

Prologue: 'Claim sunk by pen of a swordsman'

When the High Court of Australia rejected the final appeal in the Yorta Yorta native title case in December 2002, a headline in *The Age* announced: 'Claim sunk by pen of a swordsman'.¹ The man in question was Edward M. Curr (1820-1889), who was certainly fond of fencing in his youth, but is better known as the author of *Recollections of Squatting in Victoria* (1883), an engaging account of his early life as a pastoralist on the Goulburn and Murray rivers. In 1841 Curr was among the first squatters to occupy land belonging to ancestors of the Yorta Yorta people, described by Curr as 'the Bangerang Tribe'.² His nostalgic memoir is one of very few written accounts of Indigenous life in the early years of the pastoral invasion of northern Victoria. The apparent failure of Yorta Yorta people to maintain traditions identifiable with those that Curr had described was a key reason for the defeat of their native title claim.

Born in Hobart in 1820, Curr was the first son of English-Catholic immigrant parents. His father was an influential businessman and politician, who played a prominent role in the early colonial affairs of Van Diemen's Land and the Port Phillip District of New South Wales (later Victoria). Curr himself was educated in England and France before managing his family's squatting runs for a decade. His pastoral endeavours were highly successful and the dispossession of the Indigenous owners was swift. He later experienced financial failure but recovered to forge a successful career as a government official in Victoria, rising to the senior position of Chief Inspector of Stock. From 1875 he was an influential member of the Board for the Protection of Aborigines during a highly controversial period; he doggedly pursued the closure of the Coranderrk Aboriginal reserve near Healesville, publicly displaying a profound paternalism and disregard for the wishes of the Indigenous people concerned. In the same period, he pursued an interest in Aboriginal languages and ethnology.

1 Fergus Shiel, 'Claim sunk by pen of a swordsman', *The Age*, 13 December 2002.

2 Throughout this book I use terms for Indigenous groups that were common among nineteenth century writers, notably those preferred by Edward M. Curr, including 'Bangerang', 'Towroonban', 'Wongatpan', and 'Ngooraialum'. Other terms such as 'Aboriginal', 'Indigenous', 'Maori', and 'Native' are used advisedly, recognising both their conceptual limitations and their broad utility.

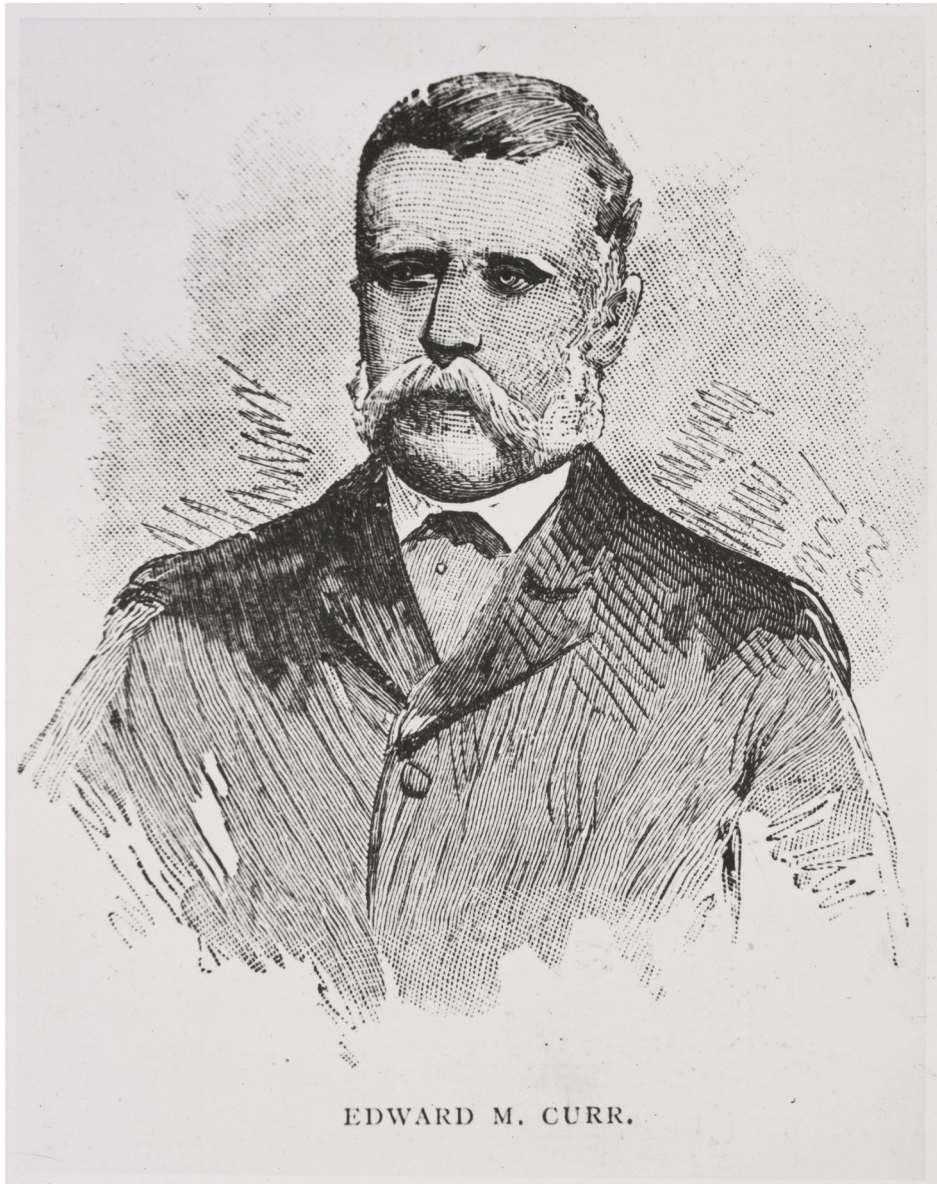


Figure 1: Edward M. Curr.

Engraving. State Library of Victoria, H15062.

Curr's life is a remarkable enough example of a colonial career to warrant investigation: his broad experience of pastoralism, public administration and Indigenous-settler relations ensure that his life is relevant to several major themes of historical interest. Yet it is his literary legacy that provides the most compelling case for a detailed biographical study. Curr wrote with humour, insight and flair, regularly quoting classic works to illustrate his points in an engaging literary style. It was his ability to write well that established his reputation as a man of ability. He published four major works in his lifetime, including a prize-winning essay on scab in sheep, a treatise on horse breeding, his memoir of squatting and a four-volume ethnological work, *The Australian Race*, which was published by the Victorian Government. His best-known work is *Recollections of Squatting in Victoria*, which has had an enduring influence on Australian historiography. Scholars frequently consult Curr's memoir for an account of Victoria's early colonial history, including the lives of Australian squatters, the social world of the pastoral frontier, the environmental effects of pastoralism, and the prominent role of fire in Australian ecology. Curr's work has also been consulted for its detailed descriptions of the Aboriginal people he encountered during his squatting years.

The considerable influence of Curr's writings on Australian historiography first attracted my attention when I was a student of history at the University of Melbourne in the mid-1990s. I was already well aware of Curr's memoir, as it touched on the history of the region in northern Victoria where I spent most of my childhood. When taking university courses on environmental history and Aboriginal history, I discovered Curr's legacy was broader than I had earlier surmised. His influence was most clearly apparent in the late 1990s when the Yorta Yorta native title case was going through the courts; it was then that I realised a biographical study of Curr might be a productive contribution to what was then quite a passionate debate about history and the law of native title.

The sources available to a biographer of Curr are extensive, although they are certainly biased towards his public persona. Curr was a regular correspondent to newspapers and his views on many prominent issues have survived as a result of his public appointments. He gave evidence to commissions and inquiries and published several works of non-fiction. Less evidence remains, however, to provide an insight into his private world, his home life and relationships, making an intimate personal portrait elusive. The key exception is a family memoir written in 1877, which includes an account of his ancestry and a short outline of his life to that point. A copy is now held in the La Trobe Library in Melbourne. A variety of other documents are lodged with the Mitchell Library in Sydney, including a diary Curr wrote in France in 1838 and some of his later ethnological records. Curr's descendants have retained other valuable

items, including photos, letters and heirlooms. It is not known if Curr collected personal correspondence, but it is possible that valuable material was lost when his son Ernest destroyed a large portion of the family's papers in the early twentieth century.³ Nevertheless, by assembling a range of sources it is possible to paint a detailed picture of Curr's life.

The principal source for any biographer of Curr is, of course, *Recollections of Squatting in Victoria*, which provides a vivid account of his decade as a pastoralist, particularly the eventful years of the early 1840s when he established his family's squatting enterprise. As Curr wrote this account in the 1880s, however, it presents certain challenges to the biographer, particularly if a broadly chronological life story is the goal (as it is here). Curr wrote a memoir not a diary: his recollections are the product of a mature mind looking back on his youthful experiences. In many passages they reveal as much about his interests and preoccupations later in life as they do of his daily activities in his twenties. This is particularly true of his descriptions of Aboriginal people, their manners and customs. Moreover, his memoir can only occasionally be weighed against independent corroborating evidence, making it difficult to detect the potentially corrupting influences of both a fallible memory and a nostalgic outlook. Finally, *Recollections of Squatting in Victoria* is first and foremost a work of literature aimed at a British colonial readership. Curr's principal purpose was to write an engaging book. He apologised in his preface for publishing 'mere personal matters ... possibly of not a very representative sort', suggesting that he was conscious of the need to shape his recollections to please a broad readership.⁴

Curr's excuse for the publication of personal recollections was 'the contrast their relation exhibits between the past and the present state of things in Victoria'. This was no doubt a valid defence in the 1880s and remains so more than a century later. The historical value of Curr's work was recognised in 1965 when Melbourne University Press published an abridged edition of *Recollections of Squatting in Victoria*. Three years later the full work reappeared as a facsimile edition published by the Libraries Board of South Australia. These publications increased Curr's prominence among a new generation of historians and general readers. Unlike much nineteenth-century writing, Curr's prose remained easily accessible: a review of the new abridged version in the Hobart *Mercury* noted Curr's 'considerable powers of evoking a telling mental picture in words' and suggested that his recollections were 'as fresh and readable today as doubtless they were when first published'.⁵ By 1980, Paul de Serville had concluded that

3 Curr, Edward A. 1979: 25.

4 Curr 1883.

5 Book Review, 'Recollections of Squatting in Victoria', *Mercury* (Hobart), 29 September 1965: 4.

the work was quite unique: 'As an historical record and as an unaffected work of art Curr's memoir stands alone – not even Boldrewood managed to capture the essence of a squatter's life in the 1840s'.⁶

Although scholars with a broad range of interests have found Curr's writings illuminating, those interested in environmental history have been particularly impressed. Curr's descriptions of landscape are vivid and compelling and his insightful descriptions of the effect of fire and pastoralism on the Australian continent have attracted praise. Stephen Pyne observed in 1991 that 'Edward Curr thought that it would be difficult to "overestimate" the consequences of the Aboriginal firestick'.⁷ More recently, Bill Gammage looked to Curr before any other to provide a clear statement of his key thesis in *The Biggest Estate on Earth: How Aborigines Made Australia*. On the second page of his comprehensive book, Gammage quoted Curr's bold claim that 'it may perhaps be doubted whether any section of the human race has exercised a greater influence on the physical condition of any large portion of the globe than the wandering savages of Australia'.⁸

As we shall see, Curr's reception among scholars in the field of Aboriginal history has been more ambivalent, largely due to his role in Aboriginal administration. The entry for Curr in the *Australian Dictionary of Biography*, written by Harley W. Forster in the 1960s, does not record Curr's membership of the Board for the Protection of Aborigines. Forster relies primarily on Curr's memoir when he asserts that his 'approach to [Aboriginal] people ... reveals sympathetic understanding'.⁹ This is not a view shared by Diane Barwick, who insisted that Curr's approach to Aboriginal administration was characterised by 'ignorance and profound paternalism'.¹⁰ Among those more directly interested in Curr's ethnographic writings, a surprisingly wide range of views have been expressed: in *Triumph of the Nomads* (1975) the historian Geoffrey Blainey described Curr as 'one of the sharpest observers of tribal life'; three decades later the legal scholar Ben Golder argued that Curr provided 'as perfect an example of crude racist stereotyping as it is possible to find among early colonial accounts of Indigenous people'.¹¹ A similar variation of views is evident among anthropologists: *The Australian Race* was roundly criticised by Curr's contemporary and rival A.W. Howitt, but nearly a century later A.P. Elkin numbered Curr (with Howitt) among 'the founders of social anthropology in Australia'.¹² Curr's legacy in this regard is clearly a complicated one and defies easy description.

6 De Serville 1980.

7 Pyne 1991: 103-104.

8 Gammage 2011: 2; Curr 1883: 189-190.

9 Forster 1969: 508.

10 Barwick 1998: 114-115.

11 Blainey 1975: 97; Golder 2004: 51.

12 Howitt 1889; Howitt 1891: 30-104; Elkin 1975: 1-24.

In the wake of the *Yorta Yorta* case, the value of Curr's writings on Aboriginal people became a major point of contention. The trial judge in the *Yorta Yorta* case, Justice Howard Olney, strongly favoured Curr's written account, arguing that he 'clearly established a degree of rapport with the local Aboriginal people'.¹³ He posited Curr's writings as the principal yardstick against which legitimate *Yorta Yorta* tradition must be measured. In contrast, the judge largely rejected the credibility of *Yorta Yorta* oral testimony, which he viewed as inherently unreliable. The oral testimony was crucial to the claimants' argument that, while their traditions had evolved, they had nonetheless been continually observed since Curr's arrival in 1841. Justice Olney's rejection of the oral evidence and reliance on Curr thus played an important role in his final conclusion, which was that 'the tide of history' had 'washed away' *Yorta Yorta* native title rights.¹⁴

The idea that Curr's writings posthumously defeated the *Yorta Yorta* native title claim has a chilling irony about it, given his earlier appropriation of *Yorta Yorta* lands for pastoral purposes. Some *Yorta Yorta* people imagined a role for the 'Ghost of Edward Curr' in the failure of their claim.¹⁵ Meanwhile, a wide range of scholars in law and history commented unfavourably on Curr's influence. The outcome of the case highlighted the extent to which the written word is granted special status as evidence. It was a stark demonstration of the narrowly defined approach to historical inquiry that prevails in the native title courts. Furthermore, the case epitomised a clear disjuncture between historians and lawyers regarding their methodological and theoretical approaches to knowing the past; it led many to question the possibility of sophisticated and nuanced historical inquiry in the native title context. During the long *Yorta Yorta* claim, therefore, Edward M. Curr became something of an historical celebrity, highlighting the need for a detailed appraisal of his life, his biases, his opinions, and his attitudes towards Aboriginal people. This book responds to that need by offering a biography of a man who more than a century after his death became a crucial witness in a major native title case.

13 *Members of the Yorta Yorta Aboriginal Community v Victoria* (1998) FCA 1606, [53].

14 *Yorta Yorta v Victoria* (1998), [129].

15 See, for example, the play by Andrea James: James 2003.