more usual to view the town as having a modern creole culture.¹ However, both these views of contemporary Broome culture are true. A large proportion of the present Aboriginal population of the town belong to families that began to move into camps on the town's outskirts after the Second World War and who brought with them, and retain, knowledge of myth, ritual, local language and subsistence lore. Recently all these aspects of local culture have undergone revival. The people that are the subject of this paper call themselves Yawuru and Djugan, and most agree that these are simple locational dialectical differences of the same language and culture grouping (see Hosakawa 1991:1–2).²

1 This is particularly celebrated in the works of the musician and writer Jimmy Chi with his musicals *Bran Nue Dae* and *Corrugation Road*, but see Hosokawa (1994).

2 In this paper, following popular usage, the term Yawuru is often used for both Yawuru and Djugan. There is another group, which calls itself Goolarabooloo, simply meaning 'coastal people', which has a more complicated attachment to the land. This paper does not concern their social organisation or attachment to the sea since these have not been the subject of such intense study. The three named groups, and others, come together under the name Rubibi, which refers to Broome town (see Sullivan 1996).

The setting

The town itself lies on the shores of Roebuck Bay at the base of the Dampierland Peninsula in the Kimberley region of north-west Western Australia. In practice, when Broome people speak of 'Kimberley' they mean further inland at Halls Creek and Fitzroy Crossing, and express in this way quite unself-consciously their sense of their own uniqueness. The town is undergoing a sustained development boom based on tourism (Jackson 1996a: 14). Between 1976 and 1986 the population of the shire doubled with most of this increase in the town (Shire of Broome 1993:6). This was probably due largely to the sealing of the road from Port Hedland in the west. The population of the town itself is predicted to increase by about a third in the next ten years from its present estimate of 10,476 to about 15,337 (Hames Sharley 1996). The current Aboriginal population of the town is 3166 (Jackson 1996b:2) and one estimate of the proportion of Aboriginal people to non-Aboriginal people in the town itself puts it at 21.2% (Jackson 1996b:1). Despite the overall increase in Aboriginal population its proportion to non-Aboriginal people has dropped almost 10% since 1976 (Sullivan 1989:7). Aboriginal people in Broome have also undergone steadily worsening impoverishment over this period (Jackson 1996b). Of particular relevance to the subject of this chapter, Yawuru uses of the sea, is the importance of caught food. An Australian Bureau of Statistics survey in 1994 reported that 45% of Broome Aboriginal people surveyed 'worried' or 'sometimes worried' about going without food, while the national Aboriginal and Islander average for these concerns was 29%.

Aboriginal culture in this area is under threat, not from loss of knowledge and breakdown of tradition—these have seen a strong revival in recent years—but from being swamped by the sheer numbers of non-Aboriginal people. Cultural conflict is finely balanced at present, and large areas of town land are under claim for recognition of the existence of native title. This has placed a pause on the release of new residential land to accommodate the population increase, as well as on new tourist related developments, and it has empowered the Aboriginal

community to begin to negotiate their future security. This paper is based on information collected in support of these claims.

In this chapter a number of propositions are developed, some of which are well founded while others are simply suggestions for discussion and analysis. These are that a system of customary land and sea ownership law exists in the shared knowledge of the Yawuru community. Use of the land is not distinct from use of the sea: in other words Yawuru people hunt and forage in the sea and the assertion of rights in the sea is essentially the same as the assertion of rights in the land. The system of ownership is felt to extend to all who claim descent from Yawuru or Djugun ancestors. Within this group there is attachment to smaller areas on a number of grounds, including descent, residence, knowledge and birth spirit (called *rai* in this region). By the manipulation of these factors the people achieve a higher degree of flexibility in their belonging to areas within the the larger group's territory than may be common elsewhere in Aboriginal experience. This is so pronounced that it is impossible to talk of patrilineal descent being the primary principle of land ownership, or of a clan-based society, as many unrelated individuals may have primary attachment to the same small named areas and most individuals will have attachment to several. Consequently, there is a strong ideology of common ownership of all the land. There is also a sense of belonging to 'land right-holding communities' that are not coincident either with linguistic boundaries or small family territories.

Yawuru country is where the arid grasslands of the Great Sandy Desert meet the sea. There are no freshwater creeks and few semi-permanent freshwater lakes. Fresh water is found in springs and soaks for much of the year. The land is low lying. The region is known for its extreme tidal variations (about 7 metres) and is subject to both monsoonal rains and frequent inundation from tropical cyclones. In other words, from time to time much of the country floods with spring tide salt water, and for long periods monsoonal rain floods also lie over much of the land making it impassable. This is a time of abundant fresh water but limited food resources. Off the coast there are areas

of shallows stretching for several kilometres out to sea which are mud flats at extreme low tides and permit wading to reefs and sandbars. It is an area, then, where water, salt and fresh, is a constant, and constantly changing, feature of the people's lives. At times the sea itself is dry as the tide recedes almost to the horizon. At other times the land is awash. In some seasons it bakes in more than 40 C of heat and fresh water is scarce. Throughout the year the Yawuru make and made use of land, sea, mangrove creek, mud flats and reefs, but in all of these they needed, on the one hand, to be highly mobile to adapt to the rapid diurnal as well as seasonal changes in topography and landscape, and on the other hand they were constrained in their exploitation of changing food stocks by the distance they could move from a small source of fresh water either *in situ* or carried in a baler shell. No doubt there are a number of adaptations that could have been made to these circumstances. Elsewhere in Australia different forms of social organisation may well be described in precisely the same circumstances. Nevertheless, the adaptation favoured by the Yawuru is flexibility in the distribution of land and sea rights supported by an ideology of relatedness and common property among those of the same and related languages.

The system of belief, group relationship and land and sea use which derives from particular local conditions is still held among the Aboriginal people of Broome. This chapter is a demonstration of this, as the information in this case study has been taken from contemporary interviews, and these were by no means limited to the old. Some of the information here relates to past practices, but a very recent past, within the experience of many older people. It constitutes a body of contemporary knowledge. Inasmuch as it is currently known, it also underpins contemporary practice. As long as it is preserved it will not have 'died out' and will remain the cultural inheritance of all Aboriginal people who belong by right to the Broome region. Many of the traditional owners have covered the area on horseback while droving or mustering, and several of the elder inhabitants have walked extensively over it. Despite only limited access to one of the three local pastoral stations,

many younger Aboriginal people of the town still regularly visit and use their traditional lands.

Uses of land and sea food sources

As a coastal people the Yawuru depend for most of their protein on the sea, but the pindan (semi arid scrub country) as well as providing some traditional meat sources, is also rich in vegetable foods and medicines. One recent inspection of a typical town block close to a main road identified within about twenty minutes fourteen plant species currently used, and this without moving more than fifty metres in any direction. This knowledge of the use of the land continues to be handed down among Yawuru families. Throughout their lives their members have eaten the foods of the land and learned to recognise its scarce waters. Hosakawa says:

The country is rich in marsupials (of small to medium size), birds, reptiles, marine fish and shells. Traditionally Yawuru people lived by gathering wattle (*Acacia*) seeds, various edible tubers and bush fruits (during my 1986 fieldwork, over 90 species of edible and/or useful native plants were identified (Hosakawa 1988a; Lands 1987)), as well as by fishing, gathering shells (mainly in the mangrove swamps) and catching wallabies, sand monitors, flying foxes, and birds (particularly Native Hens, Crested Pigeons and Australian Bustards) (Hosakawa 1991:1-2).

These sources of meat were an important part of the diet of the older people as they grew up, which otherwise was largely limited to occasional salt beef, flour, tea and sugar. They remain an important basic food source as Aboriginal incomes are almost universally very low and Broome food and housing costs high. But these are not only food sources, they are important social identifiers that bind local Aboriginal people to each other as members of a particular society, and which link them to an ancient tradition. Hunting and fishing practices are

consciously carried out to reaffirm their distinction from the increasingly embracing white population.

Women in general are the most knowledgeable about edible fruit and vegetable species, their locations, seasons, and preparation. Even quite young women who mainly live in town can provide copious information on the subject.³ While the pindan was used in the past, and can sustain life today with the knowledge of the traditional owners, the sea and the coastal fringe is their principal milieu. The tidal creeks and some parts of the coastline are fringed with mangrove thickets that both harbour important food sources and are themselves used as part of the diet. Mangrove fruit is collected and allowed to ferment for one or two weeks in the steep muddy bank of a tidal creek. Following this, it is washed and boiled. Previously this was done in a baler shell over coals, nowadays it is in a billy with a stew. The mangrove also harbours crab, which are speared with a sharpened stick, dug and hooked from their holes, or yanked out of the shallows on a baited line. In the hot season, fruit bats roost low in the mangrove for shade and the cool breeze. They are easily knocked down with a stick. Ten or more can be taken at a time. Since they eat only fruit, the entire bat is edible.

The sea itself offers the richest and most varied diet. Naturally, the coastal people of the region have developed their most refined food gathering techniques and knowledge for harvesting its resources. Fishing techniques are determined by the topography and tidal patterns. The extremely high tides of the region and the existence of reefs and sandbars not far from shore, require a variety of methods of harvesting. At high tides fish can be speared by wading from the shore or from rock formations, as can turtle and dugong. Their location can be assessed from the frequent low cliffs, but local people are also adept at spotting shoals or the shadow shape of a turtle from the shore. Tindale's field notes from 1953 also record the use of a sort of net:

3 The book Mayi (Lands 1987) is evidence both of the extensiveness of this knowledge and of its currency, and the unpublished Yawuru Seasons (Lands and Mann 1990) provides a wealth of contemporary environmental information.

The Jawuru used to fish using masses of grass which they pushed about like a net to corner and entangle fish. Such a 'net' was called 'marukutju:n'. With it they got plenty of fish. Any kind of grass could be used, as also the tendrils of *Cas-sytha* (Tindale 1953:773).

At low tide, fish traps, called *jimbinundira* or *kurljan*, come into play. They may nowadays be made of chicken wire and star pickets driven into sand at the outlet of a small subsidiary of a tidal creek. Knowledge is retained, however, of the traditional method which is to drive mangrove stakes into a prepared foundation of specially placed rocks which form a large pool. Spinifex or boughs are woven into the base of these stakes and this prevents the fish swimming out when the tide recedes. They are taken by hand, with spears or with specially designed fishing boomerangs which have concave faces.

At low tide it is possible to wade for long distances to outlying reefs and sandbars. The mudflats traversed are rich sources of shellfish, whose many varieties make up the numerous middens sometimes found several kilometres inland. For instance, at Cockle Well (Baldargi) on Roebuck Plains station some 20 kms from Broome, centuries of use of this water source has raised the ground into a significant mound. Kunin, or Fisherman's Bend, on Broome's outskirts is also such a raised midden, there is another at Crab Creek, and a prominent one in the town between Malingbar community and the Mangrove Hotel.

Stingray can be taken in the shallow waters as the tide recedes. When the flowers, *nyal nyala*, of the *guardo* tree are in bloom it tells the people that stingray are fat. When alarmed they flatten themselves in the sand of the shallows. The hunter must be skilful in assessing their location and orientation so as to avoid the thrashing of the poison tail when the spear strikes. Dugong sighted in the shallows also dive. The technique here is for several men to surround the animal and stir up the sand with their feet to make it rise when it can be speared or dived upon.

On gaining the reef, plant poison, *bunjuda*, may be used to stun the fish trapped in rockholes, or they may be speared. Shellfish such as

jagoli can be got on the reef. Large amounts of the remains of these can be found on top of Warwan hill at Wadagungu rock-hole, testimony to the distances they would be carried to a camping ground. Sometimes turtle are trapped by the retreating tide and then easily overturned and killed. Otherwise, they can be dived upon when found swimming off reef ledges. Dugong also are caught by diving onto them. When alarmed, this airbreathing mammal tends to close its nose flaps and submerge. The method in this case requires stuffing the nostrils with spinifex gathered for this purpose, or a loin cloth, and allowing the animal to drown. It can then be floated to shore on the incoming tide, providing a rich source of meat and fat.

Local people observe six seasons. *Bargarna* is the cold dry season. It is time to leave the reefs and go for salmon in the creeks. They can be speared offshore in numbers if their 'track' can be found, as can barramundi, but they must first come into the creek, so it is only a matter of waiting and they can be easily caught. There is a particular wind, the water is choppy and dirty, and the salmon are in the creek whether ebbing or flowing.

This is followed by *Wirburu*, a transitional season. Then it is *Larjar* season, in late September, October and November, the lead up to the monsoon. This is called 'married turtle time' when turtle eggs in the beach sand are plentiful. The reef fish are fat and it is a good season for barramundi, oysters and crabs (though when the crabs have eggs, they are left alone).

The full wet season, *Mankala*, is not good for fishing. Attention turns to goanna and turkey. Fishing may continue but with care taken for sudden storms. After the rain, the fish are hungry and feed well. Barramundi are taken in the late rains, and stingray. After the rain, in *Marol* season, it is still quite warm and humid, there is dew on the ground in the morning and a cool wind from the east. It is possible to return to fishing on the reef, but the fish are not so fat as during *Larjar*. Year-round fish can be taken then such as mullet, queenfish, whiting and trevally. Then it is *Bargarna*, the cold season, once more and time

to leave the reef fish to mate, spawn and fatten and turn attention to the tidal creeks.⁴

All people who live by the sea have knowledge of the tides and seasons. They know the hazards and the beneficial techniques. That this is distinctly local Broome region Aboriginal knowledge is true, however, in two senses. The brief summary of a detailed local knowledge revealed here has been handed on from one generation to another during the actual practice of hunting, fishing, gathering and camping over thousands of years. Some of it, such as when the salmon are running for instance, may be known by non-Aboriginal people, but it is not shared knowledge. Hardly any sharing takes place. That some superficial and obvious aspects of a society's knowledge may be known by members of another society does not make it common knowledge or lessen the fact that this knowledge belongs to the former society and is one of its markers.

One distinction is that Aboriginal food gathering is carried out with low impact techniques and with attention to spreading the impact across a variety of habitats and species according to their reproductive needs. Non-Aboriginal approaches in Australia generally use high technology, are geared to maximal immediate returns, and frequently are confined to single species and locations. Local Aboriginal people frequently show dismay at the waste in non-Aboriginal fishing methods, both recreational and commercial. Another important distinguishing feature is that the Aboriginal people of Broome fish to feed their families. The concept of family includes numerous individuals. Unlike non-Aboriginal people, they can never have caught 'too much' fish. While non-Aboriginal people are frequently observed to throw away fish they believe to be non-valuable, Broome Aboriginal people say that the only things they themselves leave behind are the guts, scales and bones.

4 While most of this information comes from fieldnotes I have benefited from access to the unpublished Yawuru Seasons (Lands and Mann 1990) to clarify some points.

This practice of intense use, rather than widespread catching, is bound up with the serious view they take of animal species as both food and medicine. The water in which shellfish have been boiled is said to cure depression and saltwater fish to relieve stress. Theirs is not a simple recreational use of natural resources or optional food supplements. There is deep-seated conviction, even in contemporary Broome Aboriginal thought and activity, of a relationship, even a form of identity, between individuals, their group, the features and creatures of the land, the myths of its creators and their appropriate rituals, and their own rights to own and use the land. The following sections will describe conception totemism, which is a primary regulator of land attachment, then the means by which attachment to land is expressed at the local level, followed by wider scale groupings which celebrate the myths of the land and sea in ritual.

Aboriginal knowledge of gaining food from the natural world is produced in a system of meaning and belief quite distinct from any other. Most obviously, there is the ritual that surrounds hunting and fishing activity. In at least one instance this is related to secret male initiation ritual. One old woman remembers that her grandfather would walk alone into the mangrove to find a *burgo* tree. Here he would perform a secret ritual involving blood that otherwise is confined to initiation practice. He would sing the appropriate verses and draw to him large fish called *dinga*.

Reef fish trapped in rock pool fish traps are similarly imbued with the power and secrecy of male ritual. The men sing sacred verses on the outgoing tide that women and children are not allowed to hear, and the fish are pulled back and trapped on the reef. Only initiated men are allowed to gather them from the trap. These songs, and other songs to charm species, placate spirits or celebrate places associated with hunting, fishing and gathering are taught to young men when they go through the various stages of their initiation. In particular, this is a feature of the *Walawalang* stage of the initiation cycle. Worms (1957:216–219) recorded two songs, one of which equates the seasonal appearance of turtles to aspects of men's secret initiation ritual.

The existence of 'increase sites' where particular rituals are carried out to ensure the continuity of species has been well-documented (e.g. Elkin 1933:284). The term 'increase' is widely accepted to be a misnomer as the intention is rather to maintain an existing balance and ensure success in hunting. It is widely believed that this practice has largely died out. This may be because early observers imbued it with a kind of formality (it was required to be carried out by nominated categories of individuals using prescribed ritual formulae at distinct places) that it has either lost or never in fact had. In the Broome region, places where songs may be sung to attract food species are still well-known. One, for instance, is near the old jetty and several others along the coast from Willie Creek to Broome. The practice varies from the singing of particular songs at particular locations, to the singing of particular verses in any location to ensure success the next day, to simply calling out to the spirits of the place at a creek or reef when arriving for fishing after a long absence.

Spirit beliefs, food resources and group relationships to land

Among the spirits which Broome fishers and hunters call out to after a long absence are those that are said to enter a woman as the essence of the child she is to give birth to (cf. Tonkinson 1978; Merlan 1986). These are called *rai*. The means of entry is usually a food species she has eaten. The child is frequently born with the mark of the spear, digging stick, bullet or other implement upon it. Thus each individual is linked to naturally occurring species, precise locations, father and mother (it is usually the father who has done the hunting or at least has 'dreamed' the child spirit the woman has ingested) and the world of spirits and mythic ancestors. In many areas of Australia, the spirit children are said to have been left at natural features of the landscape by the mythical heroes who created or discovered the world and passed on its law to humans. This is not always the case in the Broome region. *Rai* here can be associated

with a mythological site, in which case they are said to belong to the mythological being associated with the site, but in many instances they appear to be simply spirits of place. They are always linked to a natural species because it is that which acts as the means of transmission of the spirit to the woman who will give it birth. More fundamentally, the *rai* belongs to a site which its human manifestation will also have rights over and responsibilities for. Many of these sites are in the sea, usually in coastal reefs and rocks.

The belief in the unity of spirit, land/sea myth, and person is not compartmentalised in people's thought under a particular label such as 'folklore' or 'fairy-story'. It is firmly held even by the young. A person's *rai* place is as real to them as their birthday, even where not previously known. One young man was recently shown a rock in the sea called Miniriny near Cape Villaret as his origin place. He was impressed, imbued with a new sense of responsibility for the area, and showed a sense of fulfilment at piecing together these aspects of his social identity. Children may be claimed as the *rai* of deceased individuals, or as the special wards of an older person able to see *rai* in people. In an example of the latter, an old man once complained that one of his *rai* was missing from a particular location, he described her to others, particularly her long hair. Not long after this, a baby girl was born with the long black hair that led the man to identify her as his missing *rai*. Even the *rai* places of people long dead are discussed as matters of record, helping to determine where they belonged.

The complexities of *rai* belief in the Broome region bear much examination. They are one among the many markers of Aboriginal culture that distinguishes it from that of non-Aboriginal people. Their particular significance for present purposes, however, is to situate the economic activity of hunting, fishing and gathering in a wider framework of religious belief, and as an important means, perhaps the most important currently, by which people regulate and negotiate their particular and unique rights over areas of land and sea within the common land heritage of the whole society. This 'anchoring' of the individual to sites, myths and groups makes spirit-child belief the central and pivotal

element in social organisation. So far this chapter has discussed some of the more empirically verifiable aspects of Yawuru material culture and religious practice, the nexus of these and Yawuru social organisation now requires attention.

Some interpretations of Aboriginal statements may lead to an assumption that primary attachment to land is by descent from the father, sometimes from the mother, but *rai* belief integrates with this and cuts across it, making the system infinitely more flexible. Broome region Aboriginal people will often say that they 'come from' a place or 'belong to' a place because their father came from such a place. They can also say that their mother came from a place and nowadays among the younger generation they may refer to a grandmother or great grandmother who 'came from' somewhere. On the face of it this could be a system of patrilineal descent groups, with one or two alternate systems, such as through maternal filiation, producing the odd anomaly. This is, in fact, the way that Elkin (1933a) viewed it, but it does not stand up to examination. All knowledgeable informants so far interviewed say that persons who come from the same place may marry each other. Their offspring then have both parents from the same place. This is bi-lateral descent, neither patrilineal nor matrilineal. Moreover, family groups who are not directly related may all come from the same place. One instance concerns three prominent Yawuru men, now dead, who all 'came from' a place called Marar. The families do not believe themselves to be closely related nor does the ideology of descent insist that these three men ought to have been. The pattern that emerges is not one of small clan-like groups with delimited named areas of land tracing their origin to a common male ancestor. It is one of several family groups establishing primary rights to a 'home' area by a number of means, including having their *rai* from the place, while still enjoying rights over the combined land and sea of the wider group.

Belonging to a country

Some of the means of establishing attachment to a place within the territory should be examined. A person can establish attachment to a place if a parent or other significant forebear 'came from' or 'belonged to the place'. One very old Yawuru ritual leader, when asked to explain this, used the example of a man who will be called here Billy. It is known that his father 'came from' or 'belonged to' Marar on Thangoo station, despite the fact that he was of mixed Asian descent, removed to Beagle Bay at an early age, and spent most of his life in Broome town. Billy, according to the elder of the group, 'comes from' Broome because he was born there, raised a family there, lives there (despite considerable periods of absence in Katherine and Port Hedland). Billy, however, can 'claim' Marar, or 'get' Marar according to the old man. Asked what this means he says he can build a paddock there or a house, go hunting there, in other words live and use it by right. This does not mean that he cannot go anywhere else in the people's common land nor that they cannot enter Marar. According to the same informant one can go, quietly; one might mention that one is going to the person who 'comes from there' but not in the sense of asking permission. Nearly all of these named sites where people belong or come from are coastal and provide use of the sea and mangrove creeks.

The question is, from the point of view of Billy's future grandchildren, where would their grandfather have 'come from', Broome, Marar or somewhere else entirely?

The answer to this is that, in local Aboriginal terms, a person comes from the area socially determined to be theirs by a consensus absorbed into the body of knowledge of the oldest surviving authoritative individuals. Whether indeed the remembered old man who was Billy's father came from Marar by birth, conception totem, adoption, mother, father, or some other means is neither known nor considered consequential. Nor, if it were not for the existence of written records, would it be to Billy's grandchildren. His 'home' area would be a matter of record in the

thought and knowledge of the community, enjoying a truth not subject to any other form of reference.

Nevertheless, the level of consensus about where a recently deceased person belonged, whatever the mechanism of their belonging, does place some constraints on their descendants. It is one among the many parameters of the system. One means of escaping it and coming from an area more congenial, practical, politic or emotionally and spiritually satisfying is, as mentioned, to 'follow' a mother or other relative. Another is to return to the area of one's birth-spirit. A third may be to acquire deep knowledge of the features of a region including its mythology and associated ritual, though usually this is consolidated by reference to one of the other mechanisms.

These can be summarised as:

Descent or inheritance through one line or another

Birth

Conception spirit or *rai*

Knowledge and association. (cf Peterson 1986:59–60)

Of these the two that cannot be gainsaid are descent and *rai*, even though, as discussed, descent only operates to the extent of the oldest community member's memory and there is no necessity among community members to insist that it is the principle that stretches back to the beginning of time in any particular case, and a *rai* association cannot be falsified.

The main way a person may end up with attachment to an alternative home area than their father is by the finding of their birth spirit in another area. In an another paper Elkin (1932:330–1) pays considerable attention to this:

More research remains to be done in the Kimberlies with regard to the local organization, totemism and mythology, before the roles of the father and the locality in totemic descent can be finally determined. But on the south-east of the Kimberlies and right through Central Australia...it is the local principle which predominates. A person's country is that

in which he is conceived...or born....This is usually the father's country. The point is that in aboriginal thought in the Kimberlies and other areas where I have worked, the father is closely associated with the local horde and its totems, and therefore patrilineal and local descent amount to much the same thing, though, as I have already stated, the local principle with its spiritual, sacred and mythological associations seems to be primary and the more fundamental of the two.

It is clear that by 'local principle' and 'local descent', which Elkin here contrasts with 'patrilineal descent' he means the peoples' statements that they 'come from' or 'belong to' an area rather than, primarily, a clan group with rights over that area. Although, as he says, this may amount to the same thing, it is very important to note the effect of the cases in which it does not. In particular, conception spirits allow individuals to have attachment to areas through a means other than patrilineal descent. Elkin makes an unusual statement when he identifies the principle of attachment to an area, rather than membership of a clan group, as the 'primary and the more fundamental of the two' means of land association. This does more than simply add one alternative means of recruitment to a local group, it has two highly significant consequences for the clan model.

Firstly, there is the uncertainty it introduces about the continuity of descent. At any generation level the principle of attachment may have been 'alternate' making the descent line shallow indeed. Secondly, and more importantly, there exist in the group with primary rights over a small named area individuals, and over time families, that are not related to each other, since some of them form attachment by descent alone, some by another means (principally birth-spirit) and some by descent from these last. Clans, then, to the extent that they exist as any more than an anthropological abstraction, are neither the main land-owning nor land-using group.

It is interesting that Elkin's own fieldwork case studies support this view. One person noted by Elkin (1933a:267-8) in his discussion of the *ngura* relevant to this claim belonged to a different *ngura* and totem

than his father and brothers by means of his birth spirit. Two others, one a headman, belonged to the *ngura* of their mother, or mother's brother's (which amounts to the same thing). One was found as a spirit in one *ngura*, had their totem revealed in a dream as coming from another, and was born in a third.⁵

The situation, then, is extremely flexible. If indeed this flexibility is seen to have always been the case, and, despite his comments to the contrary Elkin's (1933a:268–70), information indicates that it was, we can no longer think of these means of gaining rights in land and sea as variants on a norm, but instead as themselves constituting the system. The picture then emerges of a people whose members each have particular attachment to relatively small area of homeland, an attachment they may have achieved by a number of means and share with close kin as well as those who may not be directly related. They hunt, fish and perform ceremonies over a wider area of land where they feel themselves to have rights in common with a larger group. They travel over wider areas still, where they feel themselves to be at the invitation or on the sufferance of other large groups. The boundaries of communal ownership do not lie between small family or clan groups, but between the latter two larger social groupings. In this region at least, a right-holding community may overlap the stated boundaries of linguistic domains, and conversely, need not assert its rights to the entire territory of either linguistic domain.

In 1959 Berndt published a seminal paper on 'The Concept of The Tribe in the Western Desert of Australia' which made the distinction between land-owning groups (the clan, which he called simply 'the local group') and land-using groups (the band, which he called 'the horde') (1959:98, 103). More importantly for the subject under discussion, he rejected the concept of the tribe as not applicable in this area and not the widest functional grouping. This latter he called a 'society' and its prime characteristic was interaction for ceremonies. His description

5 *Ngura* is glossed by Elkin as 'country' but can mean something as simple as camp or hearth. Similarly, the Dampierland 'buru' is often translated by anthropologists as 'clan estate' but has the literal meaning 'ground'.

is useful for the Broome situation. He (1959:104) finds, as well as the local forms of association already discussed, two others: the cult lodge (clans sharing a totemic association with a complex of mythic sites in a 'track') and a wider unit formed by hordes coming together seasonally for ceremonies

This last unit he calls 'a society' and he identifies it as 'the widest functionally significant group'. He (Berndt 1959:105) wrote of it that:

The significance of this wider unit rests primarily on the degree of interaction taking place among its members. Traditionally, those who occupy (not necessarily own) contiguous stretches of country would more probably be found coming together for seasonal meetings, and contacts between them would be stronger than with those further away. But this nucleus, by no means fixed since wandering was the norm, would consist of members of different local groups, different hordes and different dialect units. We cannot speak of it as a kin group, although relationships between members included in it would be articulated in kin terms. Further, representatives of more distant local groups and hordes might be present: the occasional coming together of those who are for the greater part of the year living apart, visits from areas relatively far away, are a notable feature of such gatherings. It is those who meet regularly and consistently, even if intermittently—and are closely involved in reciprocal duties and obligations—who make up the widest functionally significant group.

The land/sea-owning group described here as a society is exclusive, not inasmuch as it would exclude others from entry into and use of the land and sea, but that it would exclude them from the right of possession. The principles of membership of the land/sea-owning group cannot be found in the narrowly defined clan or cognatic descent group, nor even in the broader tribe or language group. They are found in the interrelation between these two forms of land/sea group identification and the wider group that performs the ritual of, and holds other esoteric knowledge of, the land and sea. While these principles of membership

of the land/sea-owning group can be described, it is not possible from this to definitively list all members who possess, or potentially possess, the necessary characteristics. The concept of 'the land/sea-holding society' is an abstraction from the actual practices of assertion of affiliation to named tracts, demonstration of knowledge, socially accepted lines of descent, and assertion of competence in and rights over linguistic domains. These are socially determined, sometimes by consensus and sometimes in dispute. Resolution of the question of who, in every instance, holds title is not by reference to a membership list or suitable adherence to a check-list of criteria. It is by a continuing process of community debate, assertion, reference to authorities, precedents and even signs and portents beyond the experience of current European-based systems of tenure. None of this calls into question the existence of communal native title in the sea, only the difficulty of giving it corporate expression in terms that are required for its recognition as a form of Australian land/sea-tenure.

Notes

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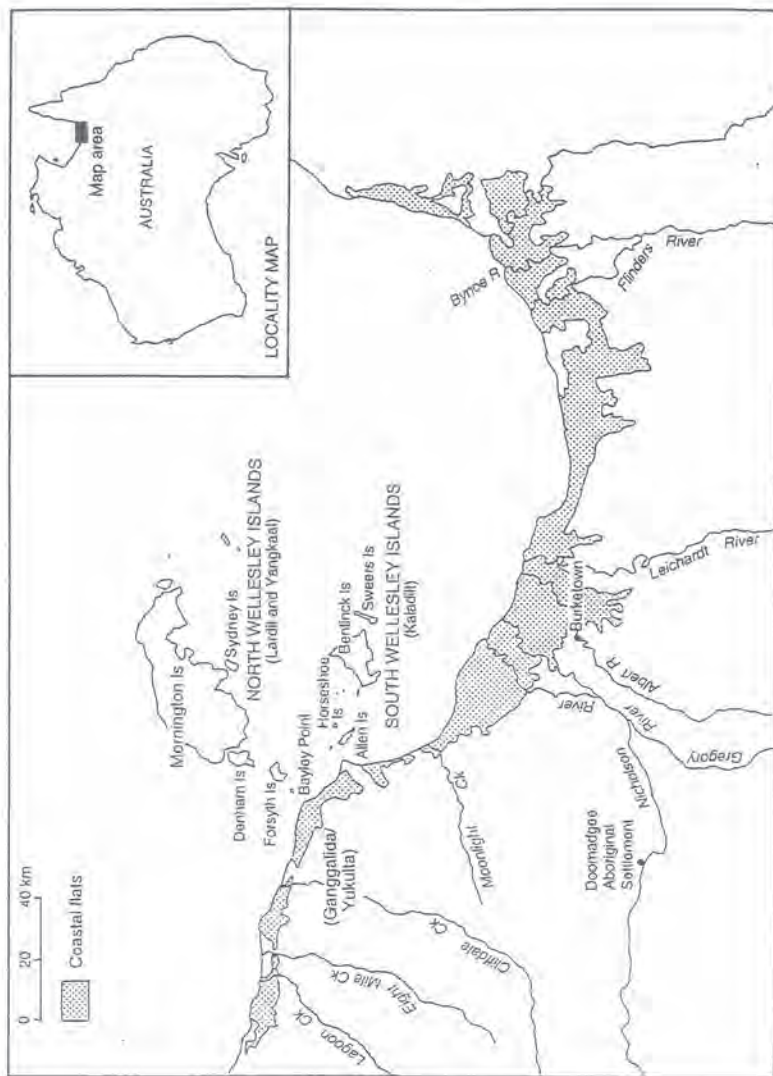


Figure 7:1 The southeastern Gulf of Carpentaria