

**“Little Cracks of Their Own Mountain Ranges”<sup>1</sup>: The Bark Petition, Church Panels, the  
Gove Land Rights Case**

**Brief Thoughts on Aboriginal Australia’s First Title Deed**

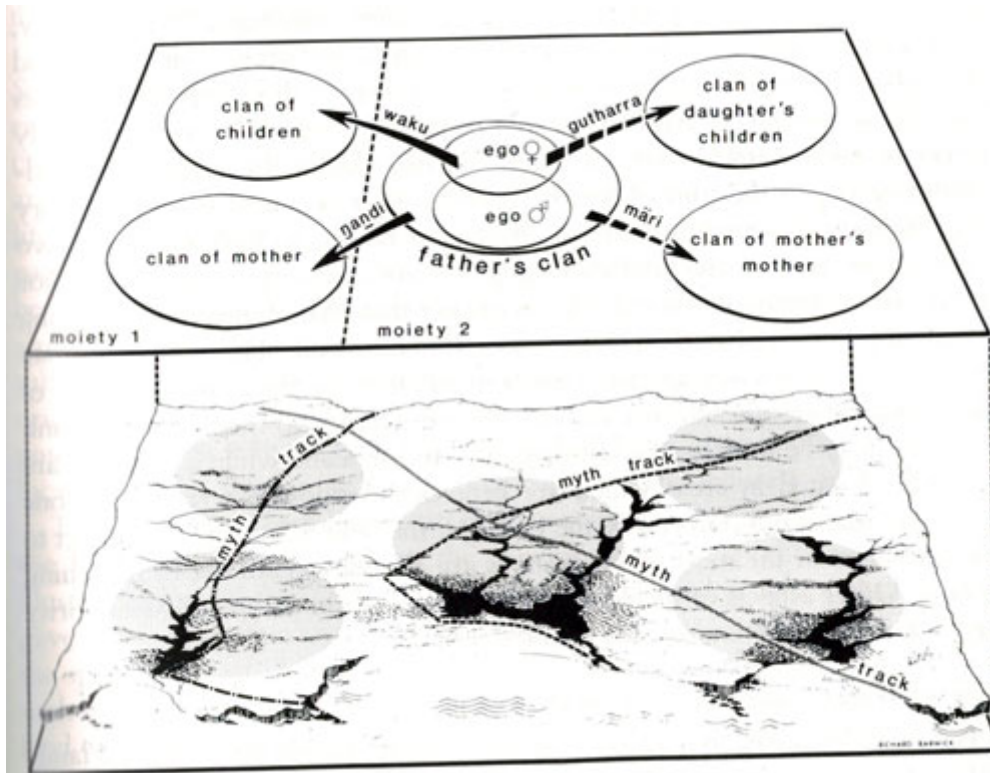
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<sup>1</sup> See Howard Morphy, “Mutual Conversion”, **Humanities Research**, Vol. XII No 1, 200, p. 48 Thanks to Bree Blakeman for comments and references.

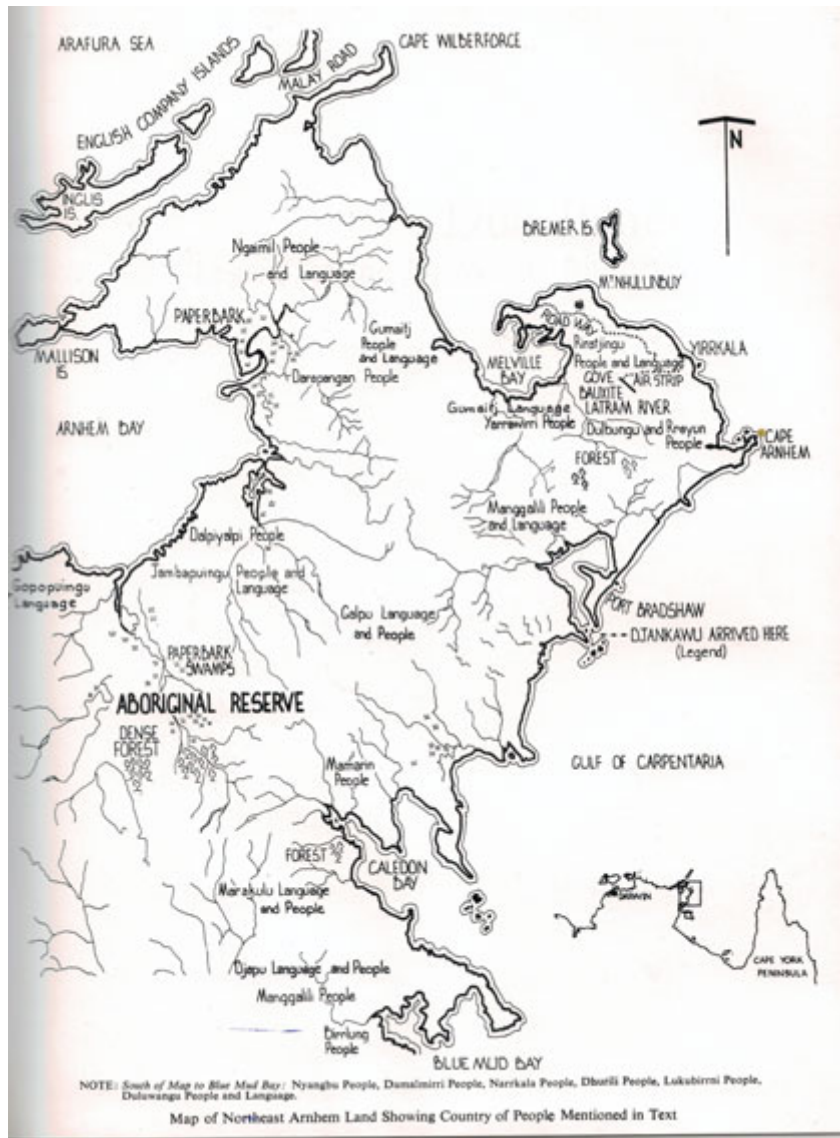
“...there are moments of illumination when the mind expands under the force of new horizons ... men such as Djawa and Narritjin could expose little cracks of their own mountain ranges ... that made areas of understanding possible.” Edgar Wells, Letter to Ed Ruhe, 1983.



This marvellous diagram of the mari – gutthara clans and estates (from Nancy M. Williams book **The Yolngu and their Land: A System of Land Tenure and the Fight for its Recognition**, Stanford University Press, 1986) was conceived 16 years after the Gove Land Rights case. It took an intellectual of great standing to show how Justice Blackburn had so badly misunderstood the nature of Yolngu land tenure, stewardship and ownership. 50 years later we are still only beginners in understanding one of the most sophisticated and wise land management systems ever conceived by man. Let us hope our children and grandchildren learn much more...



Mawalan, Turtle Rock, from Anne Wells **This Their Dreaming Legends of the Panels of Aboriginal Art in the Yirrkala Church**, University of Queensland Press, 1971



Most Australian recognise this map but it provided only a one dimensional and rudimentary “Western” representation of the Yolngu land and estates referenced in the Yirrkala Church Panels, from Anne Wells, **This Their Dreaming Legends of the Panels of Aboriginal Art in the Yirrkala Church**, University of Queensland Press, 1971

In pre-colonial Aboriginal Australia there was no legal title, no piece of paper kept in a safe spot to demonstrate legal ownership of a piece of land, as in Western law. The story of the Yirrkala Bark Petition is the story of how the Yolngu people of North East Arnhem land explained their land ownership and tenure, their responsibilities of land stewardship and of the family management of land (*märi* (MM/MB extended grandmother relations), *gutharra* (DD/ZD extended grandchild relations), *yothu-yindi* relations) over many generations.<sup>2</sup>

Fifty years later we can now partially see the marvellous system of stewardship, spiritual connection and ownership of lands that the Yolngu elders tried to explain to Australian politicians, courts and to the Australian people. In painting the church panels, and in framing the bark petition the Yolngu elders were indeed creating their own, and Australia's first native title deed, indeed the Bark Petition has been described as Australia's Magna Carta.<sup>3</sup> The Church Panels are a remarkable visual text and the references in the bark petition to the panels and Yolngu *manikay* (songs and ceremony) and law are of ongoing interest. As a nation and as a group of intellectually enlightened people there is a lot to say and analyse about the bark petition. It will remain something of interests to scholars and laymen alike for a long way into the future. Amongst other things, the Yolngu system allows us to partially conceptualise Aboriginal law and culture where languages have been lost and pre-colonial polity and society suppressed or lost.

Up until now, the bark petition has been seen as a kind of civil rights document in the thinking of our politicians. Fifty years on we see that it is the key to a remarkable and wise system of land tenure. The Church Panels are as much a document about flora and fauna should be managed as a document showing ownership. Land ownership comes with responsibilities. The deeply spiritual meanings of the panels and the petition, dismissed as not relevant to the common law by Justice Blackburn in the Gove Land Rights Case, are also worthy of major study and discussion. Non-Indigenous Australians can also learn a great deal from the concept of stewardship and management that is at the heart of the petition. This could, for example, be the basis for new sophisticated ideas for managing land and country, for passing responsibility for farms and land use on to future generations.

The rights and entitlement of land was something each Aboriginal person was born with. The bundle of rights that are tied to property title in Western law, for example, water and riparian, mineral, easement, tenancy, timber, farming, grazing, hunting and air rights came to each person, primarily through their father's hereditary rights and secondarily, through their maternal hereditary rights. The landed estates of the Yolngu "clans" were territories that came to clan members from the beginning of time and were subject to ceremonial and customary kinship relationships.<sup>4</sup> Nothing could be bought or sold. But rights could be traded and loaned to other groups. Wars in which whole clans were wiped

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<sup>2</sup> The best book of explanation remains Nancy M. Williams, **The Yolngu and their Land: A System of Land Tenure and the Fight for its Recognition**, Stanford University Press, 1986. However the detailed interpretations of land ownership principles and meanings remain hot topics of conversation within Yolngu society itself.

<sup>3</sup> Will Stubbs, Director, Buku Larrngay Mulka, 9/7/2013

<sup>4</sup> We use the term clan advisedly because it is under question in the anthropological literature. Some argue socio-political form of the 'clan' is only relevant to a select few Aboriginal groups in Australia and is, in fact, highly contested as a relevant description of social groupings in Arnhem Land. See Ian Keen, 2000 A bundle of sticks: the debate over Yolngu clans. *Journal of the Royal Anthropological Institute* 6: 419-436.

out might involve a resetting of territorial boundaries but nothing altered the underlying pre-colonial order of property rights.<sup>5</sup>

It is remarkable, arrogant and ignorant for Australians not to have recognised the oldest system of land ownership in the world.

In North East Arnhem Land the creation of an Aboriginal protectorate in 1931 meant that the age-old system of Aboriginal property rights, and the ceremonial and customary law of the Yolngu people, carried on relatively undisturbed until the late 1950s.<sup>6</sup> During this time missions did create significant changes in that Aboriginal people were encouraged, for the first time, to settle in particular areas supported by Western horticulture, transport infrastructure and housing. Modern technology and artifacts including sophisticated steel and metalwork, refrigeration, fabrics, timber manufactures, not to mention, sugar and alcohol, all had profound effects on Yolngu society. There was also a mediation of traditional value systems by Christianity. In Arnhem land, there was a paternal encouragement of Yolngu culture by missionaries, as Ann Wells wrote: “. . . it was no good for humanity to be ashamed of those of their own kind who had gone before them along the roads of this world; men should not come with either arrogance or apology into the brotherhood of man, but with head erect and heart at peace as into the company of friends and relations.”<sup>7</sup> Ann’s husband Reverend E.A. Wells believed that he was very much ‘a protector of Yolngu people’, as much as a Christian missionary. From the Yolngu perspective as Mawalan Marika stated clearly: “I’m not going to be Christian but I come as Christian to the missionary to learn about the Bible, because your story fit into our story, but my story is Law and is Christian before you arrive.”<sup>8</sup>

The granting of mining leases from 1958 disrupted the relatively harmonious relations that existed between what Wandjuk Marika came to view as “*manymak*” (good) “*Balanda*” (European people) in the form of missionaries, and *yatj* (bad) as non-mission *Balanda* (Europeans).



Gove Bauxite Testing, 1958

<sup>5</sup> Williams, *ibid.*

<sup>6</sup> See on this Donald Thomson, **Donald Thomson in Arnhem Land**, Miegunyah Press, 2010

<sup>7</sup> Ann E. Wells, **Milingimbi Ten Years in the Crocodile Islands of Arnhem Land**, Angus & Robertson, 1963, p. 229

<sup>8</sup> Wandjuk Marika, **Wandjuk Marika A Life Story** Univ of Queensland Pr; First Edition edition (November 1995)

The excision of lands for bauxite mining in the Wessell Islands in 1952 was the first hint of a different era in which the Yolngu leaders would have to become politicised in order to protect their age old property rights. The Gove Peninsula annexation of the Yirrkala reserve by R.G. Menzies for the mining of bauxite prompted a unique and elaborate expression of the seemingly timeless relationship of the Yolngu people to their lands. The painting of the Yirrkala church panels was in direct response to the Commonwealth and Territory governments grab of significant parts of the Aboriginal reserve without consultation with the Traditional Owners. Yolngu clan leaders created an Aboriginal artwork comparable to Michelangelo's Sistine Chapel depiction of the tribulations of Christ to explain the nature, strength and wisdom of their system of land ownership and tenure.

Edgar Wells the Methodist missionary at Yirrkala, and his wife Anne, deserve some recognition in what Howard Morphy has aptly called a process of "mutual conversion."<sup>9</sup> The Yolngu leader Narritjin Maymuru convinced Wells that there needed to be an explanation of the Yolngu laws, sacred beliefs and land system. As Wells noted to this friend the panels allowed the two moiety clan groups to "expose little cracks of their own mountain ranges." The Church panels are one of the greatest works of art that has ever been produced in Australia. Researchers and scholars will be studying them for the next hundred years and will still find new dimensions, ideas and inner secrets that are associated with them.

The paintings were a response to the mineral explorations and to concerns over the Gove Peninsula annexation. The animals of the Church Panel with a great deal of embedded meaning are reference in the Yirrkala Bark Petition that was sent to the Commonwealth parliament in the following year. Kim Beazley senior saw the panels in the Church, and suggested that this would be an appropriate way to petition parliament using the symbolic medium of Yolngu religion and law. The Gove Land Rights case can be seen as a logical outcome of the dialogue that occurred.

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<sup>9</sup> Howard Morphy, "Mutual Conversion", **Humanities Research**, Vol. XII No 1, 200



## Timeline<sup>10</sup>

**1931 The greater part of Arnhem Land 31,200 square miles is proclaimed an Aboriginal Reserve.** The total area of reserves for Aboriginal people in the Northern Territory is 60,000 square miles. In addition pastoral leases under the Crown Lands ordinance should contain a reservation giving to all Aborigines and their descendants "Full and free right of ingress, egress and regress into, upon and over the leased land, and every part thereof, and in and to the springs, and natural surface waters thereon such wurlies and other dwellings as those aboriginal inhabitants have before the commencement of the lease been accustomed to make and erect and to take and use for food, birds and animals ferae naturae in such manner as they would have been entitled to do if the lease had not been made". (Cited Barrier Miner, Sept 1931, p. 1)

1950 Capt Fred Wells and Fred Waulkes discover bauxite at the Wessel Islands, Arnhem Land

1952 Australian Aluminium Company granted permission to prospect for bauxite across Arnhem Land Aboriginal Reserve

1955 Wessel Islands Mining Company fails and the stock and buildings of the failed venture are distributed to the five Methodist Overseas Missions in Northern Australia

18 December 1958, Commonwealth Aluminium Corporation granted a special mineral lease of 22 square miles over the bauxite deposits of the Gove Peninsula. Corporation to submit plan for development of the area within five years.

18 April, 1961 Commonwealth House of Representatives appoints a select committee to inquire into the voting rights of Aborigines under the Electoral Act, 1918 to 1953 which reports on 17 October 1961

18 February 1963 Prime Minister Robert Menzies announces 50 million mining project in Arnhem Land together with the granting of mining leases following an excision of Yirrkala Aboriginal Reserve

11 April 1963 Cyclone ravages Arnhem Land

2 May 1963 Rev. Edgar Wells chairs meeting with mining representatives and Yolngu leaders

9 May 1963 Rev Wells calls a public meeting and reads proclamation by the Governor General of mining lease and areas adjacent from the Aboriginal Reserve.

23 June 1963 Rev. C. F. Gribble opens the new church at Yirrkala and dedicates the church panels included in the Church.

16 July 1963 Kim Beazley Snr and Gordon Bryant arrive at Yirrkala and stay for a week. The "Bark Petition" is drawn up.

24 July 1963 The Bark Petition is sent to Canberra

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<sup>10</sup> See Edgar Wells, **Reward and Punishment in Arnhem Land 1962-63**, Australian Institute of Aboriginal Studies, Canberra, 1982

12 September 1963 Mr Beazley moved, 'That a select committee be appointed to inquire into the grievances of certain aboriginal people of Yirrkala . . .'  
Debate ensued and the question was put and passed

30/31 October 1963 Findings of the Select Committee included:

"Paragraph 43

Your Committee finds that no discussion took place between Administration representatives and the Yirrkala people before excision. The discussion was between the Administration and the Methodist Mission authorities.

Paragraph 44

Your committee is of the opinion that it was not an obligation on the Yirrkala Mission authorities to inform the Yirrkala people of Government policy, even if they had been completely certain what it was. Confusion seems to have arisen on this point. The Administration apparently thought that the decision had been given to the people.

Paragraph 47

Your Committee was impressed by the quality of the aboriginal evidence given in their own tongue . . .

Paragraph 59

Evidence showed that no conference had been held with the Aborigines to discover the precise location of sacred places, although provision was made in respect of sacred places in the collateral letter to the Special Mineral Leases.

Paragraph 61

Paragraph 65

. . . there are many sacred places within the whole of the excised area. Your Committee believes that the people of Yirrkala still need the protection that the proclamation of a reserve gives them from the intrusion of Europeans who have no good reason for going among them.

Paragraph 68

Your Committee believes it is necessary to develop simultaneously homes for European Australians and Aboriginal Australians.

Paragraph 69

. . . your Committee considers that some compensation is due in the form of land grants and suggests action under the Ordinance for leases for agricultural purposes . . .

Report from the House of Representatives Select Committee on Grievances of Yirrkala Aborigines, op. cit., Pt I,

Report and Minutes of Proceedings.

94 . . . your Committee believes that a direct monetary compensation should be paid for any loss of traditional occupancy, even though these rights are not legally expressed under the laws of the Northern Territory.

Paragraph 74 . . . Your Committee considers that at least the first 150,000 pounds in royalties should go to meet the capital needs of the Yirrkala people . . . Town services should not be charged to the sum of 150,000 pounds.

Paragraph 75

The projected development of Yirrkala justifies the appointment now of a resident medical practitioner . . .

Appendix iv (2) It was agreed that the lessee will in consultation with the Administrator and Mission work out a set of rules for the conduct of its employee”

The lease granted to the Gove Bauxite Corporation was for a duration of 42 years, with a clause allowing a possible extension. In 1963 the length of the first lease granted to the mining company equalled the life expectancy of an Aborigine under average circumstances, and for the leaders of the Aboriginal community this represented the giving away of ancestral territorial privilege of children's children which was beyond comprehension. It could only be resisted. This resulted in the formation of the famous Gove Land Rights case. The final judgement of that case came down in 1971, 8 years after the bark petition. The Judgement of Justice Blackburn, *Milirrpum and Others*, Northern Territory Supreme Court did not find for the Yolngu people. This was a tragic event for many of the Yolngu leaders and painters of the church panels, particularly those that had responsibility for the lands where the Gove aluminium smelter was created. However the documents and fight that they made for their land resulted in the Northern Territory Land Rights Act and paved the way for Native Title Rights to be eventually recognised through the Mabo High Court case. Furthermore fifty years later there is still so much to learn from the church panels, the bark petition and the Yolngu people about how to own, pass on and look after land.

