

# no rock without a name:

## customary individual title to land, infrastructure and other significant assets in Aboriginal Australia

by Robbo Bennetts

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### introduction

In this essay I examine the nature of ownership of land and assets in Aboriginal Australia before dispossession. In particular I challenge conventional notions that land was traditionally owned by tribes or nations. I present significant evidence of broad agreement among nineteenth century scholars and other reliable observers that, within kinship estates, *individuals* owned sub-divisions of land and assets found on or adjacent to those sub-divisions in a way that resembled European concepts of private property.

### the structure of traditional society

There were typically several levels of social organisation in Aboriginal Australia, at least in the more densely populated areas. The most basic social unit appears to have been the family. Typically, five to eight families combined to form kin groups<sup>1</sup> of 30 to 50 individuals. Neighbouring kin groups with a common language combined to form tribes.

According to anthropologist Bill Stanner:

The basic arrangements of daily life were most remarkably similar throughout Australia. The core of society was a localised band with a mean size probably between 20 and 50 persons depending on the richness of locale. Each band was in the main a cluster of closely related families which co-operated to exploit with minute care a particular tract of country known intimately because of the accumulated experience of many generations... The bands utilised their home-tracts according to a seasonal time-table. From time to time they ranged farther afield into the territories of neighbours, or shared with them the use of common lands, but each group identified itself with a continuous locality which it and others regarded as peculiarly its own. The whole continent was divided between many thousands of such bands—there could well have been as many as 10 000—each of which systematically combed its locale.<sup>2</sup>

Sovereignty over land resided in kin groups, *not* tribes, despite kin groups and tribes being regularly confused since first contact.<sup>3</sup> American anthropologist Joseph Birdsell calculated that tribal populations tended to approximate 500 members.<sup>4</sup> In some regions tribes occasionally came together to form what A W Howitt termed “nations”. He maintained that:

The alliance of the tribes forming the nation comes into view on the occasion of one of the great ceremonies being held; all the tribes which form the nation may attend the ceremonies and take part in them, a bond which holds the hordes or clans of a tribe together.<sup>5</sup>

<sup>1</sup> Also referred to as clans or bands.

<sup>2</sup> W E H Stanner, “*White Man Got No Dreaming*”, Essays 1938-1973, ANU, Canberra, 1979, p157, republished online by Open Research Repository

<sup>3</sup> 10,000 kin groups is the equivalent of 10,000 “countries” across the continent and by extension 10,000 “nations”.

<sup>4</sup> Joseph Birdsell, “A Preliminary Report on New Research on Man-Land Aboriginal Relations in Australia”, *Memoirs of the Society for American Archaeology*, Cambridge University Press, 1975, p34, republished online by JStOR.

<sup>5</sup> A W Howitt, *The Native Tribes of South-eastern Australia*, Macmillan, London, 1904, p41 footnote, published online by Internet Archive.p44. Howitt used the term “nation” long before it was imported here from North America two or three decades ago. I prefer the term “(loose) confederation” to nation, however, because a) “nation” historically implies members of a nation state and Aboriginal society was stateless, and b) every kin group was paramount within its own jealously guarded borders.

Of relevance to the history of frontier conflict is that the mechanism of tribes coming together enabled them not just to celebrate and feast, but on occasions, to form alliances against a common enemy.

## customary land tenure

When I marched for land rights in the 1970s I assumed that land which had been collectively owned by various communities would be returned directly to those communities. After land rights were legislated I was surprised to find that the hereditary “traditional owner” (TO) of each “country” was a nominated individual — usually a male — in whom considerable authority was invested. That seemed almost feudal to me.

Cook was able to claim sovereignty for Britain over eastern Australia because the imperial powers did not recognise prior ownership. Australia was seen as unowned and therefore open to imperial claim. First Fleeter Watkin Tench, nevertheless, described the Gadigal people as “Lords of the Soil”. More enlightened settlers accepted that a form of native title persisted, morally if not legally. While Mabo ushered in a quantum shift in attitudes to native title, the question of who were the legitimate owners of the land came to a head well before that court case. In the decades since Mabo, with increasing importance attached to Aboriginal spirituality, some have suggested (and continue to suggest) that the land doesn’t belong to the people — rather, the people belong to the land. More recently, black rights activists have insisted that sovereignty was never ceded and consequently the whole of Australia always was and always will be owned by First Nations peoples. In my lifetime scholars have routinely stated or implied that there was a universal, simple model of communal land ownership which operated quite differently to modern Western property relations. Robert Hughes represented that view in *The Fatal Shore* when he stated that Aboriginal Australians “had no notion of private property, but they were intensely territorial, linked to the ancestral area by hunting customs and totemism”.<sup>6</sup> It has in fact been routinely assumed that individual land ownership only came about in conjunction with the agricultural revolution. James Krier, for example, argues that:

The status of land in the hunter-gatherer scheme eventually changed from communal to individual ownership, for reasons tightly tied to the invention of agriculture 10,000 years ago... [Just] as individual ownership facilitated agriculture, so agriculture facilitated individual ownership.<sup>7</sup>

In relation to Australia, however, that assumption is not borne out in the historical literature. Throughout the nineteenth century a school of thought held that there were two basic *layers* of ownership of estates. In the most typical scenario the primary layer of ownership was not tribal but *kin-group* ownership of country. A secondary layer of ownership or proprietorship, which was usually described as hereditary, involved private *individual* ownership — by mainly male individuals or male heads of individual families — of clearly-identified sub-divisions of land.<sup>8</sup> These sub-divisions occurred within kin-group territorial boundaries. This individual ownership extended to assets found on or adjacent to those sub-divisions of land, though some infrastructure was owned or operated by partnerships of a few closely-related males. This secondary layer of ownership seems to have been endorsed and overseen by a kind of kin-group “body corporate,” no doubt according to customary law as interpreted by councils of elders.

## the historical record

In 1798, another First Fleeter, David Collins, reported that the well-known figure Bennelong claimed to own an island in Sydney Harbour:

### APPENDIX IX—PROPERTY

Their spears and shields, their clubs and lines, etc are their own property; they are manufactured by themselves, and are the whole of their personal estate. But, strange as it may appear, they have also their real estates. Bennillong, both before he went to England and since his return, often assured me, that the island Me-mel (called by us Goat Island) close by Sydney Cove was

<sup>6</sup> Robert Hughes, *The Fatal Shore*, The Harvill Press, London, 1986

<sup>7</sup> Krier, p158

<sup>8</sup> The distinction was not always made.

his own property; that it was his father's, and that he should give it to By-gone, his particular friend and companion. To this little spot he appeared much attached; and we have often seen him and his wife Ba-rang-a-roo feasting and enjoying themselves on it. He told us of other people who possessed this kind of hereditary property, which they retained undisturbed.<sup>9</sup>

In 1840, J D Lang, Presbyterian minister and student of all things Aboriginal, stated in a letter to a certain Dr Hodgkin,<sup>10</sup> that “the difference between the Aboriginal and the European ideas of property in the soil is more imaginary than real” and that particular portions of land were universally recognised as the property of individuals:

LETTER WRITTEN BY J D LANG to Dr. Hodgkin  
Liverpool, 15th November 1840.

My Dear Friend,

In reply to the question which you proposed to me some time ago in the course of conversation in London, and of which you have reminded me in the letter I had the pleasure of receiving from you yesterday, with the pamphlets and letters for America, namely, Whether the Aborigines of the Australian continent have any idea of property in land, I beg to answer most decidedly in the affirmative ...

The whole race is divided into tribes, more or less numerous, according to circumstances, and designated from the localities they inhabit; for although universally a wandering race, with respect to places of habitation, their wanderings are circumscribed by certain well-defined limits, beyond which they seldom pass, except for purposes of war or festivity. In short, every tribe has its own district, the boundaries of which are well known to the natives generally; and within that district all the wild animals are considered as much the property of the tribe inhabiting, or rather ranging on, its whole extent, as the flocks of sheep and herds of cattle that have been introduced into the country by adventurous Europeans are held by European law and usage the property of their respective owners. In fact, as the country is occupied chiefly for pastoral purposes, the difference between the Aboriginal and the European ideas of property in the soil is more imaginary than real, the native grass affording subsistence to the kangaroos of the natives as well as to the wild cattle of the Europeans, and the only difference indeed being that the former are not branded with a particular mark like the latter, and are somewhat wilder and more difficult to catch.

#### EFFECTS OF EUROPEAN APPROPRIATION.

Nay, as the European regards the intrusion of any other white man upon the cattle-run, of which European law and usage have made him the possessor, and gets it punished as a trespass, the Aborigines of the particular tribe inhabiting a particular district regard the intrusion of any other tribe of Aborigines upon that district, for the purposes of kangaroo hunting, etc., as an intrusion to be resisted and punished by force of arms. In short this is the frequent cause of Aboriginal, as it is of European wars; man, in his natural state, being very much alike in all conditions—jealous of his rights and exceedingly pugnacious. It is true the European intruders pay no respect to these Aboriginal divisions of the territory, the black native being often hunted off his own ground or destroyed by European violence, dissipation, or disease, just as his kangaroos are driven off that ground by the European's black cattle; but this surely does not alter the case as to the right of the Aborigines.

#### UNIVERSALITY OF THIS CUSTOM.

But particular districts are not merely the property of particular tribes; particular sections or portions of these districts are universally recognised by the natives as the property of individual members of these tribes; and when the owner of such a section or portion of territory (as I ascertained was the case at King George's Island) has determined on burning off the grass on his land, which is done for the double purpose of enabling the natives to take the older animals more easily, and to provide a new crop of sweeter grass for the rising generation of the forest, not only all the other individuals of his own tribe, but whole tribes from other districts, are invited to the hunting party and the feast and dance, or corroboree that ensue; the wild animals on the ground being all considered the property of the owner of the land. I have often heard natives myself tell me, in answer to my own questions on the subject, who were the Aboriginal owners of particular tracts of land now held by Europeans; and indeed this idea of property in the soil, FOR HUNTING PURPOSES, is universal among the Aborigines ...

They seldom complain of the intrusion of Europeans; on the contrary, they are pleased at their sitting down, as they call it, on their land: they do not perceive that their own circumstances are thereby sadly altered for the worse in most cases; that their means of subsistence are gradually more and more limited, and their numbers rapidly diminished: in short, in the simplicity of their hearts, they take the frozen adder in their bosom, and it stings them to death. They look for a benefit or blessing from European intercourse, and it becomes their ruin.

If I had had a little more leisure I would have written more at length and in a style more worthy of your perusal; but you may take it as certain, at all events, that the Aborigines of Australia HAVE an idea of property in the soil in their native and original state, and that that idea is, in reality, not very different from that of the European proprietors of sheep and cattle, by whom they have, in so many instances been dispossessed, without the slightest consideration of their rights or feelings.

Indeed the infinity of the native names of places, all of which are descriptive and appropriate, is of itself a prima facie evidence of their having strong ideas of property in the soil; for it is only where such ideas are entertained and acted on that we find, as is certainly the case in Australia, Nullum sine nomine saxum. [No rock without a name]

I am, my dear Friend, Your's very sincerely, JOHN DUNMORE LANG<sup>11</sup>

<sup>9</sup> David Collins, *An Account of the English Colony of NSW*, Volume 1, Cadell Jr & W Davies, London, 1798, republished online by Project Gutenberg

<sup>10</sup> Possibly the prominent British pathologist Thomas Hodgkin.

<sup>11</sup> J D Lang to Dr Hodgkin, 15 November 1840 quoted in George Grey, *Journals of Two Expeditions*, T & W Boone, London, Volume 2, 1841, Ch 11, republished online by Project Gutenberg. Grey “extracted” this letter from the *Reports of the Aboriginal Protection Society*. Both Grey and Eyre quoted this letter in full.

Soldier, explorer and four times governor of British colonies George Grey<sup>12</sup> was impressed enough with J D Lang's views to republish them in his 1841 journal under the heading "property vested in individuals", adding in his own words that:

Landed property does not belong to a tribe, or to several families, *but to a single male*; and the limits of his property are so accurately defined that every native knows those of his own land, and can point out the various objects which mark his boundary. [My emphasis]<sup>13</sup>

Grey asserted that only males inherited land:

A father divides his land during his lifetime, fairly apportioning it amongst his several sons, and at as early an age as fourteen or fifteen they can point out the portion which they are eventually to inherit.

If the males of a family become extinct the male children of the daughters inherit their grandfather's land.<sup>14</sup>

Grey further asserted that not only were sections of shorelines considered to belong to individuals, but also whatever washed up onto the shore:

[When] a native proprietor of an estate in Australia finds a whale thrown ashore upon his property ... his heart expands with benevolence, and he longs to see his friends about him; so he falls to work with his wives and kindles large fires to give notice of the joyful event<sup>15</sup>...

In 1845, after making his way overland around the Great Australian Bight, explorer Edward John Eyre was also convinced that individuals owned land in their own right within their own districts:

#### PROPERTY IN LAND

It has generally been imagined, but with great injustice, as well as incorrectness, that the natives have no idea of property in land, or proprietary rights connected with it. Nothing can be further from the truth than this assumption, although men of high character and standing, and who are otherwise benevolently disposed towards the natives, have distinctly denied this right, and maintained that the natives were not entitled to have any choice of land reserved for them out of their own possessions, and in their respective districts.

In the public journals of the colonies the question has often been discussed, and the same unjust assertion put forth. A single quotation will be sufficient to illustrate the spirit prevailing upon this point. It is from a letter on the subject published in South Australian Register of the 1st August, 1840:—"It would be difficult to define what conceivable proprietary rights were ever enjoyed by the miserable savages of South Australia, who never cultivated an inch of the soil, and whose ideas of the value of its direct produce never extended beyond obtaining a sufficiency of pieces of white chalk and red ochre wherewith to bedaub their bodies for their filthy robberies."

Many similar proofs might be given of the general feeling entertained respecting the rights of the Aborigines, arising out of their original possession of the soil. It is a feeling, however, that can only have originated in an entire ignorance of the habits, customs, and ideas of this people. As far as my own observation has extended, I have found that particular districts, having a radius perhaps of from ten to twenty miles, or in other cases varying according to local circumstances, are considered generally as being the property and hunting-grounds of the tribes who frequent them. These districts are again parcelled out among the individual members of the tribe. Every male has some portion of land, of which he can always point out the exact boundaries. These properties are subdivided by a father among his sons during his own lifetime, and descend in almost hereditary succession. A man can dispose of or barter his land to others; but a female never inherits, nor has primogeniture among the sons any peculiar rights or advantages. Tribes can only come into each other's districts by permission, or invitation, in which case, strangers or visitors are always well treated.<sup>16</sup>

*The division of land "seems also to have proceeded on much the same principles as those of the present division into runs, or Squatting-Stations, under the European colonists".*

<sup>12</sup> Grey was governor of South Australia (twice), Cape Colony in South Africa and New Zealand.

<sup>13</sup> George Grey, *Journals of Two Expeditions*, T & W Boone, London, Volume 2, 1841, Ch 11, republished online by Project Gutenberg

<sup>14</sup> Grey, Ch 11. We will see below that Victorian pastoralist Edward gave an example of a boy who was considered the owner of a particular tract of land.

<sup>15</sup> Grey, Vol 2, Ch 14

<sup>16</sup> Edward John Eyre, *Journals of Expeditions of Discovery into Central Australia*, Vol 2, T & W Boone, London, 1845, ch 4, pp296-97, republished online by Internet Archive. The distinction between tribes and kin groups has been often confused and was not always obvious.

In 1847 J D Lang reiterated the views he had expressed seven years earlier, giving examples of the rights and responsibilities bestowed upon proprietors of “subdivided territory”. He described how property rights were “restored” to a runaway convict who was thought to be the rightful owner who had returned from the dead as a white man:

[The] Aborigines of Australia are universally divided into distinct and independent tribes, each occupying as their hunting-grounds a certain portion of territory, of which the limits are generally well-defined by prominent features in the natural scenery of the country, and well known to all the neighbouring tribes. This division appears to have taken place from time immemorial, as there is no part of the available portion of the country to which some tribe or other does not lay claim. It seems also to have proceeded on much the same principles as those of the present division into runs, or Squatting-Stations, under the European colonists. The territory of each tribe is subdivided, moreover, among the different families of which it consists, and the proprietor of any particular subdivision has the exclusive right to direct when it shall be hunted over, or the grass burned and the wild animals destroyed; for although there is always a general assembly of the tribe, and sometimes of neighbouring tribes, on such occasions, the entertainment is supposed to be provided exclusively by the proprietor of the land, who is accordingly master of the ceremonies. When Moreton Bay was a Penal Settlement, a convict of the name of Baker escaped to the woods, and became naturalized and domiciliated among a tribe of black natives in the upper Brisbane district. The natives recognised, or supposed they recognised, in the runaway a deceased native of the tribe, who had died some time before, of the name of Boraltchou, and who they supposed had reappeared in the person of the white man; and although the convict, who, it seems, did not relish the compliment, maintained that he was not Boraltchou, the natives, who knew better, as they had seen both, insisted that he was, *and allotted to him as his own property the portion of land that had belonged to the real Boraltchou*. [Lang's emphasis]<sup>17</sup>

Similarly, in 1827, when he was well clear of the Moreton Bay penal settlement, another runaway convict John Graham was recognised by an Aboriginal woman as Moilow, her husband who had returned from the dead. For Graham this was fortuitous. Not only had he had found refuge but he was able to “resume” the rights and responsibilities of the dead man he had been mistaken for, including membership of the tribal council of elders. Not so long afterwards, his tribal wife Mamba herself died. Then, nearly a decade later, having by then returned to Moreton Bay, Graham volunteered to locate and help rescue Eliza Fraser and her fellow shipwreck victims. Meeting local people he knew on the shores of Lake Cootharaba, he pretended that Eliza was the spirit of his dead partner Mamba and told them he wanted to take his new “wife” down to the beach “and there live in my own ground as I had done before”.<sup>18</sup> A gully where Graham bivouacked overnight during this mission was described by historian Elaine Brown reinforces the impression that Graham may have regarded this familiar place as his own:

Graham [spent] a most disturbed night in a gully in the sand cliffs, which he calls Moilow's Gully. The next morning, anticipating the arrival of the soldiers who were to follow him, he marked the spot where he was to turn inland with the words “Stop here. You will find fresh water at the rock”.<sup>19</sup>

In 1856 James Bonwick, citing a range of other authorities with similar views, made it clear that there was broad agreement about traditional individual ownership of land:

#### Native Rights and British Rule.

The Aborigines were held by our government to have no proprietorship in the soil; and yet, Mr. Eyre writes, “Each male has some portion of land of which he can point out the boundaries. A female never inherits.” Governor Gawler, speaking of the land, says, “over which these Aborigines have exercised distinct, defined and absolute right of proprietary and hereditary possession.” Dr. Lang adds, “Particular sections and portions of these districts are universally recognized by the natives as the property of the individual members of these tribes.” Mr. Protector Parker asserts, “Every family had its own locality.” Dr. Thomson told the Sydney Council, that the native “considers the land as his own: indeed every family had its separate portion.”<sup>20</sup>

In 1857 journalist and historian Samuel Bennett spoke of portions of land being allotted to “family groups” which can be seen as the equivalent of individual ownership assuming that, by family groups, Bennett meant each married man plus his wives, children and other dependents:

<sup>17</sup> John Dunmore Lang, *Cooksland in Northeastern Australia*, Longman, Brown, Green & Longmans, London, 1847, pp392-93, republished online by Internet Archive

<sup>18</sup> Robert Gibbings, *John Graham, Convict, 1824*, A S Barnes & Co, New York, 1957, pp92-93

<sup>19</sup> Undated talk by Dr Elaine Brown to the Friends of Kinaba about the history of Kinaba, published online by kinaba.org

<sup>20</sup> James Bonwick, *The Wild White Man and his Port Phillip Friends*, Geo[rge] Nicholls, Melbourne, 1856, p91, republished online by AITSIS. Although Bonwick stated “our government” did not recognise native title, two different colonial governors, Grey George Gawler, publicly acknowledged native title based on the “defined and absolute right of proprietary and hereditary possession”

The whole country was occupied, and *the portion allotted to each family* or tribe defined with the greatest exactness; the well-known boundaries most scrupulously maintained, and any unauthorised trespasser within their limits punished with death. [My emphasis]<sup>21</sup>

In 1865 pastoralist and NSW parliamentarian Gideon Lang described the way in which multiple families would at times come together to hunt and then disperse as each family exercised its exclusive right to hunt on its own land:

#### PERSONAL RIGHT OF PROPERTY.

Besides the general tribal right of property in the land, it belongs to different members of families of the tribe; it is always jealously watched, and transmitted from generation to generation. During seasons when all the members of the tribe are not congregated together, each family hunts on its own ground. Sir George Grey says (vol. ii, p. 232): "Landed property does not belong to a tribe, or to several families, but to a single male; and the limits of his property are so accurately defined that every native knows those of his own land, and can point out the various objects that mark his boundary." The Rev. Dr. Lang, of Sydney, in a letter quoted (*idem*, p. 235) says: "I have often heard natives tell me, in answer to my own questions on the subject, who were the aboriginal owners of particular tracts of land now held by Europeans; and indeed this idea of property in the soil, for *hunting purposes*, is universal among the aborigines." They have also individual property in various trees. I remember once, while exploring, and suffering severely from the want of food, and particularly the craving from the want of vegetables, our black guide pointed [p14] to a bee passing over us, loaded and evidently in straight flight for the hive. We told him to follow it, which he did, but when he reached the tree, he had scarcely got off his horse, when he re-mounted as if to go on again. We enquired the reason of this, when he pointed to a mark on the tree, evidently made by a stone tomahawk, and said that it belonged to "nother one blackfellow," and that he could not touch it—and at this time he was almost on the point of starvation, as well as ourselves. We could not afford to be so ceremonious under the circumstances however, so we insisted upon his cutting out the honey. It was deposited in the pipes formed by the decay of the centre of a large branch of a box-tree. He very dexterously cut out one side of a branch, the exact breath of one of the pipes, leaving a good mini chips in the honey. We then cut away the part in sections, and sucked the honey, native fashion, leaving behind the comb, chips, and half-smothered bees, which I need scarcely say had no sting. In reference to the grubs found in a certain grass-tree, Sir George Grey says (vol. ii., p. 289): "If two men have a right to hunt over the same portion of ground, and one of them breaks off the tops of certain trees, by their laws trees are his property, and no one has a right to touch the tree."<sup>22</sup>



It appears that both significant assets and boundaries were frequently marked in various ways, sometimes quite decoratively. In 1855 the explorer and later a Queensland parliamentarian A C Gregory entered in his journal:

14th August [1855]

At 6.20 a.m. we were again in the saddle, and steered south-east across very rocky hills till 8.0, when we entered a fine valley with low hills of limestone and trap, well grassed and thinly wooded with box-trees and acacia; at 10.0 ascended a rough sandstone range with white-gum, acacia, and triodia; at 11.0 again descended into a valley bounded by sandstone cliffs on the northern side, and camped at a fine pool of water in a small creek at 12.5. Several trees near this pool of water had been marked by the blacks, the bark having been removed, the wood was painted yellow with brown spots at regular intervals, and vertical waved lines in black.<sup>23</sup>

[left] A ring tree in Moiraduban country, central Victoria whose form was intentionally altered by something resembling chlorokinesis in order to signify ownership of surrounding territory. (Photograph supplied.)

Unlike Grey, Gregory believed that women and children were *not* discriminated against by inheritance arrangements.

There appears to be a tacit understanding that except on invitation no tribe should infringe on the lands of its neighbouring tribe and also that no individual of a tribe should hunt on the lands belonging to others of the same tribe without consent, although young men frequently infringe upon this law. Each tribe has its own district in which it reigns supreme; district is again

<sup>21</sup> Samuel Bennett, *History of Australian Discovery and Colonization*, Hanson & Bennett, Sydney, 1857, pp267-68, originally serialised in the *Empire* newspaper, republished online by Internet Archive

<sup>22</sup> Gideon S Lang, *The Aborigines of Australia, in their original condition and in their relations with the white men*, Wilson & Mackinnon, Melbourne, 1865, pp13-14, republished online by Nature Glenelg Trust

<sup>23</sup> A C Gregory, "Journal of the North Australian Exploring Expedition" in A C Gregory & Francis Thomas Gregory, *Journals of Australian Explorations*, James C Beal, Government Printer, Brisbane, 1884, journal entry: 18 August 1855, republished online by Project Gutenberg

subdivided into portions belonging to the individuals of that tribe, the children inherit and females share equally in distribution of landed property.<sup>24</sup>

Norwegian ethnographer Carl Lumholtz travelled widely through Queensland late in the nineteenth century, at one point living with an Aboriginal community for some 14 months. In 1889 he also spoke of sub-tribes or "family tribes" which occupied territory with defined borders:

Individuals belonging to the same tribe are usually on the best of terms, but the different tribes are each other's mortal enemies. Woe therefore to the stranger who dares trespass on the land of another tribe... In connection with this it should, however, be stated that the small subdivisions of the tribes that live nearest the border are on amicable terms with their neighbours, and that accordingly the borders between the tribes are frequently very indistinct. The family tribes have well-defined limits, and as a rule they are on friendly terms with each other. I am hardly able to state the extent of a tribe. The one living around Herbert Vale owned an area of land which I should estimate to be about forty miles long and thirty miles wide. It was divided into many sub-tribes or family tribes, which lived within their own well-defined limits, the country within which was well known to them ...<sup>25</sup>

In the same year civil servant and scientist Robert Brough Smyth also addressed the question of individual ownership, arguing that:

The [tribal] doctor, who in most cases is the principal man of the tribe, takes part in dividing the country. When a male child is born, he is supposed to have the right to designate the part of the country which shall belong to him when he arrives at maturity. Whether this division of land amongst the persons composing a tribe results in their claiming exclusive rights to any portion is doubtful.<sup>26</sup>

While he explored this topic in significant detail, Brough Smyth's seemed reluctant to fully embrace the notion of individual ownership. He was not convinced, for example, that what Eyre observed in the south-west applied to the rest of Australia:

Property in Land.

Though the land occupied by each tribe was the common property of the tribe, inasmuch as they could hunt over it, kill the wild animals on it, and gather the fruits and roots and tubers growing within its area, there were some obscure personal rights of property. Members of the tribe, it is said, had lands which they called their own; the right to such lands descended from generation to generation; and these rights were respected by all, and jealously guarded by the proprietors.

Grey says that "landed property does not belong to a tribe, or to several families, but to a single male; and the limits of his property are so accurately defined, that every native knows those of his own land, and can point out the various objects which mark his boundary."

And Dr. Lang, in a letter to Dr. Hodgkin, quoted by Grey, states that "particular districts are not merely the property of particular tribes; particular sections, or portions of these districts, are universally recognised by the natives as the property of individual members of these tribes; and when the owner of such a section, or portion of territory (as I ascertained was the case at King George's Island), has determined on burning off the grass on his land — which is done for the double purpose of enabling the natives to take the older animals more easily, and to provide a new crop of sweeter grass for the rising generation of the forest — not only all the other individuals of his own tribe, but whole tribes from other districts, are invited to the hunting party, and the feast and [p145] dance, or corroboree that ensue; the wild animals on the ground being all considered the property of the owner of the land."

Mr. Gideon Lang asserts that the natives have also individual property in various trees. On one occasion, when exploring, and suffering severely from the want of food, and particularly the craving from the want of vegetables, his black guide pointed to a bee passing over them, loaded, and evidently in straight flight for the hive. Mr. Lang told the native to follow it, and he did so; but when they reached the tree, the black had scarcely got off his horse when he remounted, as if to go on again. Mr. Lang asked the reason for his action, when he pointed to a mark on the tree, evidently made by a stone tomahawk, and said that it belonged to "N'other one blackfellow," and that he could not touch it — and at this time he was almost on the point of starvation, as well as the others of the party.

Reference is made in the same place to the statement of Sir George Grey, that if two or more men have a right to hunt over the same portion of ground, and one of them breaks off the tops of certain trees, by their laws the grubs in these trees are his property, and no one has a right to touch the tree; but Sir George here refers to the grass-trees, which, unless the top is broken or it naturally decays, is not a proper receptacle for the grubs which supply the natives with food. The man who took the trouble to break the tops of the grass-trees was surely entitled to gather the grubs; but he acquired no right to the trees, and they could not, by his simply breaking the tops, become his property, as a huge gum-tree might, or a parcel of land...

<sup>24</sup> A C Gregory, "Memoranda on the Aborigines of Australia" quoted in Henry Ling Roth, "On the Origin of Agriculture", *The Journal of the Anthropological Institute of Great Britain and Ireland*, Royal Anthropological Institute of Great Britain and Ireland, 1887, Vol 16, p132, republished online by US Archive. Gregory became a Queensland parliamentarian.

<sup>25</sup> Carl Lumholtz, *Among Cannibals, An account of four years' travels in Australia and of camp life with the Aborigines of Queensland*, Charles Scribner's Sons, New York, 1889, pp176-77, translated from Norwegian, republished online by Project Gutenberg

<sup>26</sup> R Brough Smyth, *The Aborigines of Victoria: with notes relating to the habits of the natives of other parts of Australia and Tasmania*, Government Printer J Ferres, Melbourne, vol 1, 1878, p427, republished online by Internet Archive. It follows that, if exclusive rights were not claimed, ownership would be more nominal than actual.

Eyre affirms that every male has a piece of land which he can call his own, that he knows its boundaries and can point them out; that the father divides his lands amongst his sons, and that there is almost hereditary succession; that a female never inherits, and that primogeniture has no peculiar rights or advantages; and Grey adds that, at the age of fourteen or fifteen, a boy can point out the portion of land which he eventually is to inherit, and that if the male children of a family become extinct, the male children of the daughters inherit their grandfather's land.

Lieut.-Col. Collins says, "Their spears and shields, their clubs and lines, &c., are their own property; they are manufactured by themselves, and are the whole [p146] of their personal estate. But, strange as it may appear, they have also their real estates. Ben-nil-long gave repeated assurances that the island Me-mel (known at the settlement by the name of Goat Island), close by Sydney Cove, was his own property; that it had been his father's, and that he should give it to By-gone, his particular friend and companion. To this little spot he appeared much attached. He likewise spoke of other persons who possessed this kind of hereditary property, which they retained undisturbed."

In Fraser's Island (Great Sandy Island) it is said that there are parts of the land which the natives look upon as individually theirs, and on the death of the father it descends to the sons. On the death of a mother, her property descends to her brother...

This is strong evidence in favor of there being individual property in land amongst the Australians; but is it satisfactory? What rights, exclusive of those of other members of the tribe, were enjoyed by the proprietor? What, in short, were his advantages? This personal property would naturally suggest the existence in each tribe of chieftainship; but nothing of the kind is known in Australia. The council of old men rule the affairs of the tribe. The principal man or principal men cannot act without their advice and approval. If they did act without authority, they might incur punishment. How could the sons of a daughter inherit? The people are not endogamous [in-breeding]. A girl, it is true, is betrothed at an early age to a man not of her own class or to a man of another tribe with whom intermarriage is lawful; but girls and women are exchanged, and are not seldom stolen by men of neighbouring tribes; and, moreover, an old man has usually not one wife but several; and how would the succession be settled?

It is not at all clear from the statements here quoted that there was anywhere, *in the ordinary sense of the word*, individual property in land. How, indeed, could it consist with the maintenance of tribal rights, the rules of hospitality, and the preservation of the common interests of the people?

The Rev. John Bulmer informs me that the foot that an Aboriginal is born in a certain locality constitutes a right to that part, and it would be considered a breach of privilege for any one to hunt over it without his permission. Should another black have been born in the same place, he, with the former, would have a joint right to the land. Otherwise, no native seems to have made a claim to any particular portion of the territory of his tribe. Mr. Bulmer says he has found this birthright common to the Murray tribes, and he suspects it is common to most of the tribes of Australia. In old times a fight would ensue if any one wilfully trespassed on the land thus acquired as a birthright.

This is intelligible, and seems to accord with other customs of the natives.

In any large area occupied by a tribe, where there was not much forest land, and where kangaroos were not numerous, it is highly probable that the several families composing the tribe would withdraw from their companions for short periods, at certain seasons, and betake themselves to separate portions of [p147] the area (always keeping within the boundaries of the district lawfully owned by the tribe), and it is more than probable — it is almost certain — that each head of a family would betake himself, if practicable, to that portion which his father had frequented. In this manner — and where certain privileges were acquired in consequence of a native having been born in a locality that could be appropriated — individuals would claim a property in the land. There is nothing to be discovered in the records relating to the Aborigines of Victoria which would show such a proprietorship as would justify the statements made by Mr. Eyre. But he wrote of another part of the continent; and it is scarcely to be believed that so accurate an observer — so conscientious and careful a historian — would be misled on such a point.

This is a subject of great interest, and to the ethnologist of the highest importance; and it is not to be dismissed by a reference to any authority, however high. One has to consider, in connection with it, the laws that govern the tribes, the habits of the people, and the accidents, amongst men in the savage state, which would necessarily interfere with, and, in fact, render impossible anything in the nature of hereditary succession. And there are other difficulties.

If, when any man was called to account for a crime, he kept himself within the boundaries of his own land — how could he be brought to punishment? Not, if he were contumacious [stubbornly refusing to obey authority], without violating his rights as the proprietor of the sod. And in times of drought, if a water-hole was within his boundaries, would the tribe be prevented from resorting to it? Certainly not. What rights, what privileges could individual proprietorship confer in a community of savages?<sup>27</sup>

Evidence of traditional individual land rights in the Victorian historical record did in fact emerge. While travelling through the western districts on his way to Portland, chief protector of Aborigines in Port Phillip G A Robinson, for example, noted: "My native attendants pointed out an extensive weir, 200 feet long and five feet high; they said it was the property of a family, and emphatically remarked, 'that white men had stolen it and their country' ".<sup>28</sup>

Robinson's observation was not universally embraced, however. His deputy W Thomas claimed

They [Aboriginal people] hold that the bush and all it contains are man's general property; that private property is only what utensils are carried in the bag; and this general claim to nature's bounty extends even to the success of the day; hence at the close, those who have been successful divide with those who have not been so.<sup>29</sup>

<sup>27</sup> Brough Smyth, p144

<sup>28</sup> Quoted in Eyre, Ch 4.



Missionary George Taplin went even further than Thomas, though he expressed his view somewhat ambiguously:

In the clan there can be no personal property — all implements, weapons, &c., &c., belong to the members collectively; every individual regards them as possessions of his clan, and to be employed for its welfare and defence as occasion may require. If he has a weapon, or net, or canoe, which is in some sense his own, he knows that his property in it is subject to the superior rights of his clan. Every man is interested in his neighbor's property, and cares for it because it is part of the wealth of the family collectively.<sup>30</sup>

Thomas's and Taplin's views seems more representative of current thinking than it was of nineteenth century thinking. In 1883 influential Victorian pastoralist Edward Curr's observations was one of many that agreed with those of Robinson:

Besides the fact that the Bangerang territory was parcelled out between the two sub-tribes, and fishing weirs on the numerous channels which conducted the flood-waters back into the Murray were owned by individuals, and descended to their heirs, I recollect, on one occasion, a certain portion of country being pointed out to me as belonging exclusively to a boy who formed one of the party with which I was out hunting at the time. As the announcement was made to me with some little pride and ceremony by the boy's elder brother, a man of five-and-twenty, I not only complimented the proprietor on his estate, on which my sheep were daily feeding, but, as I was [p244] always prone to fall in with the views of my sable neighbours when possible, I offered him on the spot, with the most serious face, a stick of tobacco for the fee-simple of his patrimonial property, which, after a short consultation with his elders, was accepted and paid. On two other occasions, also, if I remember right, some Blacks objected to hunt with me over certain land, on the plea that it did not belong to them. That both individuals and families amongst the Bangerang had particular rights to certain lands I have no doubt, but practically they were little insisted on. Had, however, anyone not of the tribe attempted encroachments, it would have been an instant *casus bello* [an act that provokes or justifies a war].<sup>31</sup>

Western districts pastoralist James Dawson saw property arrangements in Victoria as operating in a very schematic way:

#### CHAPTER 4: PROPERTY.

The territory belonging to a tribe is divided among its members. Each family has the exclusive right by inheritance to a part of the tribal lands, which is named after its owner; and his family and every child born on it must be named after something on the property. When the boundaries with neighbours meet at lakes or swamps celebrated for game, well-defined portions of these are marked out and any poaching or trespassing is severely punished. No individual of any neighbouring tribe or family can hunt or walk over the property of another without permission from the head of the family owning the land. A stranger found trespassing can legally be put to death.

When the father of a family dies, his landed property is divided equally among his widow and his children of both sexes. Should a child of another family have been born on the estate, it is looked upon as one of the family, and it has an equal right with them to a share of the land, if it has attained the age of six months at the death of the proprietor. This adopted child is called a 'woork', and calls the owner of the property by the same name. Should a family die out without leaving 'flesh relatives' of any degree, the chief divides the land among the contiguous families after the lapse of one year from the death of the last survivor. During that period the name of the property, being the same as the name of its last owner, is never mentioned, but is called 'Yaamp yaamp' in the Chaap wuorong and the other two languages. If, however, there are several claimants, with equal rights to the territory, the chief at once gives each an equal share, irrespective of sex or age. To those who are under age he appoints guardians to look after their property during their minority.<sup>32</sup>

Howitt's tome, *The Native Tribes of South-eastern Australia*, took in the vast area south and east of a transect from Ceduna in South Australia to south-eastern Queensland, substantially covering five colonies/states, which of course included Victoria. He was clear that family heads "by exclusive right of inheritance" owned sub-divisions of tribal territory:

The tribal territory was divided between its members, and each family had the exclusive right by inheritance to a part of [p70] the tribal lands, which was named after its owner, and every child born on it was named after some object on it. When the boundaries met at lakes or swamps celebrated for game, well-defined portions of these were marked out, and any poaching or trespassing was severely punished. No individual of any neighbouring family or tribe could hunt or walk over the land of another

<sup>29</sup> William Thomas, "Brief Account of the Aborigines of Australia Felix", quoted in Thomas Francis Bride, *Letters from Victorian Pioneers*, Heinemann, Melbourne, 1898 (1969), pp398-99. Account undated.

<sup>30</sup> George Taplin, *The folklore, manners, customs, and languages of the South Australian aborigines*, Government Printer, Adelaide, 1879, p11, republished online by Internet Archive

<sup>31</sup> Edward Curr, *Recollections of Squatting in Victoria*, George Robertson, Melbourne, 1883, pp243-44, republished online by Australasian Legal Information Institute

<sup>32</sup> James Dawson, *Australian Aborigines: The languages and customs of several tribes of aborigines in the western district of Victoria, Australia*, George Robertson, Melbourne, 1881, p7, republished online by Internet Archive (and Trove)

without permission from the head of the family group which owned it, and a stranger found trespassing on it might legally be put to death.<sup>33</sup>

Howitt gave a number of specific examples, the first of those pertaining to Victoria's western districts:

The area occupied by the tribes described by Mr. Dawson may be roughly defined as lying between Portland, Colac, Ararat, and possibly Pitfield...

The tribal territory was divided between its members, and each family had the exclusive right by inheritance to a part of [p70] the tribal lands, which was named after its owner, and every child born on it was named after some object on it. When the boundaries met at lakes or swamps celebrated for game, well-defined portions of these were marked out, and any poaching or trespassing was severely punished. No individual of any neighbouring family or tribe could hunt or walk over the land of another without permission from the head of the family group which owned it, and a stranger found trespassing on it might legally be put to death.<sup>34</sup>

The Wurundjeri clans of Melbourne, according to Howitt, were "divided into lesser groups of people, and each had its own definite tract of country and food ground".<sup>35</sup> The headman of one of the two subdivisions of the Kurnaje-berreing clan, Billi-billeri, "lived at and had the custody of the aboriginal stone quarry near Lancefield".<sup>36</sup> This quarry produced high quality greenstone which was used to make axe-head blanks which were traded widely around south-eastern Australia. The quarry seems to have been a notable example of infrastructure operated and effectively owned by a consortium of close male relatives. A W Howitt's friend and informant William Barak told him of Barak's family's proprietorship of the quarry:

[There] were places which such a group of people claimed for some special reason, and in which the whole tribe had an interest. Such a place was the "stone quarry" at Mt. William near Lancefield, from which the material for making tomahawks was procured. The family proprietorship in this quarry had wide ramifications ... But it was Billi-billeri, the head of the family whose country included the quarry, who lived on it, and took care of it for the whole of the Wurundjeri community. When he went away, his place was taken by the son of his sister, the wife of Nurrum-nurrum-biin, who came on such occasions to take charge, when it may be assumed, like Billi-billeri, he occupied himself in splitting stone to supply demands. The enormous amount of broken stone lying about on this mountain shows that generations of the predecessors of Billi-billeri must have laboured at this work.

When neighbouring tribes wished for some stone they sent a messenger to Billi-billeri saying that they would send goods in exchange for it, for instance, such as skin-rugs. [p312] When people arrived after such a message they encamped close to the quarry, and on one occasion Barak heard Billi-billeri say to them, "I am glad to see you and will give you what you want, and satisfy you, but you must behave quietly and not hurt me or each other."

If, however, people came and took stone without leave, it caused trouble and perhaps a fight between Billi-billeri's people and them. Sometimes men came by stealth and stole stone. I have heard Barak speak of such a case ...<sup>37</sup>

The proprietary arrangements at Mt William quarry seem to have been replicated at Barlowuri, a red ochre mine in Weld Range near Meekatharra in WA. Red ochre when mixed with animal fat or sandalwood oil was valued for its medicinal properties. Daisy Bates made rough notes about her guided tour the mine in 1909 by its "last owner" who she referred to as "Jaal". She wrote:

I went with the last native owner of these iron hills ... whose haematite (ochre) made the group owners a very wealthy little mob. They bartered their wilgi with neighbouring groups - who rebartered it - with others until the Barlowuri Wilgi was known and valued many hundreds of miles from its hill.<sup>38</sup>

Anthropologist and geologist Herbert Basedow travelled to some of the remotest parts of Australia between 1923 and 1928. In 1925 he claimed that various "tribes"<sup>39</sup> owned quarries throughout central and eastern Australia, but small groups of men owned the *supplies*, which presumably meant they owned the product of their own labour:

In many of the tribal districts igneous rocks do not occur naturally, but they are nevertheless obtained by barter from adjoining friendly tribes. The Dieri, Wongkanguru, Ngameni, and other Cooper Creek tribes obtain all their stone axe heads from New

<sup>33</sup> Howitt, pp69-70

<sup>34</sup> Howitt, pp69-70

<sup>35</sup> Howitt, p72

<sup>36</sup> Ibid. Archaeologists Isabel McBryde and Alan Watchman described Barak as the "son of one of the group who owned the quarry". (Isabel McBryde and Alan Watchman, "The Distribution of Greenstone Axes in Southeastern Australia: a Preliminary Report", *Australian Journal of Anthropology*, 1 June 1976, Vol 10, No 3, p169, republished online by JSTOR).

<sup>37</sup> Howitt, pp311-12. Barak's father was one of the consortium which operated the mine.

<sup>38</sup> Daisy Bates Papers, MSS 572.994 B32t, Series 5: "Notes not for legends or included in Aborigines: Odd notes only", V, 9 (13 scraps of envelopes and marginal notes on 1 torn page of text), transcribed by J. Walkley, republished online by Adelaide University.

<sup>39</sup> These were more likely to have been kin groups.

South Wales; the south-eastern tribes of South Australia used to receive their supplies from the hills tribes of what is now Victoria; and the Aluridja, Kuyanni, Arrabonna, and Kukata were regularly supplied from the MacDonnell Ranges and from Queensland through Arundt's agency. The fortunate tribes who owned outcrops of suitable stone carried on a regular trade with the surrounding districts and opened up quarries to meet the demand. The supplies were, however, not tribe-owned, but usually the property of a limited number of men who came to them by hereditary influence.<sup>40</sup>

Queensland settler Tom Petrie observed that tribes<sup>41</sup> in the Blackall Ranges of south-eastern Queensland collectively owned the animals and birds on the ground, together with the roots and nests found in their territory. He described the curious practice of males owning certain species of plants and females owning other species:

**Tribal boundaries & private property**

Each tribe had its own boundary, which was well known, and none went to hunt, etc., on another's property without an invitation, unless they knew they would be welcome, and sent special messengers to announce their arrival... This tribe all spoke the same language, but, of course, was divided up into different lots, who belonged some to North Pine, some to Brisbane, and so on. These lots had their own little boundaries. Though the land belonged to the whole tribe, the head men often spoke of it as theirs. The tribe in general owned the animals and birds on the ground, also roots and nests, but certain men and women owned different fruit or flower-trees and shrubs. For instance, a man could own a bon-yi<sup>42</sup> (*Araucaria Bidwilli*) tree, and a woman a minti (*Banksia amula*), dulandella (*Persoonia Sp.*), midyim (*Myrtus tenuifolia*), or dakkabin (*Xanthorrhoea aborea*) tree. Then a man sometimes owned a portion of the river which was a good fishing spot, and no one else could fish there without his permission.<sup>43</sup>

Ownership of bunya trees gave individuals special rights and responsibilities in relation to harvesting the trees' produce:

[During the Bunya festivals tribes assembled] from every part of the country, some hailing from the Burnett, Wide Bay, Bundaberg, Mount Perry, Gympie, Bribie, and Fraser Islands, Gayndah, Kilcoy, Mount Brisbane, and Brisbane. When all turned up there numbered between 600 and 700 blacks. According to some people, the numbers would run to thousands at these feasts. That may have been so in other parts of the country, but not there on the Blackall Ranges. Each blackfellow belonging to the district had two or three trees which he considered his own property, and no one else was allowed to climb these trees and gather the cones, though all the guests would be invited to share equally in the eating of the nuts. The trees were handed down from father to son, as it were, and every one, of course, knew who were the owners.<sup>44</sup>

Any differences between ownership and management of kinship assets would not always have been obvious to nineteenth century observers. Early settlers in south-western WA, for example, recorded a number of sophisticated fish traps that had been built across rivers that flow into the Indian Ocean. The most notable of these fish traps was the Barragup *mungah* on the Serpentine River. So many fish were caught there seasonally that hundreds of people from neighbouring areas were invited to participate in feasts and ceremonies. Barragup *mungah* seems to have been operated by a corporation of individuals in a way that suggests that ownership of the traps may have issued from ownership of the section of river where the trap was constructed. Aboriginal cosmology, however, seems to have added another layer of complexity. Archaeologist Martin Gibbs states, "As suggested by [Daisy] Bates' description of the Ngarri Maia, only the members of the salmon totem ... were allowed to operate the *mungah*".<sup>45</sup>

Surveyor and self-taught anthropologist Robert Hamilton Mathews took a special interest in the Brewarrina fish traps in central NSW. He wrote:

Each division of the tribe, and the families composing it, had their own allotted portion of the fishing grounds, and every pen or trap had a name by which it was known and spoken of among the people. The following are a few of these, aboriginal names:- Mirrā'gan, Gū'na, Thau'ia, Il'prūnya, Buddhau'inga, Giwirri, Ngiddēri, Gūmboar'o, Mu'arba, Thulūr'digana, Būragūman,

<sup>40</sup> Herbert Basedow, *The Australian Aboriginal*, F W Freece & Sons, Adelaide, 1925, ch 8, pp362-63, republished online by Project Gutenberg

<sup>41</sup> Again, the social units were more likely to be kin groups rather than tribes.

<sup>42</sup> Bunya pine

<sup>43</sup> Constance Campbell Petrie, *Tom Petrie's Reminiscences of Early Queensland*, Watson Ferguson & Co, Brisbane, 1904, Part 1, Ch 15, published online by Project Gutenberg. Petrie also suggested that, as with fishing weirs on the Murray individuals sometimes owned portions of rivers in south-eastern Queensland.

<sup>44</sup> Petrie, Part 1, Ch 2.

<sup>45</sup> Martin Gibbs, "An Aboriginal fish trap on the Swan Coastal Plain: the Barragup mungah", *Records of the Western Australian Museum*, 2006, published online

Bürugünga', Dhau'-danbaia, Mogē', Goāra, Wirridung-kunya, Waāgurma, Bau'andanna. In the lowest portion of the river bed, where the water has the most fall, and consequently runs the swiftest over the rapids, is called by the natives "Wirruwirrumba." Large rock masses, projecting high above the water, occupying their natural, undisturbed position in the channel, also had native names by which they were easily distinguished. The most remarkable of these [are] large blocks of Desert Sandstone, which are chiefly near the southern bank of the river ...

[p152] The Brewarrina fishing pens were situated within the territory of the Ngēumba tribe, who always mustered there in considerable numbers in the fishing season, or at other times when fish were expected to be plentiful. The same people did not remain there all the time, but when certain families moved away into the back country to hunt for kangaroos and other game, other families came in to the river, and participated in the piscatorial harvest. Although the fishing grounds were apportioned among specified people, as already stated, the ownership was not of the exclusive character existing among Europeans. For example, if a man were not present, his "claim" might be [p153] worked by his relatives, such as uncles, brothers, brothers-in-law, nephews, or the like. Generally speaking, there were some straggling members of the tribe located about the fishing grounds all the year round.

The fishing season was sometimes made the occasion of inviting neighbouring tribes to join in their great corobborees, initiation ceremonies, or meetings for trade and barter. The people camped on either side or both sides of the river, because when the water was low enough to admit of the traps being used, it was quite easy for those who wished to visit friends on the opposite shore, to wade across the rocky bar.<sup>46</sup>

## a discordant note: Malinowski's counter-arguments

Journalist Charles White's serialised *Story of the Blacks* first appeared in the same year that Howitt's *Native Tribes of South-eastern Australia* was published. According to his *Australian Dictionary of Biography* entry White was a "historian at heart [who] meticulously collected material for future use".<sup>47</sup> White wrote:

Territorial rights were fully recognised throughout the continent, and well defined tribal boundaries were fixed, although surveyors were unknown. All told, a well-conditioned tribe would number from 250 to 300 souls, the women and children forming the major part, and the territory held would vary in extent in accordance with its locality and capacities. Some fifty grown men or warriors would hold a tract of country measuring about 50 miles each way, and the boundaries would be as well known and accurately defined as if surveyed and registered, a certain point of a range, a belt of scrub or jungle, the watershed of a river or creek forming the legal marks; and any trespasser from another tribe intruding, whether in search of game, or in order to steal a wife, if caught, would pay the penalty of death. *The territory was used in common by the tribe, although in some of the tribes there existed a private ownership of land, the area being divided into portions, each of which became the personal property of an individual male; but there does not appear to have been any fixed rule regarding this.* [My emphasis]<sup>48</sup>

Assertions of individual ownership of defined tracts of land were seriously challenged in 1913 when distinguished Polish anthropologist and then resident in Australia Bronislaw Malinowski argued that the bulk of the impressive data he had collected indicated little support for the notion that "landed property of an economic character was vested in individuals or in single families respectively".<sup>49</sup>

Malinowski divided Aboriginal society into tribes, "local groups"<sup>50</sup> and individual families. Tribes were "characterized by name, common speech, custom and territory". Local groups (by which he seems to have meant kin groups or clans) consisted of closely related individuals, which possessed a sort of government and were connected with a portion of the tribal territory which they practically used in common. The individual family unit played "a foremost part" in social life.<sup>51</sup> He was at pains to correct those who confused tribes with "local groups". He argued, quite reasonably, that the tribe:

<sup>46</sup> R H Mathews, "The Aboriginal Fisheries at Brewarrina", *Associé étranger Soc. d'Anthrop, de Paris*, read before the Royal Society of NSW, 6 August 1908, pp151-53, republished online by Trove. This report was apparently written some decades after the fish traps were reportedly partially demolished to facilitate paddle steamer passage through this section of the Barwon River. I have been unable to establish any date but the *PS Brewarrina* was built in 1877 so it may have been soon after that. In any case, according to the guide at the Brewarrina Cultural Museum, he and his friends continue to trap fish at this site. I asked without leading him who owned the fish traps. He told me that they were shared by eight different tribes each speaking their own language. (*Pers comm*, 18 July 2025.)

<sup>47</sup> Accessed 15 February 2025

<sup>48</sup> Charles White, *The Story of the Blacks*, The Windsor and Richmond Gazette, NSW, serialised from 30 April 1904, Ch 24, republished online by Project Gutenberg. This was a good example, in my view, where tribes were confused with kinship groups.

<sup>49</sup> Bronislaw Malinowski, *The Family among the Australian Aborigines: A sociological study*, published for the University of London Press by Hodder & Stoughton, London, 1913, pp150, republished online by Project Gutenberg

<sup>50</sup> referred to above as kin groups

<sup>51</sup> Malinowski, p5

cannot be considered as proprietor of the territory, for its different divisions may not encroach upon each other's grounds. We shall call (by way of definition) a *Local Group*, such a division of the tribe as possesses the exclusive right to use a given territory and to dwell within its limits.<sup>52</sup>

While Malinowski departed from the broad consensus described that individuals or individual families owned sub-divisions of land, the statements he collected from a wide range of authorities are actually a marvellous source of support for the very view he sought to discredit. Here is his summary of those statements:

Out of the thirty-nine statements collected, thirty-one describe a certain group or family as owning a definite tract of country in common; this group is, by definition, what we called above the local group. But there are some complications as to its rights of possession over the given area. On the one hand there is some kind of "over-right" of the tribe over the district inhabited by all the local groups of which it is composed. On the other hand there is a further complication arising from the alleged individual claims to landed property. As to the tribal over-right, it presents itself chiefly in the fact that, first, tribesmen (members of related and friendly local groups) are often invited and allowed on the territory of the local group; secondly, in cases of trespass, while strangers are punished severely (often by death), tribesmen are only considered slightly culpable. The tribe may probably sometimes congregate as a whole on a part of its grounds with the consent of the local group concerned. We must imagine the local groups of the same tribe as living in amicable relations and voluntarily exercising hospitality towards each other, especially in cases when food is plentiful on their territory. But as a general rule the whole tribe neither uses its whole district, nor has a local group, forming a division of the tribe, the right to use any but its own territory without [p150] asking permission. The tribal over-right seems therefore of little importance.

The rights of a local group over its territory are, on the other hand, the most important form of ownership, and the only one which possesses economic features. These rights mean that all members of a local group may roam over its territory and use all the products, hunt and collect food and useful objects. In the case of the Central and North Central tribes we are expressly told that no individual or family claims may interfere with the rights that every member of the local group has to the whole local area. In twenty-one of our thirty-one statements referring to the right of the local group, we are not told of any family or individual proprietorship. In the remaining eight cases single families or male individuals seem to have some vague claims to special tracts of country. In three cases the information is ambiguous on this point. In the case of the Bangerang, Moreton Bay tribes (J. D. Lang), King George's Sound natives (Nind and Browne), this right is either of a merely mystic, intangible character, or it is a formal right which gives to the individual the priority in decisions as to hunting, burning of grass, etc., and makes him "master of ceremony" in cases of an assembly on the given spot. In two instances this individual "land ownership" is stated to assume a more economic aspect (G. S. Lang and W. E. Roth). There are, besides, two statements on family "ownership" which do not mention the local group. According to one of them (Collins) individual claims to land have a mystic, fictional character; according to Grey's statement, individual property in land was the only positive one; but this latter statement is inconsistent and does not define the sense of the word "property," [p151] and is therefore of little weight. So on the whole we have three statements asserting that landed property of an economic character was vested in individuals or in single families respectively.<sup>53</sup>

A number of Malinowski's claims are contestable, for example, his claim that "all members of a local group may roam over its territory and use all the products, hunt and collect food and useful objects", needed to come with a *caveat* that explicit or implicit permission of the individual family connected with any given tract of land was required. Further, the formal right he describes "which gives to the individual the priority in decisions as to hunting, burning of grass, etc., and makes him 'master of ceremony' in cases of an assembly on the given spot" very much sounds like a right which accords privileges normally associated with ownership.

Reviewing a sample of the collected statements which Malinowski presented *in cameo* reveals that his arguments tend to be self-undermining. Malinowski quoted Howitt's assertion that, in the case of the Kurnai, the social units that "had" the land frequently consisted of an old man, his sons, daughters-in-law and grandchildren where they hunted and gathered food. Howitt gave the example of a family claiming as its property both an island and the eggs that swans laid on a particular island. In response Malinowski didn't say much beyond: "It is a pity that Howitt does not give even approximately the numbers".<sup>54</sup> Strangely, in Malinowski's mind, in the case of the Murring tribes, Howitt's reference to father who pointed out the boundaries of his own child's country<sup>55</sup> was evidence of rights assumed by local groups and not families or individuals.

Without sharing his reasoning, Malinowski dismissed Curr's assertions about individual property in land as purely fictitious and having nothing to do with any real rights.<sup>56</sup> He similarly dismissed the division of land

<sup>52</sup> Malinowski, pp134-35

<sup>53</sup> Malinowski, pp149-51

<sup>54</sup> Malinowski, p136

<sup>55</sup> Malinowski, pp136-37

<sup>56</sup> Malinowski, p138

amongst individuals, as described by Eyre, as a formal rather than actual right because "all members of a [local group] may roam over the common territory".<sup>57</sup>

In response to Charles Wilhemi's comment that each Port Lincoln family had its distinct place where they lived together, Malinowski concluded: "The uncertainty as to the sense in which the word *family* is used here makes this statement nearly useless".<sup>58</sup> Yet what constituted a family in Aboriginal society should have been fairly obvious, and was in fact not altogether unlike what constituted typical settler families.

In response to Gideon Lang's comment that during seasons when all the members of a particular Moreton Bay tribe (I assume) were not congregated together, each family hunted "on its own grounds", Malinowski argued without foundation that "we must bear in mind that what is called here family may as well be a small local group of closely related people".<sup>59</sup>

Thus a clear pattern emerges. Malinowski either argued that there wasn't any meaningful kind of ownership or the group described as the possessors were in fact not a family but a collection of families better described as a "local group". Rather than dwelling on Malinowski's suspect semantics, it is worth examining some of a series of other statements he himself raised all seem to contradict his main argument. We read, for instance, that Dawson stated: "Each tribe is divided into independent families, which acknowledge no chief, and which inhabit in common a district within certain limits, generally not exceeding above ten or twelve miles on any side."<sup>60</sup>

Hodgkinson stated: "The whole body of a tribe is never united on the same spot, unless on some important occasion. They are more generally divided into small parties of eight or ten men, with their women and children, for the greater convenience of hunting, etc., and these detached companies roam over any part of the country within the prescribed limits of the main tribe to which they belong."<sup>61</sup>

Spencer and Gillen, we are told, initially stated: "There is no such thing as one man being regarded as the owner of any tract of country".<sup>62</sup> But they added:

The members of this (local group) wander, perhaps in small parties of one or two families, often, for example, two or more brothers with their wives and children, *over the land which they own*, camping at favourite spots, where the presence of water-holes, with their accompaniment of vegetable and animal food, enables them to supply their wants. [My emphasis]<sup>63</sup>

Of the "northern tribes" Robert Hamilton Mathews stated: "In those olden days, as at present, the totemic ancestors consisted of families or groups of families, who had their recognized grounds in some part of the tribal territory".<sup>64</sup>

Malinowski presented similar statements that were unhelpful to his case such notaries as J D Lang,<sup>65</sup> Roth,<sup>66</sup> J G Withnell,<sup>67</sup> Grey,<sup>68</sup> Daisy Bates,<sup>69</sup> Bishop Salvado,<sup>70</sup> and Nind.<sup>71</sup> Despite remarking that: "Out of the thirty-nine statements collected, thirty-one describe a certain group or family as owning a definite tract of country in

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<sup>57</sup> Malinowski, p139

<sup>58</sup> Malinowski, p140

<sup>59</sup> Malinowski, p141

<sup>60</sup> Malinowski, p142

<sup>61</sup> Ibid

<sup>62</sup> Malinowski, p143

<sup>63</sup> Malinowski, p143

<sup>64</sup> Ibid. Mathews' was mainly knowledge of Aboriginal culture in eastern Australia.

<sup>65</sup> Malinowski p144

<sup>66</sup> Malinowski p145

<sup>67</sup> Malinowski p146

<sup>68</sup> Malinowski p147

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Malinowski p148

common", he declared all these social units were local groups "by definition".<sup>72</sup> Even more surprisingly, though, he proceeded to inform us:

In twenty-one of our thirty-one statements referring to the right of the local group, we are not told of any family or individual proprietorship. In the remaining eight cases single families or male individuals seem to have some vague claims to special tracts of country. In three cases the information is ambiguous on this point.

[In several cases] this right is either of a merely mystic, intangible character, or it is a formal right which gives to the individual the priority in decisions as to hunting, burning of grass, etc., and makes him "master of ceremony" in cases of an assembly on the given spot.<sup>73</sup>

Later we read that "the rights of individuals to a certain tract of country had in general some vague magical character, and that they were probably always derived from some mystical relation of the individual to his birthplace or to another special spot".<sup>74</sup> This seemingly rigid thinking raises the question: why was it so important to Malinowski to reject most of the testimonies that he had sought? A possible explanation can be found in two of his end notes. In end note 453 he remarked:

It appears that [Grey and G S Lang] were to a certain extent inspired by a humanitarian tendency, namely to show that the Australian aborigines were not quite without ideas of property in land, and that they were wronged by the white settlers, and thus deserved compensation for the loss of hunting-grounds... We may therefore still more distrust their statements.

Does this mean that Malinowski — who had something of a reputation as a liberal himself — instinctively opposed any notion that could lead to compensation, anticipating John Howard's refusal to say sorry nearly a hundred years later?

End note 358 is perhaps even more telling:

To guard against misunderstanding I wish to emphasize that such words and expressions as "proprietorship", "ownership", "landed property", "rights to a tract of country", etc., are not to be taken in the sense which they possess in application to higher societies, to our own society in particular... For the sake of clearness and brevity it was sometimes needful, in the text, to use the above expressions, instead of the more correct ones like "possession", "claims to a country", etc. The term "property" has a definite legal meaning, which makes it impossible to apply it in its full sense to the low society with which we are concerned.

Ultimately, it seems, Malinowski's view was that, due to the "low society" of Aboriginal Australia, tracts of land could be *possessed* or *claimed*, but could not be regarded as the property of individual Aboriginal people or families — or for that matter, even regarded as communally-owned property of "local groups". This was remarkably similar to the views expressed by Locke and Vattel in the eighteenth century.

Seventeen years after Malinowski's death, New Zealand ethnologist Raymond Firth edited a symposium designed to evaluate his legacy. According to Firth, Malinowski was "a brilliant figure in British anthropology for a quarter of a century".<sup>75</sup> In the same symposium, British social anthropologist Phyllis Kaberry wrote that Malinowski "set a standard for intensive field-work and rigorous documentation of theory that few have achieved since".<sup>76</sup> Clearly, Malinowski was a flamboyant yet enigmatic man whose achievements were all the greater because he had struggled with ill health since a child. Alongside those achievements, however, sat some rather conspicuous flaws. Kaberry conceded that

in his vivid eye-witness accounts of ceremonies, economic activities, domestic and village relations and quarrels he records the imponderabilia of actual life... If Malinowski's ethnographic writings in their rich discursiveness do not conform to the strict canons of logical consistency, aesthetic proportion, and economy and precision of exposition, nevertheless he provides us with a wealth of information on native incentives, values and attitudes, on the tensions and conflicts ... and on 'the amplitude of deviation' from the norm.<sup>77</sup>

<sup>72</sup> Malinowski p149

<sup>73</sup> Malinowski, p150

<sup>74</sup> Malinowski, p153

<sup>75</sup> Raymond Firth, "Malinowski as Scientist and as Man" in Raymond Firth (ed), *Man and Culture, An evaluation of the work of Bronislaw Malinowski*, Routledge & Kegan Paul, London, 1957 (1960), p1, republished online by berose.fr

<sup>76</sup> Phyllis Kaberry, "Malinowski's Contribution to Fieldwork Methods and the Writing of Ethnography" in Firth (ed), p72

<sup>77</sup> Kaberry, pp85-86

On a series of occasions Malinowsky was accused by other members of his profession of misunderstanding or misinterpreting the views of his opponents.<sup>78</sup> His contemporary Alfred Radcliffe-Brown saw this tendency to misrepresent views as an essential trait of his polemical technique.<sup>79</sup> Significantly, while acknowledging Malinowski's "virtuosity as an ethnographer", South African anthropologist Meyer Fortes believed that he failed to understand the nature of classificatory kinship terminologies.<sup>80</sup> It is odd that a researcher with Malinowski's experience and intellect might misunderstand something so basic but it would help explain why his criticism of views that ostensibly supported the notion of individual ownership of land and assets seems so flawed.

## the Cape York debate

In 1852, John MacGillivray — the naturalist on board the survey ship which rescued Barbara Thompson — concluded that both sons and daughters inherited land in the nearby islands and in Cape York:

### LAWS REGARDING PROPERTY IN LAND.

It seems curious to find at Cape York and the Prince of Wales Islands a recognised division and ownership of land, seeing that none of it by cultivation has been rendered fit for the permanent support of man. According to Giaom [castaway Barbara Thompson], there are laws regulating the ownership of every inch of ground on Muralug and the neighbouring possessions of the Kowraregas, and I am led to believe such is likewise the case at Cape York. Among these laws are the following: A person has a claim upon the ground where both himself and his parents were born, although situated in different localities. On the death of parents their land is divided among the children, when both sexes share alike, with this exception, that the youngest of the family receives the largest share. Marriage does not affect the permanency of the right of a woman to any landed property which may have come into her possession. Lastly, an old man occasionally so disposes of his property that a favourite child may obtain a larger proportion than he could afterwards claim as his inheritance.<sup>81</sup>

In 1979 long-term head of the Anthropology Department at the Australian Museum, David Moore, bluntly dismissed MacGillivray's claim, arguing that "land-ownership in the sense that [MacGillivray] implies is totally alien to Aboriginal thinking".<sup>82</sup> Then in 2006 Indigenous scholar Marcia Langton examined Aboriginal customary title in the Laura Basin on the Cape York Peninsula. Under the heading of "The sociality of land tenure", she wrote:

The Aboriginal conceptions of land tenure, property and the nature of the landscape in which these societies live ... are intimately interwoven. In Princess Charlotte Bay, amongst which customary laws of land inheritance and tenure continue to operate, Aboriginal people are born with inchoate, inherited and transmissible rights in an estate of land and waters, whether marine or riparian. These rights are held in common with other members of clans or local kin-based groups which together form the customary land-holding organisation.<sup>83</sup>

Title was hereditary, transmissible and clan-based in Langton's view, but it was held *in common* and not, it seems, individually owned. In fact, she doesn't mention individual ownership.

People referred to as the "Dugong Hunters of Cape York" owned an estate of land and sea country that included most of Princess Charlotte Bay and the surrounding coastal region. In 2014 anthropologists Bruce Rigsby and Athol Chase described layers of customary ownership in Cape York that *did* include at least some ownership by individuals which had persisted into modern times despite the disintegration of Aboriginal society. The modern-day Lamalama tribe, we learn, was formed by an amalgamation of remnants of several former tribes in the area. Since then various combinations of language-named tribes, family-based estate

<sup>78</sup> Konstantin Symmons-Symonolewicz, "Bronislaw Malinowski: An intellectual profile", *The Polish Review*, Vol 3, No 4, University of Illinois Press, Autumn 1958, p64, body of page and footnote, republished online by JStor

<sup>79</sup> Symmons-Symonolewicz, pp62-63

<sup>80</sup> Meyer Fortes, "Malinowski and the Study of Kinship" in Firth (ed), p175

<sup>81</sup> John MacGillivray: *Narrative of the Voyage of the Rattlesnake*, vol 2, TW Boone, London, 1852, ch 2.1, republished online by Project Gutenberg

<sup>82</sup> David Moore, *Islanders and Aborigines at Cape York*, Australian Institute of Aboriginal Studies, Canberra, 1979, p262, republished online by Internet Archive

<sup>83</sup> Marcia Langton, "Earth, wind, fire and water: the social and spiritual construction of water in Aboriginal societies" in *The Social Archaeology of Australian Indigenous Societies*, Bruno David et al. (eds.), Aboriginal Studies Press, Canberra, 2006, pp148-49, republished online by Google Books



groups and regional groupings have asserted primary control over the land- and seascape. While any adult Lamalama person

has the right to live on, camp on, visit and use the resources found on any part of their tribal estate ... some people have special rights and interests in subparts of the tribal estate that in the past belong to their ancestors' clans; for example, the Liddys are recognised as having special rights and interests in the Port Stewart area, that come to them from Grandfather Harry Liddy, who got them from his mother and her younger brother. Other people defer to them on matters relating to the area, but nonetheless, other Lamalama people live there as they wish and use its land and resource resources without having to ask permission. North of the Lamalama, among the Lockhart-based people, there is still strong adherence to a more differentiated estate model of control.<sup>84</sup>

Moreover:

Property is not limited to things that are under human control and possession, but it extends to all things in which people are considered to have rights and interests as against others. And only owners, in whatever particular form this is defined, can properly present themselves as such and say 'Such-and-such place is my land' or 'Such-and-such island is mine'.<sup>85</sup>

## Sylvia Hallam's research

In 1975 Perth-based archaeologist Sylvia Hallam explored fire as a tool of management, mainly in a mainly Western Australian context. She quoted claims by a series of nineteenth century figures about special rights and obligations of individuals that were arguably connected to a form of individual ownership:

### Scott Nind, Edward John Eyre & Robert Dale

The careful regulation of this pattern of land use was preserved by a mechanism [medical doctor Isaac Scott] Nind interpreted as ownership: "The presence of the owner of the ground is considered necessary when they fire the country for game" (Ibid).

The notion of a close mesh of usage rights was reiterated by [explorer Edward John Eyre] Eyre (1845:11,299) and [explorer Robert] Dale:

The natives of the known parts are scattered over the country in their tribes which differ from each other slightly in their appearance and customs, though much in dialect. Each tribe occupies a determinate tract which is sub-divided into smaller portions as hunting-grounds for individuals who jealously watch over and instantly retaliate (sic) encroachment upon their shores. (Dale 1834:7)<sup>86</sup>

Eyre made the same point as Nind and Backhouse about the rights of usage:

But particular districts are not merely the property of particular tribes; particular sections ... of these districts are recognised as the property of individual members and when the owner of such a section has determined on burning off the grass (to) enable the natives to take the older animals more easily, and to provide a new crop of sweeter grass for the rising generation of the forest, not only all the other individuals of his own tribe, but whole tribes from other districts are invited to the hunting party and the feast and dance or corrobory that ensue ... (Eyre 1845:11.299)<sup>87</sup>

### George Grey

Grey also noted that organised battues [driving of game towards hunters], which in bushy places involved firing (Grey 1841:11,270), are conducted under certain rules. The proprietor of the land must have invited the other natives, and must be present himself" (ibid:11,272).<sup>88</sup>

### explorer & surveyor Robert Austin

The linkage between knowledge, usage, fire and rights in land is equally stressed in the reminiscences of Robert Austin about the coastal plain further south (where Bunbury now stands) in 1841-43:

<sup>84</sup> Bruce Rigsby & Athol Chase, "The Sandbeach People and dugong hunters of Eastern Cape York Peninsula: property in land and sea country", in Nicholas Peterson & Bruce Rigsby (eds). *Customary Marine Tenure in Australia*, Sydney University Press, Sydney, 2014, p331, republished online by University of Sydney. I take "differentiated" to mean layered.

<sup>85</sup> Rigsby & Chase, p334. That is also how I believed it seemed to work in the case of NT traditional owners who I have spoken to.

<sup>86</sup> Sylvia Hallam, *Fire and Hearth*, Australian Institute of Aboriginal Studies, Canberra, 1975, p32

<sup>87</sup> Hallam, p42

<sup>88</sup> Hallam, p41

Each family in the tribe had its own territorial division, its own ka-la or 'fire-place' ... each person knew what there actually was on his own possessions, what birds nests, etc. ... When anything showed itself in abundance, the neighbours, etc., would be asked to come over and partake. (Roth 1902:55)<sup>89</sup>

### **Mrs Edward (Janet) Millett**

Mrs Millett's appraisal (based on Bishop Salvado) saw fire (and water) as the crux of usage rights east of the jarrah belt also:

... each family has its own especial tract of land, together with the springs of water thereupon; here he can light his fire and build his hut ... it is his paternal estate.... so that the word 'fire' conveys "hearth"... (Millett 1872:77)<sup>90</sup>

It is worth quoting this passage of Mrs Millett's in full, without the ellipses, because, while Hallam does not misrepresent Millett, Hallam's punctuation is wanting and some of the passion is lost:

Each tribe possesses a territory of its own, and each family of the tribe has its own especial tract of land within that territory, together with the springs of water thereupon; here he can light his fire and build his hut without fear of molestation; it is in fact his paternal estate, so that the word "fire" conveys to an Australian the same meaning of fatherland or birthplace as the European idiom of "hearth," and is used by the aborigines in the same sense.<sup>91</sup>

Despite her sources leaning towards the notion of some sort of individual ownership, Hallam displays some reticence, stating without elaborating that Eyre (and presumably her other sources) "may have misinterpreted the question of individual property", adding, however, that "he was undoubtedly right in seeing a close and controlled mesh of usage rights and responsibilities".<sup>92</sup>

## **Bill Gammage's research**

A collaborator alerted me to a series of relevant passages in his copy of *The Biggest Estate on Earth* by Bill Gammage, most of which relate to south-western Australia (all bar the first and last).<sup>93</sup> Gammage also quotes Eyre, Robert Dale and Scott Nind. Following is a sample of these passages set out in page order.

### **anthropologist and museum curator Henry Ling Roth**

A native discovering a Zamia fruit unripe will put his mark upon it and no other native will touch this; the original owner of the fruit may rest perfectly certain that when it becomes ripe he has only to go and fetch it.<sup>94</sup>

### **explorer Edward John Eyre**

[P]articular districts are considered generally as being the property and hunting grounds of the tribes who frequent them. These districts are again parcelled out among the individual members of the tribe. Every male has some portion of land, of which he can always point out the exact boundaries. These properties are sub-divided among his own sons in his lifetime, and descend in almost hereditary succession ... Tribes can only come into each other's districts by permission, or permission, in which case, strangers or visitors are well treated.<sup>95</sup>

### **explorer Lieutenant Robert Dale**

Each tribe occupies a large and determinate tract, which is subdivided into smaller portions of hunting-grounds for individuals, who jealously watch over, and instantly retaliate encroachment upon their shares.<sup>96</sup>

<sup>89</sup> Hallam, p43

<sup>90</sup> Ibid

<sup>91</sup> Mrs Edward (Janet) Millett, *An Australian Parsonage on the Settler and the Savage in Western Australia*, Edward Stanford, London, 1872, p77, republished online by University of North Dakota Scholarly Commons

<sup>92</sup> Hallam, p42

<sup>93</sup> Bill Gammage, *The Biggest Estate on Earth*, Allen & Unwin, Sydney, 2012

<sup>94</sup> Gammage, p131. Open access reference: H Ling Roth, "On the Origin of Agriculture" in *The Journal of the Anthropological Institute of Great Britain and Ireland*, Royal Anthropological Institute of Great Britain and Ireland, Vol 16, 1887, p109, republished online by US Archive. The right to take possession of that wild fruit was not unlike the Roman law *res nullius*. See more from Ling Roth below.

<sup>95</sup> Gammage, p141. Gammage's reference: Eyre, *Journals of Expeditions of Discovery*, vol 2, 297 & 298-300. A fuller quote, encompassing this passage, appears above *sans* page numbers, which are regularly omitted from open-access facsimiles of nineteenth century publications.

### missionary and naturalist James Backhouse

[In] the Swan River, as well as King George's Sound, the Natives have their private property, clearly distinguished into hunting-grounds, the boundaries of which are definite, trees often recognised by them as landmarks ... [P]ossession rests in the head of a family.<sup>97</sup>

### medical doctor and artist Isaac Scott Nind

Those families who have locations on the sea coast quit it during the winter for the interior and the natives of the interior, in like manner, pay visits to the coast during the fishing season. Excepting at these times, those natives who live together have the exclusive right of fishing or hunting upon the neighbouring grounds, which are, in fact, divided into individual properties, the quantity of land owned by each individual divided being very considerable. Yet it is not so exclusively his, but others of his family have certain rights over it; so that it may be considered as partly belonging to the tribe. Thus all of them have a right to break down grass trees, kill bandicoots, lizards, and other animals, and dig up roots; but the presence of the owner of the ground is considered necessary when they fire the country for game.<sup>98</sup>

### commandant of the King George Sound penal settlement, Captain Collet Barker

Females never possess ground ... If a man dies without leaving sons, or males of his family, his next neighbours have his ground. Certain parts are often portioned out to sons as soon as they are born, but they do not enjoy possession until they are grown up & able to use it.<sup>99</sup>

### "A resident" of Darwin, as quoted by colonial administrator Thomas Anstey Parkhouse

The land is subdivided among the several families, with territorial rights, and the ownership is a real one ... [On] the Lammerru Beach ... is the camp of the family in whom that part is vested. A half-mile distant is the main camp of the Larrakia ...<sup>100</sup>

My collaborator pointed out that Gammage does not delve into the deeper significance of these commentaries. Perhaps the reason is that Gammage's main focus was to demonstrate the range and complexity of Aboriginal relationships with the land and their management of it.

## other relevant research

In his 1965 paper, "Aboriginal Territorial Organization: Estate, Range, Domain and Regime", Bill Stanner came perilously close to acknowledging that individual ownership was a part of the mix of customary title. Like Gideon Lang before him, Stanner asserted that there was a regular cycle whereby members of local groups (i.e. kin groups) "clustered" and "dispersed" within their own estates or range in both good times and bad.<sup>101</sup> When kin groups typically consisting of 30 to 50 members split into smaller groups and dispersed, the smaller groups were likely to have consisted mainly of *single families* with a male head. In fact, Stanner told us that "The journals of early observers refer to many encounters with small, often very small, parties in all seasons and environments. Meetings with single families, even with solitary individuals, evidently were common." What he did not say was whether those small parties regularly dispersed to places to which they had an ancestral connection and possibly regarded as their own,<sup>102</sup> or in Gideon Lang's words, "each family hunts on its own ground".<sup>103</sup>

<sup>96</sup> Gammage, p236. Open access reference: Robert W Thomas, *Descriptive Account of the Panoramic View of King George Sound and the Adjacent Country*, J Cross, London, 1834, pp7-8, republished online by Wikisource

<sup>97</sup> Gammage, P236. Full reference: Backhouse, *A Narrative of a Visit to the Australian Colonies*, Hamilton, Adams & Co, New York, 1843, 20 December 1838, p532. The relevant passage is unavailable, omitted from the Internet Archive online version.

<sup>98</sup> Gammage, pp236-37. Open access reference: Isaac Scott Nind, *Description of the Natives of King George Sound*, 14 February 1831, republished online by Trove

<sup>99</sup> Gammage, p237. Gammage's reference: 13 January 1831, Mulvaney & Green (eds), *Commandant of Solitude: Journals of Captain Collet Barker 1828-1831*, pp382-83 & p260 & p295

<sup>100</sup> Gammage, p275. Open access reference: T A Parkhouse, *Native Tribes of Port Darwin and its Neighbourhood*, Australasian Society for the Advancement of Science, Brisbane, 1895, pp638-39, republished online by Trove

<sup>101</sup> W E H Stanner, "Aboriginal Territorial Organization: Estate, Range, Domain and Regime", *Oceania*, Vol 36, No 1, September 1965, p5, republished online by University of Utah

<sup>102</sup> Stanner, 1965, p16

<sup>103</sup> Gideon Lang, p13

In 2004 researcher Jessie Mitchell drew attention to the distress that the Aboriginal people experienced when they were removed from their ancestral lands and relocated to distant missions in “greater” NSW:

[C]hief protector George Augustus Robinson recalled an Aboriginal man declaring land ownership: “when Tung.bor.roong spoke of Borembeep and the other localities of his own nativity, he always added ‘that’s my country belonging to me!! That’s my country belonging to me!!’”<sup>[15]</sup> Meanwhile, protector James Dredge described Taungurong attachment to land as material, historical, and personal:

Within these boundaries of their *own country*, as they proudly speak, they feel a degree of security and pleasure which they can find nowhere else – here their forefathers lived and roamed and hunted, and here also their ashes rest. And this is the scene of their fondest and earliest recollections...with every nook they are familiar, they know just where their favourite roots are most abundant, the haunts of the Kangaroo, Emu and Opossum – in short, it is their home. <sup>[16]</sup>

Missionaries and protectors recognised that these land claims had been ignored and violated. Again, their humanitarian backgrounds were influential here, but so were Aboriginal complaints. Robinson was angry that squatters claimed their licenses entitled them to violently expel Aborigines. In 1841, when he asked an Aboriginal family he met on the Glenelg river where they came from, “they beat the ground and vociferated, Deen! deen! (here! here!), and then, in a dejected tone, bewailed the loss of their country”.<sup>[17]</sup> Protectors stressed the moral injustice and material poverty of dispossession. In 1839, James Dredge noted the cruelty of “the original lords of the soil” being reduced to abject poverty, while Europeans profited from the land. <sup>[18]</sup> ... Edward Stone Parker claimed Aboriginal people were being “beaten back by the ‘white man’s foot’...excluded, perforce, from lands which they unquestionably regard as their own...classified with and treated as wild dogs”.<sup>[19]</sup> He found it difficult to answer “their repeated complaints of the loss of their country”. <sup>[20]</sup> Meanwhile, throughout the 1840s, Aborigines protested to Thomas about dispossession, saying “no good white man, take away country, no good bush, all white man sit down”, “Big one hungry Black fellow by & by – no Kangaroo – White man take away Black fellows’ Country”.<sup>[21]</sup> **REFERENCE!!!!**

The exclamation “That’s my country belonging to me!!” seems quite definitively to be an assertion of individual ownership. As James Dredge intimated the country in question was their birthplace, the source of their earliest memories, the medium through which they were connected to their ancestors, a familiar and safe place.

These are Mitchell’s short references:

<sup>[15]</sup> George Augustus Robinson, *Journals: Port Phillip Aboriginal Protectorate*, vol. 2, 1 October 1840 – 31 August 1841, Ian D. Clark (ed.), Melbourne, Heritage Matters, 1998, p. 318; William Thomas to G.A. Robinson, 9 July 1840, WTP, MF323, Reel 4; William Thomas to G. A. Robinson, “Journal of the Proceedings during the months of June, July & August 1841”, Aboriginal Affairs Records (AAR), VPRS4467, Reel 2, Victorian Public Records Office; William Thomas, undated excerpt fiche 91-92, WTP, MF323, Reel 5.

<sup>[16]</sup> James Dredge, 6 June 1842, James Dredge Diaries, Notebooks and Letterbook, ?1817-1845 (JDD), MS11625, State Library of Victoria .

<sup>[17]</sup> G. A. Robinson to C. J. La Trobe, 12 December 1839, in Michael Cannon (ed.), *Historical Records of Victoria: Aborigines and Protectors, 1838-1839*, vol. 2B, Melbourne, Victorian Government Printing Office, 1983, p. 413; George Augustus Robinson, “A Report of an Expedition to the Aboriginal Tribes of the Western Interior during the months of March, April, May, June, July and August 1841”, in Ian D. Clark (ed.), *The Papers of George Augustus Robinson, Chief Protector, Port Phillip Aboriginal Protectorate*, vol. 4, Clarendon, Heritage Matters, 2001, p. 23.

<sup>[18]</sup> James Dredge to Jabez Bunting, 20 April 1839, WMMS, Box 1.

<sup>[19]</sup> Edward Stone Parker to G. A. Robinson, 1 April 1840, in Michael Cannon (ed.), *Historical Records of Victoria*, vol. 2B, p. 413.

<sup>[20]</sup> Edward Stone Parker to G.A. Robinson, 1 December 1843, AAR, VPRS4467, Reel 3.

<sup>[21]</sup> William Thomas, 17 April 1840 and 17 September 1841, WTP, MF323, Reel 2.

In *Dark Emu*, Bruce Pascoe provides us with an indirect and frustratingly unreferenced quote from one of G A Robinson’s journals. Pascoe states:

Robinson, when entering the Mumbullah Valley near Pambula, New South Wales, was informed by a local elder, Yow.e.ge. that all land thereabouts was his farm. The Yuin man was aware of the word that Europeans used for their food-production sites, and this comment indicates he was trying to impress on Robinson that his people were also cultivators.<sup>104</sup>

Here is the relevant passage in full:

Sunday 25 August 1844

<sup>104</sup> Bruce Pascoe, *Dark Emu*, Magabala Books, Broome, 2018, p21.

Exceedingly fine. Mr Boyd on board 'Wanderer' last night, not returned Mr Campbells Mr Orr. Weather dull. Engaged with Natives — Biggah.<sup>105</sup> One Biggah asked me if I had seen his country, 'good place budgery<sup>106</sup> place by and by you see', another said his country was a cubboin.<sup>107</sup> Monday entered head of Biggah [River] called Mumbuller or Mumbeller, belonging to Yow.e.ge, says it is his farm.

Was Yow.e.ge trying to impress on Robinson that he was a farmer *or that he owned the land*? Pascoe's conclusion might be more plausible if Aboriginal people had wanted to be thought of as farmers, but there seems to be little or no evidence that that was ever the case.

In 2017 a collection of memorable comments-in-brief penned by various colonial figures was published by La Trobe University researchers David Frankel and Janine Major.<sup>108</sup> These comments cover a wide range of traditional Aboriginal customs and material culture. Some of them — namely, those of Curr, Brough Smyth and Howitt — touch on individual property rights and have been addressed above.

Another resource that I came across recently is Adele Millard's 2018 *Annotated Bibliography: Customary marine tenure in southern Australia* published online by the National Library in conjunction with the ANU's Centre for Native Title Anthropology.<sup>109</sup> The title was promising but there was little hint in the summaries that the topic of individual ownership is illuminated to any degree.

## conclusion

Customary property rights, like many other aspects of traditional society and culture appear to have been more diverse and nuanced than most of us have assumed. In my lifetime the assumption that land was owned communally seems to have been universally accepted without examination. I accepted this assumption myself until I stumbled across a gathering number of credible, contemporaneous claims to the contrary made by scholars and other astute observers. The weight of evidence of nineteenth-century accounts at the very least establishes that there was at least a school of thought which maintained that there were two main layers of ownership of both tribal land and assets found on that land across Australia. According to this school of thought, those layers included a layer of hereditary ownership by individuals (or individual families) of sub-divisions of land, infrastructure and other associated assets within kinship estates.

The extent to which individual ownership of land and assets might be generalised around Australia remains unclear; as do the typical sizes of sub-divisions, the degree to which individual title was subordinated to kinship-based title, and the extent to which hereditary individual title might be traceable down through the generations to the present day. What is perhaps most mystifying, though, is why a perception commonly held and freely discussed throughout the nineteenth century has slipped out of our collective consciousness. While physical connection with the land has been disrupted in many places by the impact of colonialism, relevant historical records have remained easily accessible. The fact alone that so many nineteenth scholars were so certain that there was a form of private ownership of land and associated assets around Australia surely demands further research.

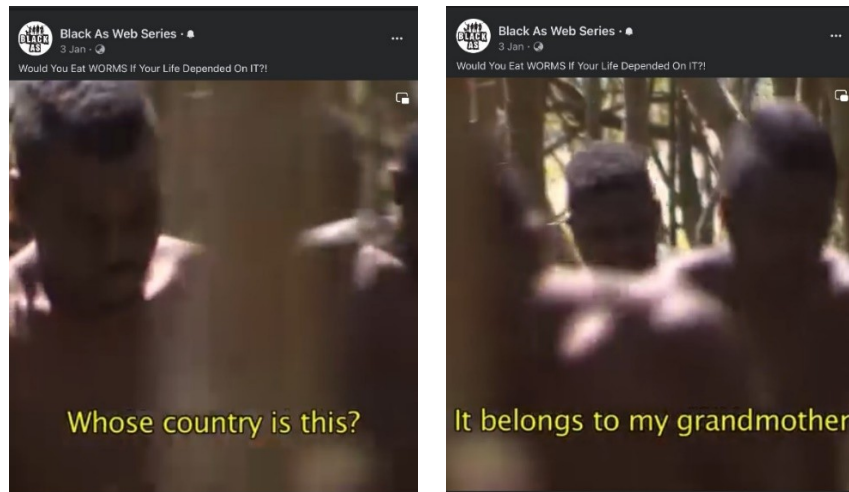
<sup>105</sup> According to the Bega Pioneers Museum, the origin of the name Bega is not definitive but is probably based on the Aboriginal word "Biggah", which is thought to mean "big camping ground" or "beautiful".

<sup>106</sup> According to *Greens Dictionary of Slang*, "budgery" in Australian pidgin is a general exclamation of approval or pleasure.

<sup>107</sup> meaning unknown

<sup>108</sup> David Frankel and Janine Major (eds), *Victorian Aboriginal Life and Customs through Early European Eyes*, La Trobe University, Melbourne, 2017, entries: 164, 167 & 168, pp76-77, published online by La Trobe University

<sup>109</sup> Adele Millard, *Annotated Bibliography: Customary marine tenure in southern Australia*, Centre for Native Title Anthropology, ANU, Canberra, 2018, published online by National Library of Australia



## appendix

### statements from various sources assembled by Malinowski relating to the nature of traditional land ownership<sup>110</sup>

[p136]

*Statements.*—The Kurnai were divided into five exogamous "clans." [359]<sup>111</sup> These were divided and subdivided several times, "each subdivision having its own tract of hunting and food ground, until the unit was a small group of kindred, frequently an old man, his sons, married or unmarried, with their respective wives and children." The author [Howitt] gives an instance of a family claiming a certain island and the swans' eggs laid on it, as its property, [360] and living under the authority of the oldest male in the family. "Taking such a family [361] as the tribal unit of the Kurnai, it was the aggregation of such families that formed what may be called a division, inhabiting a large area, and the aggregate of the divisions formed the clan." [362] This, and the expression family as "tribal unit," shows that probably its members lived actually together. It is a pity that Howitt does not give even approximately the numbers. Again, in another place, he writes of a "natural spread of families over a tract of country, "and of "elders as heads of families." [363] These "families" unite in cases of mutual need for aid and protection [364] and in cases of corroborees, initiations, etc. [365]—Here the local group was a small unit of related persons. It claimed a certain territory and exclusively used its products, and vested authority in its oldest male. These local groups usually must have lived isolated from each other, because of the exclusive right in using the given area. Howitt mentions also the beginnings of individual claims to some products (swan's eggs) being even transmitted by inheritance. [366]

The statements of Howitt concerning the Murring tribes are not quite clear. "Claims to a particular tract of country arose in certain of these tribes by birth." [367] He does not say if these claims consisted in actual right to live, roam and hunt over the said tract of country. It is probable, however, that just this is the meaning, as he speaks immediately afterwards of an hereditary principle as to the grounds determining the habitation where one lives—a father pointing out the bounds of his child's country—"where his father lived, or himself was

[p137]

born and had lived." [368] If we can assume that each "family" (= local group) had its hunting-grounds so designated this would point to a far-going subdivision of country and consequently of the tribe; we can hardly infer anything conclusive from this statement alone. But it appears clearer in the light of the following remark: "The local group has in all cases been perpetuated in the same place from father to son by occupation, I may almost say by inheritance, of the hunting-grounds." [369] It seems, therefore, that generally in the tribes studied by Howitt, the local group (he calls it the "family," speaking of the Kurnai) was a very well-defined unit. And that, in the tribes in question the people who inherit a certain territory from father to son are just members of the local group. Its rights to the hunting-grounds were based on some—perhaps magic or religious—ideas of heredity.

An analogous state of things is reported to have obtained among the Wurunjerri (Victoria): "The right to hunt and to procure food in any particular tract of the country belonged to the group of people born there, and could not be infringed by others without permission." [370] In the territory of the same tribe there was a stone-quarry, the material of which was very valuable to the natives. The quarry was the

<sup>110</sup> Malinowsky, pp136-149

<sup>111</sup> See original document to access Malinowsk's end-notes.

property of a group of people living on the spot; the head of this group had special rights in connection with it. "It was Billi-billeri, the head of the family, whose country included the quarry, who lived on it, and took care of it for the whole of the Wurunjerri community." [371] This statement appears to me very important, as it shows how rights of possession might belong to a local group and centre in the headman of this group. This statement suffices to reconcile the apparent contradiction between individual claims to a country and group claims.

The local groups amongst the Bangerang, who lived at the junction of the Murray and Goulburn Rivers, seem to have been more numerous, owing, perhaps, to the easiness of food supply on the banks of two fishy rivers. [372] The tribe was divided in two exogamous moieties, [373] and the land "was parcelled out between these two sub-tribes." [374] Each respectively lived in a body, although moving sometimes from place to place. **Curr** speaks of their head-quarters in places abounding with fish. [375] One of the sections numbered about 150, the other somewhat

[p138]

less. These two "sub-tribes" or moieties constituted, therefore, rather numerous local groups. The "sub-tribes" of the kindred tribes mentioned by **Curr** seem also to have been numerous, [376] and to have lived each in a body, [377] so that they would be, according to our terminology, numerous local groups. **Curr** speaks also of individual property in land, but this seems to have had only a purely fictitious meaning, having nothing to do with any real right. [378] Private property in other things (e. g. fishing weirs, etc.) was known. [379]

**Curr** uses the term *tribe* in place of our *local group*. In his general work on Australia he gives a definition of tribe which quite agrees with what we called local group. [380] "By the word tribe I mean a number of men closely allied by blood, and living in the strictest alliance, offensive and defensive, who, with their wives and children, occupy, practically in common, and in exclusion of others, a tract of country...." Everybody must respect the customs of his tribe; and as no one may live apart from the tribal community, "there is no alternative between compliance with tribal custom and death." [381] "Although the lands of a tribe are *nominally* parcelled out amongst its members, it is the fact that they are used in common, and for several reasons must have always been used so." First, because for mutual protection the tribesmen must have often associated. Secondly, because of the economic conditions the tribe often was compelled to feed on a given spot. [382]

**Angas**, describing his travels in the Murray River district, tells that he met several times with native encampments; from the passage in question [383] we may infer that they were small groups. He says [384] that on the seaside (Encounter Bay), on the lakes, and on the Murray banks, where means of subsistence were fairly easy, the local groups were numerous. But this information is very loose.

Amongst the tribes of the Lower Murray River "particular districts having a radius of from ten to twenty miles, or in other cases varying according to local circumstances, are considered generally as being the property and hunting-grounds [139] of the tribes who frequent them." [385] **Eyre** speaks of a further

[p139]

division of land amongst single individuals; it is handed down hereditarily in the male line. "A man can dispose of or barter his land to others." [386] At any rate, all members of a "tribe" (= local group) may roam over the common territory. It seems, nevertheless, to be rather a formal than actual, exclusive right. [387] The local groups may not trespass on their respective territories without permission. [388] The whole local group congregates only "if there is any particular variety more abundant than another, or procurable only in certain localities. Should this not be the case, then they are probably scattered over their district in detached groups, or separate families." [389] Here we are well informed on our principal points: the local group is the exclusive joint landowner; the individual has some claims which are not quite clearly defined, but surely do not mean exclusive economic *usum fructum* [use fruit]. They live scattered in small parties over their area. There is another passage in **Eyre**'s book that confirms this latter point. He says that each family is independent and governed by the father; but that, "as a matter of policy, he always informs his fellows where he is going." So that "although a tribe may be dispersed all over their own district in single groups ... yet if you meet with any one family, they can at once tell you where you will find any other.... In cases of sudden danger or emergency, the scattered groups are rapidly warned or collected" by messenger or smoke signals. [390]

**Mitchell**'s expedition, when exploring the interior of South-East Australia, met a party of blacks on the banks of the Murray, whom they had seen before on the Darling a few hundred miles distant. [391] This would apparently contradict the assumption of fixed boundaries. But the general evidence shows that, in exceptional cases, and with the leave of the neighbouring tribes—especially if these were friendly—a local group or any party of natives were allowed to travel even considerable distances for purposes of warfare, barter or ceremonial gatherings.

Amongst the Aborigines of Encounter Bay and Lower Murray River (the Narrinyeri) the local groups (**H. E. A. Meyer** calls them "tribes," [392] or "large families" of connected people) seem to be numerous (the country abounds with fish and birds). These local groups have their head-quarters, from which their name is derived. But only in cases of great

[p140]

abundance of food does the local group live and move together. Usually single families roam in parties; the sick and aged remain in the head-quarters, and suffer often from want of food. Not only in search of food, but for the sake of performing corroborees, initiations, etc., and visiting each other, do these local groups roam about the country. [393]

From a passage in **Taplin** [394] we may infer that the local group of the Narrinyeri near Lake Alexandrina numbered about 200 natives. [395] The local groups of this tribe were, besides, exogamous, totemic, and had a regular form of government. We have not even a hint as to their mode of living; but if plentiful food supply was the chief condition of larger aggregations, then these latter would naturally have developed better in the lake country.

Among the natives of Yorke's Peninsula there are local divisions; each with a certain totem and with headmen. [396] This seems analogous to the conditions among the Narrinyeri and Central tribes; but the information is not detailed enough to be considered quite reliable.



The Port Lincoln tribes seem to roam about in small parties of several families. [397] This statement is not sufficiently clear; probably a number of such parties constituted a local group.

We read, again, about the Port Lincoln tribes: "Each family has its distinct place, where they live together." [398] The uncertainty as to the sense in which the word *family* is used here makes this statement nearly useless. The same author says in another place: "It has been remarked that the population and general condition of the natives of Australia greatly depend on the nature of the locality they occupy; where the country is sterile and unproductive the natives are found to congregate in small numbers. In fertile districts they are comparatively numerous." [399] This opinion is in agreement with the fact that the population round Lake Alexandrina, where food supply was plentiful, was extremely dense. [400]

An author who has made his observations on the blacks of the Murrumbidgee River (New South Wales) and Moreton Bay (Queensland) writes: Each "tribe" (= local group) occupies a definite tract of country; a trespass of its boundaries by a stranger is punished with death. [401] This common

[p141]

district is subdivided among families of the local group. "During seasons when all the members of the tribe are not congregated together, each family hunts on its own grounds." The author quotes, also, instances where trees were marked and belonged to individuals. [402] This statement answers both our questions as to land ownership and modes of living; in both respects the "family" is the unit: it owns its area and it lives on and uses it normally in isolation from the others; proprietorship means here exclusive use. But we must bear in mind that what is called here family may as well be a small local group of closely related people, like those among the Kurnai. At any rate it certainly means that the blacks live in very small groups, perhaps in individual families, and that this scattered mode of living rests on a territorial basis. (In general the authority of **G. S. Lang** cannot be said to be of the best.)

We read in the travels of **Gerstaecker** that natives carefully keep to the boundaries of their own district. So that a traveller, to be quite safe, should always change his guide when entering upon a new territory. [403]

We read about the tribes of New South Wales in general: "Though they are constantly wandering about, yet they usually confine themselves to a radius of fifty or sixty miles from the place they consider their residence. If they venture beyond this, which they sometimes do with a party of whites, they always betray the greatest fear of falling in with some Myall or stranger blacks, who they say would put them to death immediately." [404] We find here again the local group owning its territory and having head-quarters; as well as the sacrosanctity of boundaries.

**Turnbull** remarks about the New South Wales tribes that the best food supply, and consequently the largest gatherings, were possible on the sea-shore and on the banks of fishy rivers. [405]

An example of family proprietorship in land is mentioned by **Collins**. [406] From it, it appears that this sort of proprietorship meant rather some mystic claim than any exclusive right of economic character.

We are informed that among the natives of New South Wales there is a great number of small tribes, each containing from forty to fifty individuals. "Each tribe has a certain beat, or hunting-ground, frequently of not more than twenty miles in

[p142]

diameter, from which they never move, unless on certain occasions when they visit the territory of a neighbouring tribe for the purpose of a fight, or a ceremony. Sometimes, the tribe will wander about in parties of five or ten; at other times all the members will encamp together." [407] In substituting the word *local group* for *tribe*, we get here again a fairly good statement.

In the statements of **Fraser** we find again the local group; he calls it "sub-tribe." It derives its name from a certain locality, owns a tract of country, which is guarded jealously against any infringement from any of the neighbouring sub-tribes. [408] This statement is illustrated by an example, and therefore appears rather trustworthy. [409]

"Each tribe is divided into independent families, which acknowledge no chief, and which inhabit in common a district within certain limits, generally not exceeding above ten or twelve miles on any side." The tribes number from 100 to 300. [410] "The families belonging to a tribe meet together upon occasions of festivals at certain seasons, and also to consult upon all important occasions." [411] The first phrase is not clear: we are not told whether what he calls the tribe owns its area in common, or whether the divisions called "independent families" possess each its own district. From the context, however, we see that we must assume the latter. Three hundred people occupy in Australia usually more than a hundred square miles.

**Hodgkinson**, speaking of the tribes between Port Macquarie and Moreton Bay, says that the tribes (local groups) keep each within very narrow limits. The district of each of them measures about 150 square miles; usually some ten to twelve miles of a river bank and the adjoining hinterland. "The whole body of a tribe is never united on the same spot, unless on some important occasion. They are more generally divided into small parties of eight or ten men, with their women and children, for the greater convenience of hunting, etc., and these detached companies roam over any part of the country within the prescribed limits of the main tribe to which they belong." [412] This statement agrees with the general type of information.

Of the Coombangree tribe, New South Wales, it is said: "Each tribe kept its own belt of country and separated into

[p143]

small camps, and only collected on special occasions." [413] In this statement the words "local group" should be substituted for "tribe."

The Dieri, divided into five local hordes, are still subdivided into smaller "local groups, each having a definite tract of hunting and food ground." [414] These local groups cannot be very numerous. The whole tribe numbers about 250. There are at least ten local groups, since they include about twenty persons each. But we do not know whether such a local group lived in a body or scattered over its territory. [415]

We owe one of our best statements as to the nature of the local group to **Spencer and Gillen**. Its totemic character, its organization with the *alatunja* at its head, the different functions of magico-religious character and many other social functions and characteristics



define it perfectly well. [416] The territorial division seems to be much the same in all the tribes studied by Messrs. **Spencer and Gillen**. "In all the tribes there is a division into local groups, which occupy certain well-defined areas within the tribal territory." [417] The possession of land is vested in them. "There is no such thing as one man being regarded as the owner of any tract of country. In every case the unit of division is the local totemic group." [418] This statement is quite clear. The local group owns a certain area, and all the individuals have the right to hunt and roam over it. They do not do it in one body, they live scattered in much smaller parties of one or two families. "The members of this (local group) wander, perhaps in small parties of one or two families, often, for example, two or more brothers with their wives and children, over the land which they own, camping at favourite spots, where the presence of water-holes, with their accompaniment of vegetable and animal food, enables them to supply their wants." [419] Here the picture is perfectly clear: the territorial unit is the local group; within its grounds all members have the right to hunt and roam; no other people may trespass over the boundaries. Such trespasses do not in reality frequently happen. [420] The area is not only economically the property of the local group, there are much stronger ties between the land, once the hunting and ceremonial ground of the Alcheringa ancestors, and their actual

[p144]

descendants. [421] But the local group does not form one body; division into single families seems to be, under ordinary circumstances, the normal status. We get here a good insight into the inner structure of a local group, the chief feature of which is the isolation of families. The local group acts as a body chiefly on ceremonial occasions. To sum up: the local group is the joint land-owner; proprietorship means exclusive rights to hunt and roam over the country; but in the native's mind it has much deeper roots, and the connection between the local group and its hunting-grounds is based upon all their traditions and creeds. Their mode of living is scattered; they hang usually round favourite spots (see below).

Speaking of the totemic myths of the Northern tribes **Mr. Mathews** says: "In those olden days, as at present, the totemic ancestors consisted of families or groups of families, who had their recognized grounds in some part of the tribal territory." [422]

Among the natives of Queensland [423] the territory is parcelled out completely amongst the different local groups; the boundaries are well known and mutually respected. This district is again subdivided amongst the members of the local group; the proprietor "has the exclusive right to direct when it should be hunted over, and the grass burned and the wild animals destroyed." If other men aggregate and use the products of his land he is regarded as the master of ceremonies. This statement gives us at least a clear and consistent definition of private proprietorship, which seems to be of a formal, ceremonial character. But it is not complete. We do not know if normally each family enjoys its district alone, with the head of the family always master of ceremonies, or whether the whole local group, or parts of it, hunt and roam usually in bodies. This statement is, therefore, not very useful.

We read about the Kabi and Wakka tribes of Queensland: "A few families claiming the same territory usually camped and travelled together, sometimes in smaller, sometimes in larger numbers. I characterize such family groups as communities." [424] And again: "Such communities were constituted

[145]

by a few families occupying the same small area in common." [425] This is a clear definition of what we called local group, and agrees perfectly well with the general picture already outlined.

**E. Palmer** says that the game and other products of a certain country belonged to the tribe (= local group) there residing; the boundaries were respected and trespassers punished by death. [426]

In North-West Central Queensland the "tribe" (our local group) has its head-quarters. [427] This group has also an over-right over its territory, "over which the community as a whole has the right to hunt and roam." [428] There is still a further subdivision; each family possesses hunting-grounds of its own, and no other has the right to any product thereof without the family's permission. In the case of tribesmen, transgression is a trifle; in that of strangers, a very serious offence. [429] The statements of **Roth** do not, however, say anything about their mode of living. The mention of "head-quarters" points to a subdivision of land amongst families and to a scattered mode of living. In all probability we may assume here the following form: the local group as joint owner of its land; and single families having special rights to certain parts of it, and camping as a rule separately or in small groups, and aggregating in cases of emergency at the head-quarters. This is the only statement which attributes to families and individuals respectively a virtually exclusive right over a certain ground. We read in another place of the mode or rather the principle according to which individual proprietorship is determined in the North Queensland tribes: "The child's own country, its 'home' where it will in the future have the right to hunt and roam, is determined not by the place of actual birth, but by the locality where his *choi* had been held apart." *Choi* is the spirit part of the child's father, embodied in the father's afterbirth. The place of this *choi* is carefully determined after the child's birth, according to a customary ceremonial. [430] The extent of a local group is determined in the following statement: "there were from twelve to twenty heads of families constituting the group, each with its particular division, who together made the tribe." [431] Here again the land seems to be allotted to the local group, though, according to the foregoing passages, there was a further subdivision according to families.

[p146]

As an instance showing that there were sometimes territorial changes and shifting of tribes may be quoted the statement of **G. W. Earl**, who says that a big tribe came from the interior and established itself at the base of Coburg Peninsula. [432] How far this statement is reliable it is difficult to say. Anyhow it is in opposition to the numerous and reliable statements which affirm that tribal boundaries were strictly kept and never changed.

The natives of Melville Island seem to have lived in more numerous groups. **Major Campbell** says that their "tribes" number from thirty to fifty persons each. On visiting an encampment he found about thirty wigwams, which would point to about fifty persons at least. "They lead a wandering life, though I think each tribe confines itself to a limited district." [433]

A clear statement concerning the scattered mode of life is given of the North-Western aborigines by **J. G. Withnell**, who lived amongst them for twenty years. "The natives generally live in families at various intervals of a few miles down the course of each river and its creeks." [434] "In fact they are small families constantly moving camp a few miles in any direction they please." [435] In another place we read: "The natives are divided into many tribes, having their boundaries defined." These tribes are obviously our local group. The

members thereof live scattered in small parties, called by **Withnell** "families." Very interesting is **Withnell's** information concerning totemic local centres quite analogous [436] to those described by Messrs. **Spencer and Gillen**. It is important in our present discussion because it throws light upon the problem of the connection between an individual or a family and a certain tract of country. From **Withnell's** information [437] it results that among the North-Western tribes there were also totemic centres, allotted each to a "family" (local group or part thereof?) at which ceremonies for the multiplication of the totem were performed. The claim to such centres is hereditary.

We read in **Grey** about the tribes of West Australia. "They appear to live in tribes (= local groups), subject, perhaps, to some individual authority; and each tribe has a sort of capital, or head-quarters, where the women and children remain whilst the men, divided into small parties, hunt and shoot in different directions. The largest number we saw together amounted nearly to 200, women and children

[p147]

included." [438] This directly asserts that the local group lived in one body; for of course the men were bound to return always to the head-quarters. Now if we had to assume that the local group numbered about 200 individuals we could hardly allow the possibility of obtaining food. Especially as in another place Grey says: "Landed property does not belong to a tribe, or to several families, but to a single male; and the limits of his property are so accurately defined that every native knows those of his own land, and can point out the various objects which mark his boundaries." This land is divided by the father amongst his several sons. But Grey does not define what proprietorship means. These two statements are quite inconsistent with each other; if every man of a big local group had to go to hunt on his own grounds (and we know that the food area for an Australian family is not small) they would have to spend their life in making journeys between their hunting-grounds and head-quarters. We must either suppose that Grey's tribes were quite small local groups which lived each on its own territory, and that when he speaks of from 100 to 200 persons assembled he refers only to exceptional meetings, or that the individual ownership of land had no real economic meaning, and that the natives actually lived in these tribes in more numerous bodies (perhaps the coastal tribes at least). This statement is, therefore, not very useful.

**Bishop Salvado** asserts a subdivision of land among single families (although he calls "family" a small party of related natives, see p. 257) acquired by right of birth. [439] Neighbouring families, small local groups, may enjoy their land in common. [440] Such small parties are quite independent, and governed by the oldest male. [441] They lead, as we may infer from that, normally a solitary, isolated existence. This statement of **Bishop Salvado** is also in agreement with the generality of our evidence. His "family" is evidently a small local group. (It reminds us of a similar unit amongst the Kurnai, also interrelated, owning a portion of land, governed by the oldest male). He says such small groups have been often incorrectly called tribes by other authors.

**Mrs. Bates** says the South-West Australians were divided into tribes or families; "these tribes appear to have been aggregated into geographical groups ... each occupied a definite tract of country." [442] But in another place she says that "each (family) occupied a definite tract of country" with well-marked

[p148]

boundaries. [443] This statement is marred by the lack of precision in using words like tribes, families, etc. The only thing that can be made out of it is that there was some local unit owning a definite tract of country. The right of ownership is defined by the right of hunting. A man is allowed to hunt merely his own district. But he has access to his wife's district too. [444]

In King George Sound each "tribe" (= local group) owns a certain district; this is further subdivided among individual families; each of these portions being hereditary in a certain family, which is proud of the extensiveness of its grounds. But all the members of the local group may roam and hunt over the whole territory. "Under normal conditions and in its own district the tribe (= local group) is divided into small parties or families; each party forming a camp of six or eight wurleys." [445] Only on special and important occasions does the local group aggregate. Strangers are not admitted to the territory. We see here, again, the actual proprietor of the land is the local group; families have some merely formal (or magical) claim to portions of it. The local group roams in parties, which are nevertheless not so very small. In from six to eight huts there may live from three to four families (we must count besides the married couples also the old people and grown-up children).

**Scott-Nind** says about the natives of King George Sound, "An encampment rarely consists of more than seven or eight huts; for, except the fishing and burning seasons, at which times large parties assemble together, their numbers are generally small, and two or three huts suffice. The number of individuals, however, seldom exceeds fifty." [446] "These encampments generally consist of near relatives, and deserve the name of families rather than of tribes." [447] Natives who live together have the exclusive right of fishing or hunting upon the neighbouring grounds, which are, in fact, divided into individual properties; the quantity of land owned by each individual being very considerable. Yet it is not exclusively his, but others of his family have certain rights over it; so that it may be considered as partly belonging to the tribe. The individual owner must be present on his grounds when the members of his group fire the country for game. [448] We have here again the local group as real and exclusive land-owner, the individual having only mere formal rights over the land. **Scott-Nind** describes with details how in connection

[p149]

with and dependence on plentiful food supply, the natives gather in larger numbers at appropriate seasons. [449] He says in several places that the parties in which the natives live and roam about number only a few individuals.