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Aboriginal religion and native title

A popular and sustained view of Aboriginal society and culture has been and remains that it is essentially spiritual. Concepts like the ‘Dreaming’ or ‘Dreamtime’, stories relating to localised supernatural beings (the Wagurl in Western Australia, the bunyip in eastern or south-eastern Australia and the Djanggawul of northeast Arnhem Land to mention just a few) are known and appreciated by informed Australians. Indigenous relationships to land are commonly represented in spiritual terms. For example, until recently, the official Australian Government website, informed the world that ‘For Indigenous Australians, the land is the core of all spirituality and this relationship and the spirit of “country” is [sic] central to the issues that are important to Indigenous people today’.¹ Accounts of Aboriginal religion, beliefs and practices are common in the anthropological literature, both as classic ethnographies as well as shorter accounts in edited volumes and academic journals. Tourist bookstalls carry popular accounts of ‘Aboriginal Dreamtime stories’, children’s picture books and illustrated narratives, many of which are authored by Indigenous Australians. In short, across the spectrum of popular and academic publication (digital, as well as hard copy)

1 The quotation came from the Australian Government’s website (www.australia.gov.au/about-australia/australian-story/austn-indigenous-cultural-heritage, accessed 9 December 2016), which has since been removed and replaced by a short catalogue of services and general information about ‘Indigenous culture and history’ (see www.australia.gov.au/information-and-services/culture-and-arts/indigenous-culture-and-history). The website of the Australian Human Rights Commission, on the other hand, states that ‘Native title is a property right which reflects a relationship to land which is the very foundation of Indigenous religion, culture and well-being’ (see www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/native-title, accessed 13 March 2018).

Aboriginal religious beliefs and practices are as much in evidence as the koala and the kangaroo, while the iconic Uluru is commonly represented as the embodiment of Indigenous spirituality and belief.²

This apparent privileging of Aboriginal belief and practice has its downsides. Beyond the academic work produced by both Aboriginal and non-Aboriginal scholars, popular culture has commoditised Aboriginal spirituality and has often shown a scant regard for authenticity or accuracy. This has led to misunderstandings and even trivialisation of some aspects of belief and practice. In turn, the classic ethnographies of Aboriginal ritual practices³ provide ready examples of the richness and diversity of ritual practices in some remote areas of Aboriginal Australia. This wealth of ritual and belief is not reflected in the ethnography of many native title claimant groups whose ritual practices are either substantially diminished or, as is the case in many rural and urban areas, no longer a part of contemporary practice. In a native title business that requires proof of traditionality, such comparisons are odious.

Given the centrality of religious belief and practice to Indigenous Australian culture, it is self-evident that the subject should be discussed in any report written in relation to a native title application. However, as with all other ethnography discussed in this book, the account has to be relevant to native title questions. In writing a native title report, an account of the claimants' religious beliefs and practices will not, of itself, provide a basis for the provision of an expert view as to the continuity of law and customs that relate to rights to country. Moreover, the prominence afforded to Aboriginal spirituality and the manner of its representation, particularly in the popular media, may require that the account clarifies issues and that it provides a corrective to popular misconceptions. Treatment of the field data may also require accepting and admitting that the ethnography relied upon reveals a religious life somewhat diminished in scope and content when compared with the earlier accounts of customary mytho-ritual performance as witnessed and recounted by mid-century anthropologists. This may have the potential to weaken the claims of right, but is a matter that cannot be neglected.

2 See, for example, uluru-australia.com/about-uluru/uluru-and-aboriginal-culture – along with advertisements for Kangaroo Island, Broome's Cable Beach and women's fashion garments. Accessed 9 December 2016.

3 For example, Berndt's *Kunapipi* (1951), *Djanggawul* (1952); and Meggitt's *Gadjari* (1966). Many other examples could be cited.

Making it relevant

Some dos and don'ts

The content of an expert or connection report will, of course, depend upon the ethnography available. No two reports, then, will be the same. The comparative process, whereby present practice and belief is compared with documented past practice will also be determined by the availability of materials in the early literature. In some cases such accounts will be very limited or perhaps altogether absent. In these cases the writer will have to rely on early accounts from a neighbouring area (if available) or from the scholarly literature for comparable areas of Aboriginal Australia. Claimant testimony that beliefs and practices have been a part of their culture 'for ever' may have some value in supporting the continuity argument. However, a discerning critic of the application is likely to evoke views relating to the shallowness of the oral tradition and its potential for transmutation, as I discuss in the next chapter of this book (see Chapter 6, 'Native title research and oral testimony'). As with other aspects of the laws and customs of the claimants, an expert view supporting their continuity through time really does need to rely, at least in part, on independent archival or ethnographic data. This process may attract its own problems. When reviewing the early literature in relation to a practice or belief that is known now to be entirely absent, there is little point in providing a detailed account of the practice if the conclusion will be that it is no longer a part of the contemporary account. Better to note its past occurrence and then state that its absence today is an evident loss of customary practice. I have read reports that detail past practices at length, only to conclude that the ritual is long gone, so rendering the historical account redundant. In native title writing, cultural losses require neither explanation nor excuse, but should, nonetheless, be openly and clearly admitted without requiring the reader to labour through descriptions of practices long abandoned.

The Dreaming, the secret, the sacred and the Law

Given the comments I have set down in the preceding paragraphs, it is essential that the writer of a native title report makes clear exactly what is meant by words or phrases that may commonly occur in the popular literature or might otherwise be subject to uncertainty or possible misunderstanding. This serves to anchor the ensuing account to key

concepts evident in the ethnography, as well as helping to demonstrate that the beliefs and practices constitute a system with normative content and a structured form and process. This may also serve to counter the perception common in early accounts that Aboriginal belief and practice did not constitute a proper religion, but was magic or superstition – a perception that is not altogether absent in some circles today.

Australian Indigenous languages often have a term that roughly translates to ‘the creative period of the Dreaming’. *Jukurpa* is common in areas of the Western Desert, but *bugarigara*, *ngarangani* and *munguny* are common further west. I have recorded the term *mura* in northeast South Australia and southwest Queensland and *ularaka* from the Lake Eyre Basin.⁴ In the Yindjibarndi language (central Pilbara region of Western Australia) a phrase is employed that can be translated as ‘when the world was soft’, being descriptive of the state of the country as it was believed to have been in this creative time. These terms (and many others besides) carry a range of meanings depending on the context of their use but all provide a foundation concept for Aboriginal religious belief that underpin a range of spiritual beliefs, practices and concepts. Dreaming, as represented by the Indigenous term is, in part, regarded as a period of time in the far distant past. During this time extraordinary events took place at certain locations typically effected by mythic⁵ beings with extraordinary capabilities. These events fashioned aspects of the claimants’ physical, social and cultural world, providing an explanation and mandate for a particular cultural practice (like a ritual, prescribed behaviour between classes of kin or way of gutting an animal) or natural phenomenon (like a hill, rock, river or plain) today. Anyone who has worked with Aboriginal people in Australia in remote as well as rural and urban areas is likely to be familiar with these aspects of belief as they are found commonly in daily discourse. Notable in this regard is the idea that country was first allocated to human groups in the Dreaming and has subsequently been ‘handed down’ through the generations to the present Indigenous owners.

4 Cf. Elkin 1934, 176, 181.

5 As far as I know, the term ‘mythic’ was introduced into the literature by Ronald and Catherine Berndt (see, for example, R.M. Berndt 1970, 218, 219; Berndt and Berndt 1993, 223ff.) but was not used in their earlier work where ‘mythical’ seems to have been preferred (e.g. Berndt and Berndt 1964, 189). While ‘mythic’ suffers from the same imperfections as ‘myth’, its substitution for the more common ‘mythical’ may serve to alleviate the pejorative connotations of the latter. In lectures Ronald Berndt used to speak of ‘my-thick’ beings, so the word had little resemblance to the cognate ‘mythical’.

Dreaming is dynamically manifest in the present and its spirituality traverses the temporal dimension such that it is neither solely of the past nor the present. As a reference to potent spirituality, the term may be used to denote a manifestation of contemporary sanctity derived from the creative era. Spirituality evident within place is attributed to events of the distant past but is elementally contemporary and a part of present experience. Consistent with this concept, Dreaming (or its Indigenous equivalent) can also be used to denote a particular relationship between a person and the natural world (a place or a natural species), which is readily understood as a totemic association.

These preliminary comments relating to the concept of ‘the Dreaming’ should serve to illustrate that the popular view of the Dreaming as some quasi-romantic period steeped in myth and legend and being the stuff of children’s stories egregiously misrepresents the ethnographic reality. I have worked with some claimants who refuse to use the term ‘Dreamtime’ for this very reason. The word Dreaming is probably the better choice than ‘Dreamtime’ as the former at least represents the sense of the recent and continuous aspects of the belief. Terms from the claimants’ own language may also have advantages when used in native title discourse, but if this choice is adopted the word chosen must be accurately defined.

The spiritual power of the Dreaming is neither passive nor benevolent. Common to all Aboriginal groups with which I have worked is the belief that there is a potent spiritual force present within the countryside or evoked in ritual practice. Things of the Dreaming are sacred and their substance sacrosanct. A place, then, that is believed to have been created in the Dreaming and has continuing Dreaming characteristics is sacred and is generally subject to rules that govern visitation or use. In writing of such things, care needs to be taken to distinguish the idea of sanctity from the ideal of the secret as the two terms are sometimes conflated in popular use, yielding a sort of hybrid ‘secret–sacred’ notion that obfuscates the system of belief and action that characterises Aboriginal religious belief in this regard. While all aspects of the Dreaming are ‘sacred’, not all are ‘secret’.

Terms from the claimants’ own language are helpful in any analysis of these concepts. In parts of the northwest of Western Australia and east into the desert areas, potent Dreaming spirituality is identified by the term *ngurlu*, a term used to refer to phenomena that are potentially spiritually dangerous to those not qualified to encounter them. In parts of the Western

Desert, the concept is expressed by use of the term *milmilpa* while other languages have their own terms. Such words carry the meaning of being restricted and not open to some people (usually women and children), and content so characterised is thus esoteric. Spiritual danger within country (a manifestation of the Dreaming) is a determinant of how country can be accessed, exploited and managed. The term for spiritual danger is also used to refer to a place associated with esoteric and restricted activities like a ritual ground where gender-specific activities are known to take place and it is also used to refer to ritual items, knowledge of which is restricted to senior ritually qualified men. The term is thus a means of referring to such items without making a direct reference to them and so functions as a euphemism. Since these matters are so sensitive, however, no mention is made of *ngurlu* (meaning objects) in the presence of women. Esoteric and highly restricted objects are manifestations of Dreaming and may also articulate a spiritual relationship between a person and a place.

The usefulness of such data in the native title context may be limited by the need for strict confidentiality when discussing such material. It is essential that the management of these data be discussed at the outset of the research with senior male claimants (or senior female claimants if the material is restricted to women) and a decision made as to whether it will be collected and included in some form in the anthropologist's report. One possible solution is to place these restricted materials into a separate report and have the court make orders as to its subsequent distribution and use. This is not uncommon and the court may also choose to hold certain sessions *in camera*, limiting attendance to males or females and imposing restrictions on the subsequent dissemination of the transcript. However, this may result in procedural difficulties. In a recent case that was appealed to the Full Bench of the Federal Court, restricted materials were demanded by the appellant to be discovered since the appeal court needed to review all the evidence considered by the trial judge. The question then arose as to what would be the outcome if one of the appeal judges was a woman. Court orders are only secure for as long as they endure: they can be overturned.

In some areas the original Aboriginal language words for such concepts as Dreaming, 'sacred' and 'secret' are now not remembered. However, it has been my experience that beliefs in these concepts endures and can provide helpful insights to any native title inquiry. Dreaming and the related aspects of potent spirituality within the countryside comprise a significant reference within customary Aboriginal belief. Manifestation

within place potentially makes it a part of any daily encounter with the countryside. This is significant in the native title context as it is a belief that serves to link people with country through the conviction that Dreaming spirituality imbues the country and so is a part of the contemporary relationship a person has with their country. The affiliation a person has with his (or her) land is one that comprises a relationship constructed of spiritual interconnectedness, mediated by places and the spiritually potent attributes of those places. Consequently, rights to country are legitimated by reference to the supernatural ordination of the creative period of the Dreaming that continues to the present. The identification of the location of sacred ritual items reflects the belief that the spirituality of the country is immanent in paraphernalia. These beliefs and concepts are pertinent to any native title report that seeks to explore the contemporary relationship between people and country. The rules that are believed to have been set down in the Dreaming and that are now cited as comprising expected and regulating behaviour are important to native title analyses as they serve to demonstrate the existence of a normative system that underpins the claimants' relationship to country. Native title reports generally require careful consideration and analyses of these beliefs, concepts and social dealings in order to show the customary relationship between the claimants and their asserted rights to country.

Both the period of the Dreaming and its principal actors are believed to be responsible for the institution of laws and customs. 'The Law', commonly a term for customary practices and ritual observances, is believed to have its origins within the Dreaming. In many Aboriginal groups, the term 'law' is used with a range of meanings depending on the context. A common use of the term 'law' is to refer to rules of social behaviour, particularly those governing marriage and kin obligations as well as rules that determine access to country and the asking of permission. So, for example, visiting places that are regarded as prohibited to certain categories of person is also a matter of the exercise of law. The term 'law' is also used in context to refer to any one of several of ritual activities, each having its own particular signature or style (songs, body markings) as well as associated paraphernalia and teaching. Used in this sense and in part to distinguish its use from the more general 'law', meaning rules, axioms and required behaviour, some writers represent it with initial upper case ('Law'). Commonly, a person who has submitted to the ritual of induction (commonly 'initiation') is referred to as having 'been through the Law'. The time when rituals are performed may be known as 'Law time', the ground where ritual action takes place as the 'Law ground' and a man who

is regarded as having status and authority in ritual matters referred to as a 'Law man' and a woman as 'Law woman' or 'Law boss'. Collection of these vernacular (Aboriginal English terms) helps define the structure and underlying system of Aboriginal belief and practice. Credible exegesis of this sort does, however, require that the terms are carefully and accurately explained at the outset.

Religious beliefs

It may be helpful in writing for a native title audience to separate out the claimants' religious beliefs from practices. This is a pragmatic choice that may assist in the presentation of data for what is ultimately a legal readership where an assessment of data is made in relation to specific criteria – for example, the continuity of customary belief relating to the application area. Care needs to be taken when following what might be understood as a reductionist process that belief and practice are not dissociated, for the two are a part of the whole. The dichotomising that characterises this discourse highlights the problem of writing about complex spiritual and metaphysical matters in a native title report. Data must be applied to the native title questions, otherwise it will be redundant. While beliefs and practices are two sides of the same coin, clarification of beliefs and significant concepts (see previous section) paves the way for an account of practice since the latter can be understood to be the manifestation and realisation of the former.

Each ethnography will yield examples of different religious convictions so the content of the text will vary on a case-by-case basis. In what follows I set down some of the beliefs I have found to occur widely across Aboriginal Australia in my native title research, noting that they are not restricted to remote or northern areas, but with patient and thorough inquiry may be recorded within rural and urban groups as well.

Totemism

The early literature on Aboriginal religion instructs that totemism was a significant feature of belief and practice in times gone by. Consideration of this aspect of belief is, then, a necessary part of any contemporary account of the claimants' religious beliefs. The terms 'totem' and 'totemism' are not without their problems. They have a long history in anthropological

writing that is well beyond the scope of this book to review. Spencer and Gillen wrote at the end of the nineteenth century that every person belonging to the groups they studied in Central Australia was:

born into some totem – that is, he or she belongs to a group of persons each one of whom bears the name of, and is especially associated with, some natural object. The latter is usually an animal or plant; but in addition to those of living things, there are also such totem names as wind, sun, water, or cloud. (Spencer and Gillen 1899, 112)

R.M. and C.H. Berndt (1988, 231) cite Durkheim (1915), Spencer and Gillen (1899), Radcliffe-Brown (1945 and 1952), Warner (1937), Elkin (1933 and 1945), Strehlow (1947), Stanner (1958 and 1959–61) as well as R.M. Berndt (1951 and 1952) as examples of those who have provided comprehensive accounts of totemism in Aboriginal belief. They remark that, ‘all have suggested ... that a major focus was on totemism. In fact, Aboriginal religion has been labelled as totemic, and a great deal has been written, at second hand, on this subject’ (ibid.). The ‘second hand’ nature of so many of these early accounts is identified by R.M. and C.H. Berndt as a principal problem with the early anthropological literature, observing that ‘Totemism is a confusing term, because it has been used in so many different ways’ (ibid.). Nevertheless, they conclude that the term is now so ‘well-entrenched’ that adoption of a different term would ‘only add to the confusion’ and counsel that it be used with careful attention to what is meant by the writer. They cite Elkin as providing the ‘best’ description in this regard:

a view of nature and life, of the universe and man, which colours and influences the Aborigines’ social groupings and unites them with nature’s activities and species in a bond of mutual life-giving and imparts confidence amidst the vicissitudes of life. (Elkin 1945, 126, cited in Berndt and Berndt 1988, 231)

Elsewhere, and earlier, Elkin defined ‘totemism’ as:

a relationship between an individual or group of individuals on the one hand and a natural object or species on the other – a relationship which is denoted by the application of the name of the latter, the totem, to the human individual or group concerned. (Elkin 1933, 257)

Elkin went on to caution against applying the definition without a proper understanding of the implications and consequences of the relationship between totem and person or group, since he understood this relationship to influence and perhaps even determine social action (ibid.).

R.M. and C.H. Berndt echo these definitions by adding that they understand totemism to be, very broadly, about:

a view of the world in which man is an integral part of nature, not sharply distinct or differing in quality from other natural species, but sharing with them the same life essence. (Berndt and Berndt 1988, 231)

Elkin sought to bring clarity to his analyses by dividing totemism into seven different types that he called ‘forms’ (individual, sex, moiety, section/subsection, clan, local and multiple) (1945, 129–133). This categorisation is expanded by R.M. and C.H. Berndt into 10 (individual, sex, moiety, section/subsection, clan, local, conception, birth, dream and multiple). They also identified two classes of totemism (social totemism and ritual or cult totemism), all categories belonging to one or other of the classes (1988, 231). Elkin’s further classification, however, was based on ‘function and meaning’ (1945, 133–148), identifying types of totemism that R.M. and C.H. Berndt included as categories. While this may be represented as sound analysis and certainly explores different manifestations of totemism, it may prove of limited assistance in a native title report because of its evident rigidity and conspicuous complexity.

The lists furnished by Elkin and the Berndts may provide a useful checklist for native title researchers to explore with claimants regarding their totemic beliefs. While I do not for one minute suggest that researchers list these categories as a kind of questionnaire (‘Do you have birth totemism? Do you have subsection totemism?’), exploration of the concepts that inform the categories may provide a basis for the collection of helpful data. That said, totemism, as the term might best be employed in native title writing, is better understood as a relationship. Classification is not as important as developing an understanding of how the relationship is articulated and how it works to link a person to the natural world through a spiritual correspondence that renders a person correlative with the natural world, either a place or a species or both. Understanding totemism as a relationship rather than a thing, which is sometimes a consequence of categorisation, positions and so helps define the belief within social action and personal credo. Typically, the relationship is manifest as a personal bond between an individual and a place or between an individual and a natural species, many cultures exhibiting examples of both. In a native title account, such an understanding may assist the

reader in gaining an appreciation of how people relate to country through spiritual affiliations that are a part of their day-to-day lived experience and their social interactions with others.⁶

In my own experience, I have found that discovering terms from the language of the claimants that identify spiritual relationships between an individual and the natural world is a helpful first step. For example, in areas of the central and western Kimberley I have recorded the terms *ray* and *jarin* that identify the existence of a relationship between an individual and a place and an individual and a natural species respectively. *Ray* is a term used for a spirit that enlivens the foetus of the unborn child. It is identified by an adult (not always the father) through the dream of natural sleep or through a metaphysical experience. Its revelation is rehearsed as a subsequent narrative in which the particulars of the imbueement are told and the place whence the *ray* originated identified (Glaskin 2017, 64–65). In many cultures (although not invariably), the totemic link between the resultant individual and the *ray* and its place of origin (sometimes referred to as *ungurr*) yields rights for the individual within the locale of the *ray* – the locale being known as that person's 'ungurr place'. Such place-specific links between people and country provide data that is helpful when developing expert views on the existence of contemporary links between a person and an application area.⁷

Jarin is a word used to identify an animal or natural species associated with an individual in areas of north-western Australia. Typically, this is explained through the reporting of an incident that occurred immediately prior to a mother's realisation that she was pregnant. The details of a person's *jarin* are generally explained by means of a short narrative that describes the relevant circumstances. Subsequently, the person is understood to have a particular relationship with that animal or natural species, such that the *jarin* is 'special for them' or that they feel a particular affinity toward it. In some cases, the *jarin* is forbidden food, although this is not always so. The *jarin* may also be identified with an individual through some physical mark or distinguishing feature. This characteristic is understood by claimants to be the result of the circumstances that led to the spiritual relationship being created. Thus, if the *jarin* was an animal that was hunted or a fish that was speared, the individual is shown to have

6 See Palmer 2016, 130–132 for totemic data drawn from a rural and urban population.

7 See Kaberry 1936, 1938; Kolig 1981, 31–35; Palmer 1981, 336–342 for examples of how a totemic relationship endorses rights to country.

a birthmark or other physical blemish that represents the act of capture or killing. Totemic beliefs of the *jarin* type are widespread across Aboriginal Australia and are not usually linked to a place or locale, although the location where the *jarin* originated may be regarded as significant to the individual.

These two examples serve to illustrate common aspects of totemic belief that may be found in native title ethnographies. There are, of course, others, as the texts I discussed above clearly illustrate. Totems may be passed down through filiation, from either mother or father, or may be associated with a social category (moiety, section, or subsection). A totemic relationship may also develop through ritual practice where an individual (usually a man) experiences induction into an esoteric mytho-ritual tradition such that he is believed to have gained a spiritual affiliation with a particular Dreaming being identified with a place or string of places across the countryside. This belief, or variations of it, has been called ‘cult totemism’ (Berndt and Berndt 1988, 238–239; Elkin 1945, 136–144; Kolig 1981, 158–176). One difficulty with consideration of such data, should it be available for a native title researcher, is that much of the content may be restricted in its allowable dissemination. This raises difficulties for its use in a native title report that is most usefully an open account available to all parties who have an interest in the application. As I have noted above, restricted materials need to be discussed at the outset of the research and a policy adopted as to how such ethnography will be used, if at all (cf. Glaskin 2017, 132–134).

Myth and narrative

A native title report should include examples of the claimants’ oral literature. Some of those with whom I have worked dislike the term ‘myth’, regarding it as pejorative as it may be understood to imply falsehood or untruth. Notwithstanding that the term ‘myth’ has a technical anthropological meaning (a sacred tale held to be true), the word is open to misunderstanding, particularly when used for a non-specialist readership. The more neutral term ‘narrative’ may be the wiser choice. Some oral literature comprises narratives that tell of domestic and social events situated within the context of the Dreaming. These are generally narratives of place and are often publically rehearsed while some are regarded as mostly suitable for children. This should not diminish their importance to an ethnography that seeks to demonstrate the

continuing nature of cultural traditions and, provided they are a part of the field data, they have a place in a native title report. Care should be taken, however, to ensure that narratives have been passed on in an oral tradition as there are undoubtedly examples where narratives have been lost to the oral account while being preserved in print as ‘Dreamtime stories’ only to re-emerge again as an oral account that has been learnt from the printed version. Over a generation or two the interruption to the oral account is not remembered. Asking claimants where they learnt the narrative is sometimes helpful and is an essential part of the research process. Becoming acquainted with materials that have been produced by the relevant community over the last few decades at schools and resource centres is also important as this may provide an indication of the likely history and origins of an oral account. Given that narratives were only ever oral accounts in customary arrangements, an absence of the oral account for a period of time would signal a lack of continuity of this aspect of Aboriginal culture. Its resurrection would not alleviate this loss – although this is a legal matter that might find support from other arguments that are not my concern here.

Narratives of the Dreaming that tell of the actions of mythic beings at known locations across the countryside and particularly within the application area provide useful data for those who seek to provide a view as to the claimants’ continuing connections with the countryside. Consistent with the discussion above relating to the inherent spirituality of the Dreaming, such narratives serve to show how claimants continue to esteem and value the country and particular places and areas within it. Narratives can attest to the belief that there is a manifest deep spirituality that is the continuing and contemporary representation of the actions of the Dreaming being or beings. Accompanying song as well as artistic representations may be of assistance to an understanding of how place and narratives enshrine spirituality that is linked to people through a perceived equivalence between a person and his or her country – yet another form of totemism. Travels of mythic beings also lend themselves well to graphic representation as lines across a map (see, for example, Cane 2002, 84; Hawke and Gallagher 1989, 114). Many narratives of this sort are restricted in their dissemination – or have confidential segments or versions. Again, proper management of such data, and indeed whether it be collected at all, is a matter that needs to be discussed with senior claimants, who are themselves privy to these materials, before the research is undertaken.

The reproduction of narratives in a native title report can be helpful in demonstrating the continuity of the oral tradition. This counsels that the accounts be summary rather than effusive, providing only such detail as is necessary for the subsequent provision of an opinion as to the likely continuity of the tradition since times prior to sovereignty. Some narratives in the oral tradition are quite lengthy and have performative aspects that are best omitted from the field data as presented. However engaging the narrative, if it has no bearing on the native title questions its telling will be at best redundant, at worst irritating.

Sites, locales and place

Many narratives relate to country and named places that were typically spiritually ordained and modified or transformed during the Dreaming. The idea of the 'sacred site' has a long and troubled history in the latter part of the twentieth century in Australia that continues to this day. The phrase was brought to academic prominence by R.M. Berndt in the early 1970s in his monograph, *The sacred site: the western Arnhem Land example* (1970). State legislation to protect 'sites' was enacted about this time.⁸ Difficulties developed in Western Australia when the local community at Noonkanbah on the Fitzroy River (west Kimberley) sought to prevent drilling on country they regarded as spiritually significant. The state government took the view that the area concerned was not a 'sacred site' as it lay well beyond the compass of the geographic feature that had, apparently, previously signified the site and so could, according to this logic, be drilled with impunity (Hawke and Gallagher 1989). This raised a fundamental problem with legislation that regarded land-based spirituality as essentially contained within the parameters of a definable 'site'. Beyond the boundary, the spirituality and associated cultural and religious significance was absent.

The *Native Title Act* is not sites-based legislation but seeks to recognise rights to country as a whole. However, in writing of 'sites' in a native title report, the researcher needs to be mindful of the baggage the term carries. Indeed, it might be better to avoid the word altogether and substitute a word like 'area' or 'locale' (as I have done above). To avoid subsequent misunderstanding, some discussion of the nature of land-based spirituality and its pervasiveness and absence of evident and convenient containment

8 See Williams and McGrath 2014 for multiple references.

is required. Generally, according to Aboriginal customary understandings and belief, named places are not 'sites' in the sense that they can be readily bounded. Typically when mapping country on the ground it is evident that there is a zone of transition between one named area and another with an intermediate region separating them. The spirituality believed to reside at a place is not contained within a bounded site. Rather, it is pervasive and sometimes extensive. Individual named places ('sites') may comprise a complex of significant places that in aggregate constitute an area of spiritual significance having component parts that cannot be separated since they rely on and express common spirituality. In the Pilbara region of the northwest of Western Australia, I recorded a totemic association of an area as being fog. The spirituality of the area was understood to be no more contained as a bounded site as is the very fog that constituted its visual manifestation. A question along the lines of, 'Well, how far does the Fog Dreaming site go?' is, then, incontrovertibly foolish. The same understanding could be applied to any area wherein spirituality is believed to reside.

Sites and areas of importance should be identified by a unique number and listed with summary details, including approximate geographic location, the Indigenous name, the map name, an indication of the type of site (artefacts, ritual, historical and so on) along with a brief description of the place and the source of the information and field note reference. Sites gathered from earlier researchers or extracted from state sites' databases, if presented in the report, should be clearly differentiated from the field data collected in preparation for writing the native title report as the former may not represent contemporary knowledge. Sites should also be shown on a large format map by number so they can be identified by the reader or, should the matter go to trial, by the court and other interested parties. I have found that by sorting the UTM grid references of the sites I can order the sites roughly top to bottom and left to right across the map. While this is unsophisticated, it aids identification of sites when there are many dozens of them. An alternative is to provide an index like a street directory with the map divided into sectors ('A1', 'A2' and so on) so any site can be found on the map. A 'site map' provides a ready and graphic representation of the claimants' knowledge of their country and can be a telling if crude indicator of the continuity of connection.

Beliefs and practices of daily living

Aboriginal religious beliefs penetrate the surrounding natural environment, bringing the metaphysical to the physical world with which Aboriginal people interact in the course of their daily lives. This results in a complex system of belief that circumscribes many aspects of the claimants' quotidian activities through observance of customary ways of dealing with the spiritual world that readily translates to a normative system of laws that prescribe correct action. These aspects of customary observance and the rules that underpin them are founded upon spiritual beliefs but are not set apart like major ritual action or indeed evidently separate from daily life. They are, then, sacred in the sense that they belong to the spiritual world but mundane in the sense that they are a part of the routine of the commonplace and humdrum everyday tasks. For this reason, too, they may be missed in a native title inquiry or considered by the claimants to be of no consequence. However, what might be called beliefs and practices of daily living are an important part of Aboriginal religious belief and should be included in any account of the continuity of those beliefs over time and examined to determine what they can tell us about the claimants' relationship with country. They may also reflect rules about the rights exercised by the claimants within the application area.

Spirits figure prominently in Indigenous cultures. These are manifest as a pantheon of different forms and characteristics. Some are mischievous, some benign and helpful, some elementally dangerous. Spirits are typically present within the countryside and so must be managed when the places they are known to inhabit are visited – reflecting ritual practices of greeting country that I have considered in the previous chapter of this book (see 'Realising rights and dangerous places', and 'Permission, trespass and licence'). In many instances I have found that claimants consider that only those with customary rights to the country can manage these spiritual encounters. This is because it is believed that it is the owners of the land who hold a spiritual commonality with both the country and its metaphysical manifestations. In similar vein, the spirits of deceased ancestors (another important aspect of Aboriginal religious belief) recognise their descendants as those who are, like them, of the country.

Another example of beliefs and practices of daily living are protocols that govern the taking and processing of food. Goannas may have to be gutted in a particular way, kangaroo, turtle and dugong prepared according to normative prescriptions while some meat is forbidden to certain categories

of person while others are privileged in its distribution. These customary ways of doing things are well reported in the general Aboriginal studies literature, as any student of the subject will know. Understood as an expression of the abiding relationship that an Aboriginal person has with the natural world through supernatural agency, they may serve to illustrate the continuity of customary action and the deep correlation believed to exist between people and country and much that is within it.

Domestic encounters with birds, dogs and other animals may also carry with them a range of beliefs. Common to many ethnographies with which I have worked is the belief in messenger birds – omens of good (or more often bad) news, visitors and death. The countryside as observed by a keen and knowing eye may also provide information about the availability of natural species, the weather or the wind. While these examples of the beliefs of daily living are more in the nature of a natural history than of a credo, on being pressed claimants are likely to explain that the relationship of one part of the natural world with another is a product of the spirituality of the Dreaming. During this creative time, so is the widely held belief, all things were ordained and the present order and the rules that regulate interaction with the natural world were set in place. Such data is helpful to any native title account since it goes to both normative values and continuity and should not be overlooked in the research process.

Religious practices

Accounts of ritual in a native title report need to be presented in the context of their relationship to the possession of rights by the claimants. If the data available in this regard is either not evident or cannot be provided in a convenient and accessible form, care must be exercised to ensure that the account is not irrelevant. That stated, ritual performance generally signals a vibrant continuity of laws and customs and so finds a rightful place in the ethnography. Ritual is a complex and challenging area to write about in any native title report. Ritual action can be both the most public and spectacular of a researcher's fieldwork data as well as the most private and sensitive. Before lifting the lid on the claimants' ritual lives, great thought, planning and close consultation needs to be undertaken, while the practicalities and resources required to record properly events that occur only periodically and may last for many days will have substantial resource implications for the organisation funding

the research. Those of us who have been lucky and privileged to take part in one or more of the major mytho-ritual practices of Aboriginal Australia understand the intensity and all-consuming emotional commitment required of ritual practitioners. This is not an undertaking that should be embarked upon lightly, nor should the velocity of the moment obscure the end goal of the research. To be helpful to the court and others who assess native title applications, ritual data need to be accessible and available. Much ritual action is gender restricted while some claimants may consider that practices that are not so restricted are, nevertheless, not matters that should be made public, even within the limited audience of a native title claim.

While the practicalities of providing a first-hand account of ritual activities may not be possible given the severe restraints imposed by court deadlines and the commissioning agency's budgets, other means can be utilised to provide data on ritual practices where these are a continuing part of the claimants' laws and customs. Anthropologists who have worked at least quite recently with the claimants may have published their own independent accounts of ritual to which the native title research can refer. Obviously, such accounts need to be verified by the claimants and confirmation provided that such accounts continue to reflect current practice. Claimant accounts of their ritual practices may also serve to provide useful field data, again with the proviso that it is evident that what is related refers to contemporary practice. As with all field data, lawyers who manage and finally present the case at trial (if that is the outcome) will wish to lead claimant testimony to support the anthropologist's data.

Major rituals of induction are not practised in many areas of settled and southern Australia. Relevant early literature may attest to this absence in the contemporary account or reveal that the rituals that are practised are either substantially changed or diminished. I have been asked on a number of occasions by prospective claimants whether people can gain recognition of their native title rights if the major life-stage rituals are no longer practised. Based on my knowledge of claims that have been determined, it is evident that ritual, like language, can be lost without jeopardising recognition of native title⁹ – although its continued practice

9 Examples that come to mind are the Single Noongar Claim in southwest Western Australia (*Bennell v State of WA*), *Dempsey on behalf of the Bularnu, Waluwarra and Wangkayujuru People* and the Juru People (Parts A and B (*Prior on behalf of the Juru People and Lampton on behalf of the Juru People*)), but there are any number of other examples that could be drawn from the determined claims listed on the NNTT website: www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx.

undoubtedly makes claims stronger. While historically anthropologists have made the focus of their research and recording the great initiatory or life-stage rituals as well as the post-initiatory ceremonies that inform classic texts of the sort I have cited at the beginning of this chapter, ritual practice may also be in evidence in less spectacular forms, such as greeting country, hunting evocations and increase rituals. Such practices, particularly when performed in what might seem to the uninformed to be in a rather perfunctory or low-key manner, are easily overlooked in the research process. In my experience rituals that show the continuing relationships between people and their country may sometimes be performed in a disarmingly 'modern' manner, all too easily overlooked during the research process.

Kinds of ritual practice

Studies of ritual have long been a significant topic for anthropological inquiry and it has been subject to extensive review, analysis and theoretical constructs. Trained anthropologists learn of these things during their courses of study and should bring this knowledge to their subsequent presentation and analyses of their data. In this regard the classic work of Arnold van Gennep (1960) and later work by Victor Turner (1968, 1974) are important points of departure. Lloyd Warner's classic *A black civilisation* reveals the complexity and detail of recording ritual practice and furnishing exegesis (1937, 234–401). The challenge for anyone undertaking a native title inquiry is that of relevance. Rituals are often by their very nature protracted affairs, containing complex and sometimes intricate details while ceremonial activity invites a range of possible interpretations, some of which have been in times past speculative and farfetched.¹⁰ To be helpful to those who adjudicate on an application for the recognition of native title, ritual data needs to bear on the question of the continuity of law and custom, particularly as that relates to people's relationship to country and the perdurance of their rights within it.

Ritual practice in Aboriginal Australia is generally directed toward a specific goal and is characterised by unique form, style and content. Different sorts of ritual are named and are not conflated in practice – indeed, to do so would be to break the ordaining rules that are believed

10 For a review of some of the problems of interpretation of narrative and ritual, see John Morton's introduction to Geza Roheim's *Children of the desert II* (Morton 1988, vii–xxx).

to have been set down by mythic beings of the Dreaming who first established the way a ritual should be conducted. Emic classifications of ritual practice are useful in any presentation of data since they allow for an orderly presentation of materials that reflects the claimants' beliefs and understandings. In what follows I consider just some of the principal types of ritual that might inform a native title inquiry.

Initiation

Common in ethnographies of northern and remote Aboriginal Australia is the practice of rituals of induction for youths, typically males. This usually (although not invariably) involves the physical operation of circumcision, although an alternative in some areas may include ritual arm tying.¹¹ The practice is often referred to generally as 'the Law' or 'Law time' and the process as 'going through the Law'. The ritual often involves not only members of the initiates' own community but members of others across the region as well, while several boys may be initiated at the same time, together involving several hundred participants. These rituals are major regional community events, having substantial non-restricted segments, may continue for a week or more and are a significant event in the Indigenous calendar. In some places where I have worked, dedicated ritual grounds have been set up complete with ablution facilities and semi-permanent bough sheds to cater for those attending. European Australians are often invited and welcome to attend, take photographs and participate in the dancing and ritual adornment ('dressing up'). There are, however, restricted episodes, including the actual circumcision, from which women, children and generally European Australians are excluded.

'Going through the Law' by ritual induction and circumcision is a necessary first step for the social transition from youth to manhood. However, while it makes 'a man of a boy', senior men with whom I have worked all agree that it is merely a first stage of a social and ritual education, rather like completing primary school. Being a man (*wati* in many Western Desert languages) requires much more than this. A fundamental feature of Aboriginal religious practice is that it is progressively revelatory. Knowledge of the Dreaming, the narratives and associated beliefs, customs and practices, evocation of spirituality and its renewal and comprehension

11 A number of other male initiatory rites are recorded across Aboriginal Australia by R.M. and C.H. Berndt (1988, 166–175). Initiation rites for girls are also recorded in the literature (e.g. *ibid.*, 180–185), but this is a matter that I feel unqualified to comment upon. It has been explored by other writers – see Bell 1983 and 2005 for a discussion, review and additional references.

of the sacra that may link people to country are sequences in a life-long ritual journey. While the juvenile initiate may hear songs and observe dances and performance that relate to the countryside, he is unlikely to gain much knowledge of them. Moreover, a boy can be circumcised at a community quite far removed from his own ancestral country, so the relationship between the ritual practice and activating rights to ancestral country may not be evident. The observation of the ritual is likely to demonstrate that there is a continuity of laws and customs in this regard. However, the relevance of this practice to the assertion of rights to the country of the application may not be evident.

Higher rituals

Post-circumcision rituals are, in my experience, often replete with restricted episodes, furnishing significant challenges as to how such material might be managed in a native title application. These revelatory ritual practices are sometimes euphemistically referred to as ‘higher Law’, ‘bush business’ or simply ‘men’s business’, although they have specific names that are often themselves restricted. For obvious reasons I can write very little about these rituals except to observe that it is these that often relate to what might broadly be called the totemic relationship between people and their country. In those communities where such rituals continue to form a part of customary practice, lifetime exposure to the rituals yields status and a depth of arcane knowledge that legitimates eminence and standing and so are an important feature of the social organisation of the claimant group and its governance. Progressive revelation and rehearsals of ritual, narrative, song and performance is also a means to ensure the continuity of this knowledge through time and facilitates the preservation of its content. These matters go to the normative system whereby claimants manage their social relationships, structure their quotidian exchanges, manage disputes and impose discipline. Consequently, they are relevant to any native title inquiry. In this sense it may be sufficient simply to note that such higher rituals are a part of contemporary practice, without any need to go into any detail beyond the sort I have provided here. However, in an open report at least it will not be possible to provide a fine-grained explanation of how higher rituals function to link people to country through spiritual evocations.

Entertainment and ‘corroborees’

Native title research may reveal a genre of oral literature that comprises single songs believed to have been composed by a named individual. Such songs are generally believed to have come to the composer in the dream of natural sleep and may be associated with a particular place within that person’s country, either because of the content of the song or because it was conceived at a particular location.¹² These songs are sung informally for entertainment or for the edification of the researcher and some individuals may have a repertoire of several dozen pieces. These songs are the property of the composer and pass to his or her heirs on the originator’s death. They can be helpful in a native title inquiry in so far as they demonstrate a continuing relationship between a person and country.

Some groups retain knowledge of more complex song sequences, sometimes with dance and ritual paraphernalia, including some restricted intervals. These ‘corroborees’¹³ may also serve to demonstrate continuity of customary practice – and may also articulate a relationship, born of the Dreaming whence the song poetry originates, with the country of the claim.

Some other rituals that might come to notice

Mortuary rituals were a notable feature of the early ethnographies.¹⁴ However, for one reason or another these complex rituals have now been largely replaced by Christian services and interment.¹⁵ Nevertheless, funerals are significant events across Aboriginal Australia and native title research should not neglect these sad but important events that demonstrate the magnitude of social relationships, kin ties and concomitant duties and responsibilities. I have found burial practices to include the use of grave goods, steps taken to avoid the escape of the deceased’s spirit and post-mortuary smoking rites. There is often a declared preference for being buried in one’s ancestral country, based on the belief that the spirit of the deceased returns to the land whence it is believed to have also originated.

12 Common terms from the north of Western Australia are *jawi*, *jabi* and *nurlu*. In South Australia they are commonly referred to as *yinma*.

13 From *garaabara*, a word of the Dharuk language of the Sydney area, first recorded by Europeans in about 1790 (*The Australian National Dictionary*, ‘corroboree’). While the term is not much used in standard English now, its use by Aboriginal people to identify particular forms of public entertainments is common.

14 For example, Dawson 1881, 62–67; Howitt 1904, 426–508; Roth 1907; Spencer and Gillen 1899, 497–511; Warner 1937, 402–440.

15 But mortuary rituals remain a significant part of ritual practices in parts of Arnhem Land.

In one area of north Queensland, where return to ancestral country for burial was impractical, I recorded that sand taken from that remote location was buried with the deceased so the spirit would be able to be absorbed by the elements of ancestral country within the grave. I have also observed how the news of a death is disseminated according to custom, ritualised visits to the deceased family and communal weeping. All of these are likely to have had parallels in customary practice and can be used to demonstrate to the respondents of an application for the recognition of native title that aspects of customary belief and practice endure to this day.

I have noted above that rituals of greeting the country are helpful in a native title context since they demonstrate the spiritual relationship between a person and their land occasioned by physical visitation. While rituals of increase (again well documented in the literature¹⁶) may now be uncommon as rites, I have noted how claimants sometimes speak out to the country when visiting to fish or hunt, expecting that such an exhortation will facilitate their success at securing a good catch. If such observations are a part of the researcher's field data, they are helpful to a native title report and should not be overlooked.

Bringing the data to a proof of native title

In writing about Aboriginal religion in the native title context the anthropologist faces two challenges. The first is common to all native title writing: the requirement that the data provided brings to a focus the nature of the relationship a claimant has with his or her land and how this may serve to perpetuate and legitimate rights to that country. The continuity of laws and customs that are otherwise a part of the claimants' cultural experiences are not without a place in a native title report as these serve to demonstrate that there is a continuance of a society whose members share commonalities. However, aspects of these laws and customs need to have a bearing on the core business of native title: how rights to country were held pre-sovereignty and how they have endured to the present. Graham Hiley, then a native title lawyer, wrote:

16 For example, Elkin 1933, 284–296; Piddington 1932; Spencer and Gillen 1899, 167–211.

The relevant laws and customs ... are those that, inter alia, define and regulate rights and interests in land (and or waters). Thus, the relevant 'society' for the purposes of native title jurisprudence is the society that gives rise to and is defined by the body of laws and customs which includes that important element.

It is not sufficient just to identify any body of laws and customs. For example the identification of a body of laws and customs regarding matters totally unrelated to rights and interests in land – for example, regarding social discourse or behaviour -- will not without more identify the relevant society for native title purposes. (Hiley 2008, 146)

Given the essentially land-based spirituality that informs Aboriginal religious belief and practice, consideration of this aspect of Indigenous culture should provide fertile ground to further an understanding of the intense and enduring relationship which Aboriginal Australians have with their country and their age-old proprietorship of it. However, the problem of relevance and focus is exacerbated in any account of Aboriginal religious belief and practices. This is a result of the richness, complexity, diversity and multidimensional nature of the subject that comprises in a very real sense the totality of Aboriginal cultural space. The temptation is to become absorbed in presenting ritual descriptions, enumerating beliefs and then embarking on lengthy explanation or exegesis. In this extravaganza the application of the data to the native title questions is easily overlooked. Native title writing seeks not to provide the definitive account of the claimants' beliefs and ritual practices, but rather to articulate how they encompass relationships to country and articulate the exercise of customary rights within it.

The second problem relates to secrecy and sacrilege. Writing well before the native title era, Eric Kolig commenced his study of the 'modernisation' of Aboriginal religion in the central Kimberley region by writing:

An enormous stumbling block faces anyone who wants to write about traditional Aboriginal religion – the strict secrecy of its most sacred aspects. ... the most treasured parts are shrouded in deep secrecy and access to them requires special and formal training not readily granted ... and any breach of secrecy has traditionally been considered a heinous crime, the gravest possible sacrilege, for which nothing but the most severe punishment is adequate response. (Kolig 1981, vii)

I have watched senior Aboriginal men agonise about whether or not to disclose restricted materials to the court, sometimes (but not always) encouraged by their lawyers or enthused by the researcher who want the best case made without perhaps paying enough attention to the longer-term consequences for the claimants. Fatal car accidents have been blamed on the perceived betrayal of sacred lore, terminal cases of cancer linked to statements made in court – albeit during a restricted session. The fear of supernatural consequences and of social opprobrium for betraying a sacred trust is a very real and present one. Researchers and lawyers need to consider such matters with great care before exhorting claimants to tell all, particularly if such matters are not critical to an understanding of the possession of rights. It should be evident from the content of this chapter that there is much that can be written that relates to Aboriginal religious belief that does not compromise the secrecy of the esoteric. My opening position has always been that there should be no restricted materials included either in my field note book or in the evidence: my report, the *viva voce* evidence or the claimant affidavits. The case for the recognition of native title can with skill and industry be put without the need to reveal the most personal and secret aspects of an Indigenous culture. It seems to me that Aboriginal people are asked to subject enough of their cultural heritage to close scrutiny in the process of making a native title claim without having to give away their deepest secrets and feel themselves potentially at least to be liable to suffer direly as a consequence.

This said, I have been involved in a number of claims that have seen the presentation of restricted materials. In some cases this has been as a result of the inextricable nature of esoteric belief and practice and the articulation of rights to country. Sometimes, a proper understanding of these matters must include the restricted dimensions of belief and practice, otherwise it cannot be fully comprehended – which is why, of course, it is senior ritual leaders who take the lead in matters relating to the use and management of country. In other cases I have witnessed the claimants taking action on their own account to reveal restricted materials to the court because they have felt that this will serve their interests best in the long run. In such circumstances one can but hope that the outcome is one that makes the revelation worthwhile.

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