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Indigenous Law and the Politics of Kincentricity and Orality

Amanda Kearney · John Bradley
Vincent Dodd
Dinah Norman a-Marrngawi
Mavis Timothy a-Muluwamara
Graham Friday Dimanyurru
Annie a-Karrakayny

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*You know we got rights, just like any other human, we got rights, whitefellas
have to stop looking at us like we are some kind of different human, maybe
they reckon we are an animal, I don't know.*

They have their land, so why can't we have ours?

They got their ceremony, why can't we have ours?

They got their culture and language why can't we have ours?

You know I think about this a lot.

*You know I can't stop fighting for my people, my family, my Country, no, I
won't stop. That why I'm here today, talking in this court, telling this judge,
maybe he's got ears to listen, I don't know. This government mob, I know
them well, they've got no ears. Never mind let them be manji (ignorant),
they can't stop me, I got a right through whitefella law and blackfella law to
be here...yurrngumantha karna-wukanyima kurdardi binjawu (I will keep
on talking, I will not stop)*

**—Annie a-Karrakyny, testimony given at the third
Yanyuwa Land Claim, 2000**

FOREWORD

The Gulf is forever calling... The Law is vast and expansive.

During the 1970s and 1980s there was much hope prior to self-government of the Northern Territory, Australia, for Aboriginal land rights to be ushered into Federal Parliament, thus providing a legal framework to protect the rights and interests of Aboriginal people in the Northern Territory and indeed across the nation. There was a sense that land rights could support the recognition of the complex nature of Aboriginal people's relationship to their Country. In part, this was achieved by way of recognising communal ownership and providing a means of making decisions about the use and development of Aboriginal land. It also provided a way of protecting sacred sites. But all of this was constructed or deconstructed to fit complex Aboriginal Law into a western paradigm, and through this process, a lot of detail got lost.

From the early to mid-1900s anthropologists began working with Aboriginal and Torres Strait Islander people around the Country, followed by linguists and in some other places other skilled professionals such as economists. Early accounts by some of these experts told of the complex nature of the various societies that existed but that they existed under the watch of government. Fearful of whitefellas, especially in places like the Gulf that had a deep history of frontier violence and now systemic and structural racism, this was the reality for Aboriginal people.

This reality was my reality as well. I was raised in this era of land rights in and around a small frontier town in the Northern Territory. In the 1990s I began working with Aboriginal communities across northern

Australia, which instilled in me the deep interconnection between people and place. But much deeper than the sense of land ownership is the Law in which Country, People and all systems are interconnected in place-based anchors. And as a child I was first introduced to the concept of Aboriginal Law by my grandmothers and other elders. However, of all my teachings, one memory reoccurs in my mind—I was travelling along the Roper River with a dear friend, Gimul Nundhirribala, as he recited to me a detailed account of how the Roper River was made by ancestral beings. He described where the beings travelled, stopped and lived. The Laws and language about them and the kincentric nature of the Law, People and Country—the importance of orality in their application and being in the present, not something of the past, or being static. Even though Ngukurr (where Aboriginal people lived) was the site of a Christian mission settlement, people remained in the realm of their Law and somehow managed to live with both realities.

Over the course of our continuing friendship spanning over 30 years, it amazes me that resilience is not often used to describe Indigenous Australians. However, as you will garner from this book, Law—(Family and Country), knowledge, ceremony, rules, ancestral ownership, spirituality and associated protocols are still very much alive. The authors have articulated clearly in these pages—that ‘Country, People and Law exist together’—the localised social, ancestral, ecological and geographical systems that are entwined in place and the people belonging to that place are fact. Many Indigenous scholars from the bush have articulated this complex reality, but in a form that English-speaking people fail to comprehend.

From the 1990s I collaborated with families and individuals throughout the ‘Gulf Country’—from Numbulwar to the Northern Territory/Queensland border, across many different but related families. I was also fortunate enough to work with many senior men and women demanding and worthy of profound respect from other Aboriginal people and whitefellas who knew and understood their place within local societies. Some of these people are the authors of this book. Graham Friday and his wife Gloria, whom I was fortunate to have many interactions with and then to a lesser extent Annie a-Karrakayny, Dinah Norman a-Marrngawi and Mavis Timothy a-Muluwamara—in fact amazing humans in the face of adversity and enormous change and challenge. Yanyuwa are viewed as a powerful people, pragmatic and always searching for ways in which to enrich their young people into Law and Country—I have witnessed that

through the various claims, reports and the successful Caring for Country group *li-Anthawirriyarra*—people whose essence and Law come from the sea manifest into a ranger program that conducts globally significant work for all humanity in and around their Country. They are charged with the very serious task of practising Yanyuwa Law in a modern context.

Many other senior men and women of this region who are not co-authors of this book are deeply rooted in their Country and shared the same intellectual capacity and concern as articulated in this story—what is written in these pages does not end at the border of Yanyuwa Country. Unfortunately, I see the fatigue on many faces, fatigue from the long and unrelenting waves of colonisation that continue to manifest in daily lives and occupy far too many minds and souls. I remain in awe of how Aboriginal people remain resilient and resolved to our ancestry in the only Country of the Commonwealth that does not have a treaty with the original peoples of that land.

I have witnessed many people struggle to describe the complex connections, customs and beliefs between Indigenous people and our Law. This is particularly difficult when a large body politic operates within the context of western law and jurisprudence in the Northern Territory: the *Native Title Act 1993* and the *Aboriginal Land Rights (Northern Territory) Act 1976* that continues to wrongly describe the connection between people, place and Law (as described in Chap. 3) in order to suit the western legal construct of a rights-based approach to land and kin. In addition, the pressures of mining, pastoralism, recreational and commercial fishermen and tourism alongside generationally poor health, overcrowded housing and a dysfunctional and in many places irrelevant education system mean that there are serious challenges facing younger generations of Yanyuwa to ensure that the Law remains strong and people are anchored to their respective places.

The evidence in this book shows how hard it is to articulate Indigenous Law, kincentricity and orality, but also the trappings of writing about this, as carefully described—the loss of orality and oral traditions, being place based in description and relevant to the features of that place and the many thousands of people that have traversed that Country since the original ancestors created it. Indigenous people are forced into compromise in order to retain Law and Country and we see an emergence of new generations, using technology and communal decision-making under enormous pressure by third parties seeking access to land and waters returned or

recognised as possessing co-existing rights and interests for extractive industries that benefit people far from the place of extraction.

By explaining Old Arthur Narnungawurruwuru's telling of Yanyuwa Law, the authors have explained Yanyuwa Law in a kincentric way through an oral means. This important story is also telling of modern western law that fails to appreciate the complexity of Yanyuwa Law.

Unfortunately, many years of experience have also exposed the brutal truth about the chasm that exists and continues to widen between western society and Indigenous ways of knowing and being. There is no wider gap between our respective societies than the topic and understanding of Law – (Family and Country) knowledge, ceremony, rules, ancestral ownership, spirituality and protocol. How we govern ourselves and find peace with our individual selves and our Country (nature) will be a feature of how or if humanity survives into the future—there is much to learn from the ancient knowledge and ways of Indigenous Australians and the authors have laid it out for us so aptly and clearly.

I have known John Bradley and Amanda Kearney for many, many years and have read with great interest John's work from the time he was a teacher at Borroloola and Batchelor College in the Northern Territory. Many Aboriginal students, especially those from Roper, looked upon John as a trusted member of the family architecture in Borroloola. A scan of the many books, theses and articles that both have published with Yanyuwa families over an extended period of time has returned a proportionate library of information to the benefit of future generations of Yanyuwa people as described with the efforts of G Adrian Hoosan and Nicholas Fitzpatrick Milyari.

The authors have laid out a detailed account of what Law is for Yanyuwa in practice and its underlying philosophy. Not only have they articulated the complexity of Yanyuwa Law, they have outlined the amazing resilience of the community to endure and find new ways to keep Law alive, but also to change and adapt to modern circumstances.

At a time when the nation is seeking reconciliation with First Nations people through truth telling, treaty and settling previous injustices such as the Stolen Generations, it is timely that the future of this country embraces, amplifies and empowers Indigenous Law into the future design and culture of our country. This book presents a pathway for that to occur from the most remote parts of this continent. It is of paramount importance

that this book's message becomes part of the lingua franca of a new nation, formally known as Australia. Humanity has much to learn from the Yanyuwa of the southwest Gulf of Carpentaria.

Group CEO, Indigenous Land and Sea Corporation,
and descendant of the Dagoman and Mualgal peoples,
Australia & the Torres Strait Islands

Joe Morrison

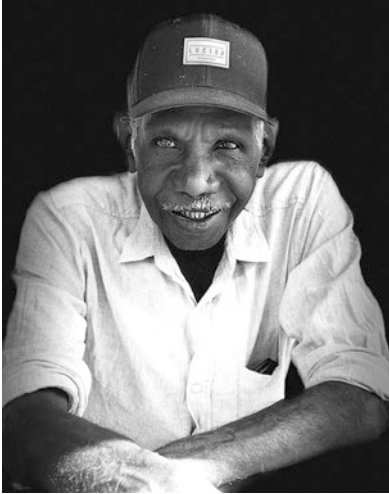
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We acknowledge the ancestors and the old people as the preeminent teachers of Law. We also acknowledge the middle and younger generation Yanyuwa who are meeting and practising their Law in the present.

Nakari wabarrangu ambuliyalu li-nganunga li-wankala kala-ninya nyungku-mangaji ki-awarala ki-anthaa ki-waliwaliyangka kala-ninya manbhantharra narnu-yuwa. Karnu-yirdardi aluwa kulu kanalu-ngunda wuka ki-awarawu na-wini ki-awarawu, kujika yarrayarrambawaja yumbu-lyumbulmantha narnu-yuwa narnu-wunungu barra.

From a long time ago, our ancestors were in this Country, the sea and the islands; they were there holding the Law. We grew up with them and they gave to us the stories for this Country, the names for this Country, the songlines and the ceremonies; all the strong Law for this Country.

li-Wankala li-ambirrijingu kalu-manbhamanthaninya narnu-yuwa maraka-mantharra kurdandu kulu bajingu nganu barra li-ngulakaringu kanalu-ngunda, marnajinganu janu-manbanji janu-wukanyinji kurdandu barra nuwarnu-yuwawu.

Our ancestors were there in front of us and they were holding the Law safely, with an intensity they were doing this, and then we people that stand behind them were given the Law. We are still here holding this Law with an intensity and we are still talking so hard to hold it.

Marnajinganu wukanyinjarra kurdandu alunga liyi-munangawu li-manjimanji nalu-murunma nalu-anma janu-wukanyinji alunga baki jarrumantharra janu-wukanyinji kurdardi binjawu kulu alu bara bajalu jalini li-manjimanji li-jakudimulu kurda.

We are still here talking to the white people, they do not understand, their ears are blocked they have little intelligence at all, we are talking to them, we do not stop and yet there is no effect, they remain ignorant, they have nothing to say, we feel sorry for them.

Nganthimbala kalingana-nyngkarrinjama? Ngathimbala kalinymaba nyn-gkalanynyngkarrinjama? li-Manjimanji kathalu liyi-wirdinju ki-awarawu.

When will they listen to us? When will they reflect amongst themselves? They just do not know, they still mistakenly think they own this Country.

Na-ja na-burruburru nya-nganuna wuka nungu-burruburrula nuwarnu-yuwawu barni-ngalngandaya wurrbi barra wuka jinangu yurrungumantha janinyamba-linginmanthanima narnu-yuwa na-nganunga nakari li-wankalalukurdardi janu-murdirrinjau marnajinganu janu-manbanjikurda.

This book contains our stories that concern our Law, do not disregard them, they are words of our truth, words that we are continually contemplating. This is the Law from our ancestors, we have not forgotten about, we are still here holding this Law for our dead ancestors.

li-Yanyuwa li-Wirdiwalangu – The Yanyuwa men and women who have authority to teach.

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