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Owners versus Bubu Gujin: Land Rights and Getting the Language Right in Guugu Yimithirr Country

Recent Queensland Aboriginal land rights legislation and court decisions have produced a series of land claims since 1992. Many claims involve speakers of Guugu Yimithirr (GY), residents of Hopevale Aboriginal Community who are descended both from local Aborigines and from others. Much of the support for claims of "traditional" ownership flows from putative owners' knowledge of GY speech practices. Yet legal constructions of such practices accord with invented, rather than historical, "traditions." Heretofore, strictly local matters of appropriate GY talk and complex patterns of multilingualism and linguistic affiliation have been refashioned, recast, and exported into wider arenas as part of the process of legitimizing land claims. In that process, language and land—far from offering community—are among the ingredients of division and conflict.

Land Rights and "Tribes"

Aboriginal Australians are a sacred totem for anthropology. Much of the coin of the discipline—notions of kinship, social organization, myth, and ritual—was originally minted and then alloyed and refined in reflections on Australian "tribes." Although I started work in Cape York Peninsula carrying this conceptual change in my theoretical pocket, little by little I have found for this corner of Australia that at worst it is counterfeit and that at best it does not fit into the local parking meters. The suspect valuta extends to theoretical construals of language, tribe, and speaker. I will show

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Owners vs. *bubu gujin*: Land rights and getting the language right in Guugu Yimithirr country[1]

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Land rights and 'tribes'

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[1] A version of this paper was presented in the invited session "Social Formations and Language 'Communities'" organized by Michael Silverstein, Annual Meeting of the American Anthropological Association, Washington, D.C., November, 1995. I wish to thank Jane Hill for comments on that occasion, and especially Bruce Rigsby for corrections and suggestions on a later draft.

land rights, where judges, lawyers, anthropologists, journalists, politicians, and of course Aborigines themselves are searching for a new sort of currency. I present one example of the creation of a linguistic ideology and its associated language community, to illustrate a striking cycle: a simplified scientific model, gradually dissolved by the facts of history and ethnography, is then resurrected and legislated via law.

Recent land rights legislation and types of 'title'

Queensland Aboriginal land rights legislation (Brennan 11992) and, more recently, a landmark Australian High Court decision in the "Mabo" case that recognizes the existence of Aboriginal "native title" to land--a legal status that predates the European invasion of Australia (Bartlett & Meyers 1994)--have for the first time in the history of the Queensland produced a series of land claims beginning in 1993. I consider both an Aboriginal land claim to national parks at Cape Melville and Flinders Island, and current vitriolic disputes over land at the Hopevale community, north of Cooktown. Language and anthropological construals of linguistic communities loom large in these matters. However, the definitive language at issue is probably the letter of the law.

Bruce Rigsby, a University of Queensland anthropologist actively involved in recent land claims, distinguishes three kinds of title to Aboriginal land:

> "1. traditional aboriginal title, 2. native title, and 3. other title under Australian law, such as freehold and leasehold title. Traditional aboriginal title is title created and maintained under indigenous Aboriginal Law. Native title is title created and maintained when Australian law recognises traditional aboriginal title. . . . [T]he third category includes other forms of title under Australian law" (Rigsby 1995a).

Rigsby observes that "[u]ntil recently, traditional aboriginal land tenure was accorded no recognition formally or informally under Australian law . . ."

Such recognition has been grudging and slow. Conservative state government legislation (the *Community Services [Aborigines] Act 1984-86*), designed to frustrate anticipated Commonwealth plans to recognize some form of Aboriginal land rights, "handed back" Aboriginal reserves to communities as "Deeds of Grant in Trust," turning them into special communal tracts held in trust by community councils, which administered them much like ordinary

Queensland country towns. Under the *Aborigines and Torres Straits Islanders (Landholding) Act 1985* councils could also lease pieces of such tracts to individuals. What had been a large Aboriginal Reserve north of Cooktown--where I have done periodic fieldwork since 1970--was put under the legal control of the elected Hopevale Council under this legislation on July 27, 1986. There had been no consultation with Aboriginal people, and there was very little understanding in the community of what the new legal status meant (Pearson 1989).

In 1991 a newly elected Queensland Labour Government passed the *Aboriginal Land Act of 1991*, designed to provide for "the adequate and appropriate recognition of the interests and responsibilities of Aboriginal people in relation to land and thereby to foster the capacity for self-development, and the self-reliance and cultural integrity, of the Aboriginal people of Queensland."[2] New legal mechanisms permitted groups of Aboriginal people to apply for a restricted type of inalienable freehold title over "available Crown land," that is, "land in which no person other than the Crown has an interest."[3] In effect, the Act allowed Aborigines to claim certain specially regazetted existing National

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[2] Aboriginal Land Act 1991, Preamble, para. 10.

[3] Land Tribunal 1994, para. 14.

Parks,[4] and it required them immediately to lease such land back to the Government as park land, rent free in perpetuity. The Act recognized three grounds for such claims: (a) an ancestral "traditional" association with an area; (b) a "historical" association based on the use of a tract or a neighboring area; and (c) a need for land to ensure "economic or cultural viability." The Cape Melville/Flinders Island claim mentioned above was "won" under only the first "traditional" provisions of this act.

Finally, and most importantly, the "Mabo" decision handed down by the Australian High Court in June 1992 (and since reconfirmed against legal challenge as the Federal *Native Title Act 1993* [Native Title 1994]) "rejected the previous doctrine of *terra nullius* that this land had belonged to no one at European settlement" (Rigsby 1995a) and for the first time admitted into law the notion that Aboriginal communities could have "native title" under indigenous tradition. The Native Title Act 1993 includes the following definition:

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[4] A further number of smaller non parkland tracts were also gazetted for possible claim.

223.(1) 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 1994:104, quoted in Rigsby 1995a.)

The new law recognized such title where it had not been "extinguished" by the subsequent actions of the invading Crown (for example by granting freehold title over the land to other parties), and where the Aboriginal groups had maintained a continuous traditional connection to the land until the present. As one guide to the Mabo decision puts it, such a connection might exist

> "if a community has continued to:
> -live on the land where its ancestors lived, or
> -live off the resources of that land, or
> -treat that land as a special place, or

-visit that land, or

-remember that land, or -tell stories to children about

that land . . ." (FAIRA 1992).

"Tradition" and precedent

Not surprisingly, these different pieces of legislation have produced what we might call discursive conflict--as well as conflict of other kinds! The law has invaded, called into question, and probably irrevocably altered indigenous discourse about such matters as land and language. There is, to begin with, the problem of how to interpret the legal language itself. Because there are no legislative precedents in Queensland, nor, indeed, anywhere in Australia in the case of native title, the exact construal of "tradition," "custom," and "history," as well as the very notions of ownership or "possession," are contested issues whose resolution depends on newly invented discursive practices that surface in the course of local conversation (both amicable and otherwise), in the preparation of claims and depositions, in testimony before the Land Tribunals, and in wider public discussion throughout Australia and beyond.

'Tribe' and its relation to 'language'

In the 1970s the dominant metaphor for Australian tribe, language, and land was the jigsaw puzzle: researchers were presented with Norman Tindale's

tribal map--fraught with errors, one assumed, but in principle corrigible--in which the territory was cut up into discrete little pieces, each of which was imagined to correspond at once to a "tribe" (perhaps with some sort of internal divisions such as "clans"), a "language" (to which, along with its "dialects," there was uniformly assigned a "name"), and a "run" or an "estate"--the territory it "owned." Some, probably most, of the tribes and their "languages" and "cultures" were thought to be extinct or on their last legs, and there was a certain urgency in the air about salvaging something of those that survived. But even though the tribes were, as it were, being rubbed off the map, the conceptual division of the territory, the people, and their languages was thought to be straightforward and familiar; indeed, Bob Dixon, the most distinguished researcher on Australian languages, discerned "strong political, social and linguistic similarities between the (so-called) 'tribes' of [the northeastern part] Australia, and what are called nations in Europe and other parts of the world" (Dixon 1976:219-220).

A more detailed consideration of the language/tribal map and the ethnographic realities that underlie it across Australia suggests problems with this view. First, Australian Aborigines are not and have evidently never been monolingual.

> "To this day, in mainland areas where Aboriginal languages are spoken, almost every fluent speaker is fluent in at least two of them, and it is not uncommon for one person to speak four or five, even in areas where languages differ greatly in grammar and vocabulary" (Rumsey 1993:195).

Routine multilingualism was bolstered by prescribed language exogamy in areas like the Cooktown hinterlands. Moreover, careful consideration of residence and territoriality shows extensive overlap between people's ranges even in the regions most isolated from European occupation (Milliken 1976). Thus, linking people either to either the languages they speak or the land where they live is a complicated and potentially misleading business. People had routinely been polyglots, had routinely obtained their spouses far from their own "countries," had traveled widely for both food and ritual, and had maintained the linkage between land, language, and people through a principle of inheritance through the father that was nonetheless both fluid and interpretable: it could be altered to fit new circumstances (for instance, the fading of a lineage, a crooked marriage, and so on).

Throughout Australia, languages are associated with (sometimes discontinuous) tracts of land, but according to the formulation of Alan Rumsey

> "Languages, or even mixtures of them, are directly placed in the landscape by the founding acts of Dreamtime heroes . . . The links between peoples and languages are secondary links, established through the grounding of both in the landscape" (1993: 204).

The latter links are secondary in a further sense since, as Peter Sutton has argued, language--like the land itself--is something one normally inherits by patrifiliation. "[L]anguage is *owned* and not merely spoken" (Rigsby & Sutton 1980-82:18).

One might add, "not necessarily even spoken at all." The Hopevale community--home to most of the few hundred speakers of the Guugu Yimithirr language--pushed even this amended jigsaw model well beyond its all too fragile limits. Some of the people who lived at Hopevale did come from the immediate vicinity, and it was to these people I was sent to learn to speak proper Guugu Yimithirr. But the vast majority of the Hopevale community were descended from Aboriginal people from distant parts of Queensland; in addition, most had non-Aboriginal ancestors. There were thus many languages claimed, if not actually spoken, in this community, and it was not unusual to hear a fluent native speaker of Guugu Yimithirr remark: "I got my own language [let's say] Kuku Yalanji" and nonetheless go on to admit, "but I can't speak that language."

To further complicate matters, ambiguities about patrifiliation in mixed-descent children had to be resolved, often more on the basis of contingent circumstances than principle.

These circumstances were the vicissitudes of history. The hinterlands of the Endeavour River were severely and violently depopulated by gold miners and settlers in the period immediately following the Palmer gold rush of the mid 1870s, and the area was further subject to violent military punitive raids after the death of a European woman near Lizard Island in 1881. The whole of the coastline north of the Daintree River was subject, even as late as the 1930s, to predations by European and Asian boat crews. As a result, by the time the predecessor of the modern Hopevale community, the Hope Valley Lutheran Mission at Cape Bedford, was founded in 1886, it had the unhappy task of trying to preserve from total extinction the remnants of the coastal tribes in the area, which by then included only a fraction of their original inhabitants. By recruiting children to the school, the mission tried to preserve families that were otherwise on the verge of dying out entirely.

After the turn of the century the population of Hopevale was shaped by several decades of police action in North Queensland in which native troopers and government officials conspired to abduct part-European children--and later any children--from their parents in the bush and to place them in missions and

reformatories for "civilizing." Often these children were rounded up far from Cape Bedford, and although the children were educated by the missionaries and later encouraged to establish Lutheran families on mission outstations, they were acutely aware, as was the entire community, of their varying "tribal" (as well as genealogical) origins and affiliations.

Residents of Hopevale, like other Queensland Aboriginal people, accommodated the social and conceptual anomalies of such a social reality into the available calculus of identity, language, and "ownership" as best they could, though not without explicit acknowledgment that the system was being strained. A characteristic symptom was the sort of complaint my fictive "father" would voice when trying to teach me about some new relative: "he's supposed to be your 'uncle,' from his (step)mother's side, but then he turned around and married your 'daughter' and now I don't know how you should call him." Or hearing how someone talked, he might prescribe a dialect choice: "he says *wuthila* 'give!' but don't pay any attention to him: we say *wuwaa* instead. These people don't know how to talk my language."

However, it has been the need to accommodate not just the "waifs and strays" that government policy "removed" to the community but the requisites of new land laws that have most severely tested ideas of land, language, and identity.

Guugu Yimithirr and Hopevale in the claims

Many recent land claims in north Queensland involve residents of Hopevale, whose ties to land extend all over Cape York Peninsula and beyond. Guugu Yimithirr speakers have participated in recent claims either as potential "owners" of land, or as crucial witnesses in establishing the sorts of links between tracts and individuals recognized under the Queensland legislation: "traditional" ownership and "historical" ties to land. I have been involved in the cases of two such people.

Roger Hart

Roger Hart's biological father was the European leaseholder of a cattle station in the territory which Roger's Aboriginal stepfather, his mother's recognized husband of the time, claimed as his "own country." The little boy grew up in shifting bush camps, learning his father's "Barrow Point" language as both his native and his legitimately claimable tongue. In this period, Barrow Point--some one hundred kilometers to the north of Cooktown as the black cockatoo flies--was one of the last refuges for "wild" or bush-dwelling Aborigines who still survived in the hinterlands of Cooktown, a coastal town which had sprung up during the gold rush on the Palmer River in the 1870s. By the time Roger was born, in about 1916, the "jigsaw" map was already in

shambles, with many groups of people wiped out by violence and disease, and the best land taken up for white occupation.

In 1922 or 1923 Roger's mother Alice, who--as was typical in that era--came from a different "tribe" and spoke a language different from that of Barrow Point, was abducted by another man. Roger remained behind in the Barrow Point camps. Soon Roger's Aboriginal father decided that he could no longer keep the little light-skinned boy. In company with a large group of Barrow Point people, Roger made the long trek south to the Lutheran mission station at Cape Bedford, just north of Cooktown. There Roger's father left the boy, tied up with a rope made from sisal hemp growing in the mission garden and locked in the mission hospital.

Roger learned Guugu Yimithirr and English in the Cape Bedford school, where he was educated in a select group of light-skinned children that the German missionaries singled out for preferential treatment. He married at the mission and raised a family, during the community's exile to the south during World War II and later when the modern Hopevale was reestablished on land associated with the Guugu Yimithirr-speaking *juubi-warra* clan inland from the original mission site at Cape Bedford.

When I first met Roger in 1979 he asked me to help him record his language, of which he believed he was probably the last speaker. We have from that day to the present been engaged in a protracted "conversation" of the kind I think Charles Taylor had in mind when he wrote "I become a person and remain one only as an interlocutor" (1985:276). In the guise of "telling his life story," Roger has struggled actively with issues that have plagued his entire life: a strong identification with a "language" he alone could speak, and a "land" he had not laid eyes on for sixty years; simultaneously, a deep ambivalence about the color of his skin, product of the race-based tensions of the mission, but also associated with the memory that, as he said, his own Aboriginal father "wanted to get rid of me."

As part of our excursion back into Roger's past, we made several trips to his childhood haunts--one to Cape Melville and Cape Bowen in 1980, and finally back to his birthplace at Barrow Point, where we walked in 1982 and again in 1984 and 1989. The whole area had been used for pastoral purposes since the First World War, and some had been regazetted as park land. Although Roger's home camp itself was not included, much of his country fell within the first land claim to be lodged under the 1991 Aboriginal Land Rights Act: the Cape Melville/Flinders Island claim on which the Land Tribunal announced a positive decision in May, 1994. Roger Hart was a central witness.

Gordon Charlie

The first Lutheran families at Hope Valley were couples, one or both of whose members had been educated by the missionaries. All of these early Christians were identified with specific areas on the Aboriginal Reserve which the Government had gazetted for the mission in 1886. The early couples were the parents of many of the oldest people at Cape Bedford before World War II when the whole community was evacuated south to Woorabinda, and where most of the old people died. The latter were, in turn, the parents or grandparents of the oldest people still alive when I began research at Hopevale in 1970.

In the late 1960s a Japanese electronics corporation had established a large silica mine on the mission reserve at Cape Flattery. The mining rights had been negotiated directly by the Queensland Department of Aboriginal and Islander Affairs, without direct consultation with Hopevale people, and royalty payments from the mine were paid directly to the Department. The Cape Flattery operation, owned by Mitsubishi, is now the largest silica export mine in the world, with annual profits of over one million dollars. In 1991 the lease for the mine was renewed, and the Hopevale Council, now trustee for the "Deed of Grant in Trust," renegotiated royalties equivalent to some 60% of these profits to be paid into Hopevale community funds. Further statutory royalties, amounting

to roughly one million dollars annually, are also paid directly to the Queensland Government.[5]

But what of the "traditional owners"? The mining operation at Cape Flattery sits on a tract of land associated with a group of people called *dingaal-warra*. Mitsubishi further planned to extend mining operations onto an adjacent tract associated with *ngurrumungu-warra* people. Exactly three men out of the early Cape Bedford residents were associated with these areas, and they had a sizable number of descendants at modern Hopevale. Thus, for example, old man Charlie *Digarra* was from *dingaal*, and his two sons inherited this affiliation, as did their sons, the most senior of whom is Gordon Peter Charlie, born at Woorabinda in 1946, and currently (1996) a Hopevale policeman.

Unlike Roger Hart, Gordon Charlie would be called in Guugu Yimithirr *bama buthun.gu* 'a real Aborigine,' or, in Hopevale English, a "full-

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[5] Details of the final lease agreement are confidential; these estimates come from Holden (1995). Under the agreement a percentage of these statutory royalties were also to be dedicated by the appropriate Minister to the needs of "traditional owners" of the areas used by the mine, although to date no such allocations have been made.

blood"[6]Aborigine. Also unlike Roger, his family belongs to what might be seen as a mission underclass, systematically excluded since early mission days from educational opportunities, and until recently from jobs and positions of responsibility at Hopevale. Gordon himself recalls a childhood of fighting and drinking. He was estranged from his devoutly Lutheran father, and by his own account he only straightened himself out during several years in an alcohol rehabilitation program in Brisbane, from which he returned determined to recapture his heritage.

Excluded by the Hopevale elite from access to royalties paid by the renegotiated Cape Flattery lease, Gordon lodged claims under the new Native Title legislation to regain his ancestral land. This put Gordon into direct conflict with two other groups in his own community. First, it launched him into a boundary dispute with people descended from the early Cape Bedford resident who was known to lay claim to the neighboring *ngurrumungu-warra* area, thus putting the notion of "traditional ownership" and "boundary" to legal test. Still more problematic, it pitted the interests of Gordon as "traditional" owner against the those of the vast bulk of Hopevale residents, descended from the "waifs and

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[6] Despite their frequent use, such terms are often offensive to Aboriginal people, and I apologize for any discomfort their use may engender.

strays" brought to the mission in the early part of the century, whose only claim to the area which produces most of the community's income is--in terms of the land rights legislation--"historical." Indeed, although Roger Hart has won recognition as a "traditional" owner of the *gambiilmugu* tribe included as part of the Cape Melville/Flinders Island claim, at Hopevale where he lives he is, under provisions of the land law, merely a "historical" owner. This is, incidentally, a status which Roger would not claim for himself at all, although there are other Hopevale residents whose own "traditional" land is not available for claim and for whom, accordingly, Hopevale is the only "homeland" they know.

Speech practices and establishing claims

The complexities of the land disputes in which Roger Hart and Gordon Charlie are engaged go well beyond the scope of this essay. They involve the social history of the Hopevale community, the economics and politics of community administration, government schemes to buy back land for Aboriginal people, the role of environmental activists and other public interests in marshaling public opinion, the various Aboriginal bureaucracies in government, and the growing national network of Aboriginal activists and their relation to Hopevale. After recent (1996) elections which removed both federal and state Labour governments, the political situation remains in turmoil.

The remainder of this paper limits itself to the evolution of discourse about land, language, and community in the land rights era. Because much of the testimony in land claims, which directly exhibits the microscopic conversational processes involved, remains restricted, I will limit myself to published documents, my own field observations, and the field of public discourse on the matter.[7]

The discourse of land claims

Trimming Aboriginal notions to fit Australian law is a slippery business. Nonetheless, a claim had been made for an essential continuity. The full Federal Court ruling on a claim in the Northern Territory[8] in 1993 argued that "[t]he establishment of Land Trusts and Land Councils is essentially a modern

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[7] One of the most remarkable pieces of data is a news program about land squabbles at Hopevale, aired in September 1995 on Australian national television on the Australian Broadcasting Commission's *Four Corners* program. I am indebted to Dr. Leslie K. Devereaux, of the Australian National University, for making a videotaped copy of this program available to me.

[8] Pareroultja and Others v Tickner and Others, (1993) 214 ALR 206 (Lockhart, O'Loughlin and Whitlam JJ), cited in Land Tribunal (1994), para. 100.

adaptation of traditional Aboriginal decision-making processes through their communities. The Land Rights Act was created to reflect the rights and obligations that arise from traditional title." This defining legal fiction puts discursive matters--"decision-making processes"--at the heart of the land claim procedures. It also prepares the ground in advance for a kind of reinvented tradition, replete with the appropriate genetic engineering, to be sowed and cultivated.

Legislation directly incorporates an image of Aboriginal social and territorial relations which it proceeds to impose procedurally. Section 4.09 of the Aboriginal Land Act 1991 describes claims for "traditional affiliation" as follows:

> 4.09(1) A claim by a group of Aboriginal people for an area of claimable land on the ground of traditional affiliation is established if the Land Tribunal is satisfied that the members of the group have a common connection with the land based on spiritual and other associations with, rights in relation to, and responsibilities for, the land under Aboriginal tradition.

By contrast, a claim "on the ground of historical association is established if the Land Tribunal is satisfied that the group has an association with the land based on them or their ancestors having, for a substantial period, lived on or used" the land.[9] In either case,

> (2) [i]n determining the claim, the Tribunal must consult with, and consider the views of, the persons recognised under Aboriginal tradition as the elders of the group of Aboriginal people.

In the Cape Melville/Flinders Island claim, to which Roger Hart was a party, the Land Tribunal dissected the statutory criteria for "traditional affiliation" into its crucial elements and considered definitional problems arising from each of the central terms: 'group,' 'Aboriginal,' 'common connection,' 'spiritual association,' 'rights' and 'responsibilities' for land, and most prominently 'Aboriginal tradition.' This last term is defined elsewhere in the Act as "the body of traditions, observances, customs and beliefs of Aboriginal

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[9] ALA 1991, Sect. 4.10(1).

people generally or of a particular group of Aboriginal people."[10] The Tribunal observed that

> "none of the terms ... are technical terms in the discipline of anthropology. Rather they are ordinary English words which should, if possible, be interpreted as having their ordinary meaning . . . having regard to their context in the Act and to the purpose of the Act."[11]

In fixing the criteria the Tribunal appears to have tried to allow claimants to set many of their own parameters for discussion: thus, for example, with regard to the Act's definition that "Aboriginal people are the people of the Aboriginal race of Australia"[12] the Tribunal followed the precedent of Mabo v Queensland (no 2) that "membership of the indigenous people depends on common biological descent from the indigenous people and on mutual

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[10] ALA 1991, sect. 2.03.

[11] LT 1994: para. 192.

[12] ALA 1991, sect. 2.01.

recognition of a particular person's membership by that person and by the elders or other persons enjoying traditional authority among those people."[13]

The Land Tribunal further incorporated into its procedures what they perceived to be distinctive aspects of Aboriginal "decision-making," explicitly recognizing what one might consider to be sociolinguistic or discursive conventions. Thus, for example, they agreed to take evidence "in groups," observing that

> "there may be local protocols to be observed in determining who within a group had authority to speak in relation to certain matters. In particular, it was submitted that young people may feel some sense of reticence or even shame[14] when asserting their rights to land in the presence of older people who had the traditional authority to speak about such things . . . [T]here is . . . a hierarchy of knowledge and

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[13] (1992) 175 CLR 1, cited in LT 1994, para. 112.

[14] The reference is evidently to the common English gloss for the Guugu Yimithirr term *muyan*.

> of rights in relation to land which people giving evidence would wish to respect."[15]

Similarly, the Tribunal records its awareness of restrictions on naming deceased persons[16]--inconvenient when matters of genealogy are central to its deliberations. It provides for translators to render various Aboriginal languages "when witnesses felt unable to express particular concepts adequately or at all in English."[17] (A skeptic might ask whether these provisions represent anthropological sensitivity or rather constitute a recipe for psychodrama and theater in claim testimony.)

A question to which the Land Tribunal devoted considerable attention is the fixity of "Aboriginal tradition," citing both anthropological literature[18] and

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[15] LT 1994, para. 140.

[16] LT 1994, paras. 145-6.

[17] LT 1994, para. 142.

[18] In an interesting recent paper Bruce Rigsby (1995b) examines the varying influence and credibility of "expert anthropological" testimony in several land

legal precedent to conclude that "[w]hile that tradition will ordinarily be, or be derived from, what has been handed down from ancestors to posterity, especially orally or by practice, the content of the tradition need not be immutable from generation to generation."[19] In establishing "spiritual connection" to the land in the Cape Melville claim, for example, emphasis was placed on a collection of stories about a trickster hero Fog who moves across the claimed territory. A decade before, I had recorded and translated this story from Roger Hart, and a decade before me anthropologist Peter Sutton had tape recorded a version from another Barrow Point man. Gordon Charlie similarly had asked his father to tell him "old stories" shortly before the elder man died in 1984, and Gordon asked me to submit transcriptions and translations of these stories (only some of which dealt with the *dingaal* area at all) in support of his claim to the Native Title Tribunal.

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claims in Canada and Australia, concluding that such testimony is itself an appropriate--indeed, urgent--object for anthropological study.

[19] LT 1994, para. 226. The Tribunal report goes on to cite Stravinsky's *Poetics of Music* to the effect that "tradition results from a conscious and deliberate acceptance of something from the past, and presupposes the reality of what endures."

is continuous "language" evidence for continuing traditional connection to place and culture?

Shortly after the Mabo decision in 1992, Noel Pearson, a University of Sydney educated lawyer from Hopevale who headed the Cape York Land Council and who had rocketed to prominence as Australia's foremost Aboriginal activist, wrote to me about an inspired idea: that the continued existence of Guugu Yimithirr, spoken around the Endeavour River since before Cook's visit there in 1770, was *prima facie* evidence of the "continuity of Aboriginal possession" of the area since before European occupation, one criterion upon which "native title" claims rest.[20] As it happens language has been an especially ambivalent index of "traditional affiliation" and community.

On the one hand, the Land Tribunal takes as evidence for "traditional associations with the land" the fact that there are still names for places, clans, individuals, and other traditions such as stories maintained in distinct native languages, however fragmentary people's knowledge of them.[21] Such recognition of the significance of languages linked to places of course reinvokes

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[20] N. Pearson letter to Haviland, 20.8.1992.

[21] LT 1994, paras. 405-414.

the jigsaw model. The Tribunal cites biographies that testify to a range of diverse and separate languages in the claim area, mentioning one man from Flinders Island who when "removed" to Cape Bedford, "learned Guugu-Yimidhirr, adopted some of that culture [sic] and married a Guugu Yimidhirr woman."[22]

The special indexical value of language presses claimants to assign language names to named tracts: if the *dingaal-warra* were a separate group, they must have had a separate language. Guugu Yimithirr was certainly subject to lexical and dialectal variation, something that the early missionaries complained bitterly about.[23] A major division, characterized by many lexical doublets, separated two large groups of Guugu Yimithirr dialects: a *thalun-thirr* (literally 'with the sea') or "seaside" dialect, and a *waguurrga* ('of the interior') or "outside" dialect. In a short video "documentary" commercially produced by his lawyers, Gordon Charlie's language is presented as "Guugu Dhalunthirr." In his invitation to me to submit a deposition about Gordon's father's stories, the

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[22] LT 1994, para. 410.

[23] The early Lutheran missionary W. Poland, in a series of pamphlets published by the Bavarian Lutheran church beginning in 1901, described how one had to be constantly on guard against saying obscene things in Guugu Yimithirr, partly because of its internal diversity. See 'Working as a Sower,' 1901.11,3.4.

lawyer for the *dingaal* claim requested that I underline "words that are specifically coastal dialect."[24]

Moreover, much of the credibility people have in speaking about tradition seems to derive from their language skills. The Land Tribunal mentions evidence of the remnants of polyglot competence among witnesses. The recent Australian Broadcasting Commission's program about the conflict between "traditional" owners and "historical" people--enshrining now as a social category what began as different bases for land claims first set down in the 1991 legislation--shows people speaking in Guugu Yimithirr, the lingua franca of Hopevale, only in the context of a camping trip to Cape Flattery in which rival traditional claimants are meant to reconcile their differences.

On the other hand, the mere ability to speak a language is considered by most Aboriginal people as a mere contingent possession, something that one can just "pick up." Everyone at Hopevale, whether having an ancestral claim to the area or not, speaks the lingua franca Guugu Yimithirr to some degree, and for most it is still a first language. So the ability to speak Guugu Yimithirr is, in this sense, no index of "traditional" identity.

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[24] Poynton letter to Haviland, 31.3.95.

The issue is clearest in connection with the label "Guugu Yimithirr warra, Limited" which was proposed as a cover term for an economic development corporation for the whole Hopevale community,[25] meant to include the original Hopevale reserve and all its "historical" inhabitants, and actively contested by "traditional" owners like Gordon Charlie.

Individuals who might have gone by a variety of names both in Guugu Yimithirr and in English were frequently further identified by a *bubu*, a 'country.' Thus, one elderly man who instructed me on such matters was known to trace his genealogical heritage, his 'own *bubu*,' to an area on the Starcke River called *Junyju*, which means "narrow place." He was thus known as *junyju-warra*, where the suffix *-warra* derives an adjective-like expression that denotes the legitimate and traditionally recognized 'owners' of the corresponding named country. Only a few 'place names' can figure in such an identifying expression with the suffix *-warra*; others are simply names, with no corresponding *-warra* form. That is, other place names may denote spots which 'belong' to specific groups--again, as an example the nickname of the elderly man just mentioned was the name of a lagoon where he was born--but they cannot be used with the suffix *-warra* to identify a whole group of people. Gordon Charlie is *dingaal-warra*, and Roger

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[25] N. Pearson, letter to Haviland, 29.5.92.

Hart *gambiilmugu-warra*. It was in recognition of this linguistic convention that the Land Tribunal endorsed the Cape Melville/Flinders Island claimants' suggestion that the land trust established for them be called the "Yiidhuwarra Aboriginal Land Trust" since "Yiidhuwarra is said to be a name for all those people who are traditionally affiliated with the region in which areas under claim are located."[26]

However, the coinage *Guugu Yimithirr warra* has met with no such acceptance. One of the "traditional" claimants to the *thiitharr-warra* clan on the mission reserve, asked about the term on the ABC television documentary, remarked "I never heard about that," suggesting that being able to speak Guugu Yimithirr in no way united Hopevale people into a community.

One thus cannot avoid the impression that the language itself is being refashioned in response to the conceptual demands of legislation. Perhaps the most striking example is the evolution of the Guugu Yimithirr term *bubu gujin* in modern Hopevale usage. When I began work on the language in the early 1970s, my teachers explained the meaning of the expression by reference to a system of

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[26] LT 1994 para. 499. The Guugu Yimithirr term *yiithuu-warra* appears to have included several clans whose ranges included an area from Cape Bowen to Cape Melville and Flinders Island.

clan *bubu* or tracts in which people who laid claim to one area might have especially close ties to people from other tracts--sometimes nearby, sometimes distant. Such ties might, for example, be established by reciprocal marriages, by joint responsibilities for initiating youths, or by common interests in harvesting bush foods. One's *bubu gujin* were people from other areas with whom one stood in such a special relation, and the term was often translated into English as "neighbour" or "friend."[27] In current litigious Hopevale discourse, however, the expression has come to mean not only "owner of [a tract of] land," but "boss" for an area, a person by definition able to exclude others or to limit their access to a bounded section of territory.

The current politics of NQ land rights

In a flurry of interest in 1995, the Australian national press made much of land squabbles at Hopevale. In addition to the national television program "Four Corners," newspaper articles described how Aboriginal activists like Noel

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[27] The word *gujin* could also be concatenated with nouns other than *bubu* in which case it suggested a notion of ownership, although of a special kind. Thus *mayi gujin* (from *mayi* 'edible vegetable, food') was a feast-giver, and *galga gujin* (from *galga* 'spear') was the person who made the spear which one might happen to be using (thus, its "owner" although not in an exclusive sense).

Pearson wanted to "lock up" the whole of the Cape York Peninsula--"Australia's last great wilderness"[28]--as a "Black nation," but how at the same time the Cape York Land Council, which Pearson headed, ignored injustices and inequities within Aboriginal communities like Hopevale, Pearson's home town. However, a recent agreement signed by the leaders of different Hopevale clans to cooperate conjointly on future native title claims has calmed much of this internal conflict. Furthermore, a wholesale change of state and federal governments in the 1996 Australian elections threatens, as of this writing, to alter the legislative scene once again.

There is both intellectual and human irony to the emerging cycle: just as anthropology was beginning to move beyond a suspect jigsaw model of land, language, and tribe--and just as the last generation of elderly Aborigines who could have shed authoritative light on the complex processes involved in creating individual identities (and linguistic profiles) has passed--land rights legislation appears. The legislation, in turn, revives the jigsaw model and slams it back into procedural concrete--at least until government policy changes again.

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[28] An article entitled "Cattlemen and Aboriginals up in arms over moves by governments to take over Cape York," *The Sunday Mail*, 22.10.1995, for which I am indebted to Prof. Bruce Rigsby.

Queensland Aborigines find themselves in process which seems to be just beginning: the recasting of tradition in terms amenable to the requisites of new, often incompatible, universalizing languages that derive from land rights, the law, the "environment," "tradition,"[29] and "development." In fact, the process is as old as the European conquest, if not older. Testimony before land tribunals (in which Aboriginal interests are as often pitted against each other as against non-Aboriginal ones), as well as other autobiographical conversations, reveal that far from being exceptional cases, Roger Hart's experience of being wrenched from his homeland and having to bridge multiple, partly contradictory selves, or Gordon Charlie's experience of finding himself homeless at home, is the *characteristic condition* of most of the people in the Aboriginal communities of the north. And far from offering community, language and land are now among the elements that foment division and conflict.

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[29] The astonishing malleability of the word *tradition* is evident in the following line from the previously mentioned *Sunday Mail* article: "Traditionally, Cape York cattlemen have not had a lot to say about politics and the state of the world, preferring instead to get on with the job of managing their properties."

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