

Banyjima native title - The Descent of rights

1. Palmer worked extensively amongst the people at the 'Yandearra' [sic] community in the 1970s when undertaking doctoral research (Paragraph 242, 263, footnote 131, Paragraph 656; see Palmer 1981). Referring to his work at Yandearra, Palmer (Paragraph 242) comments: 'Based on my work in the region I am of the view that these comments and understandings would apply, generally, to the Banyjima culture.'
2. Continuing to the present, the Banyjima people participate in initiation ceremonies at Yandeyarra, involving shared Laws and customs. As for the Banyjima, at Yandeyarra Palmer notes, 'Rights to country are potential and must be realised through ritual induction, during which time the novice learns of the religious mysteries which relate to the inherited estate (Palmer 1983:172)'.¹
3. Palmer (1983:173) states:

In ritual, land-owners can demonstrate their spiritual relationship with land through the purveyance or revelation of esoteric songs or objects which are symbolic of their relationship with their country. Such relationship would involve obligations to 'look after' the country and ensure that miners or prospectors and other intruders did not destroy or alter the countryside. Being absent from the country and living in a European Australian town with no 'traditional' interests is taken by Yandearra people as signifying loss of interest.
4. It is suggested in this report that the above system survives amongst the Fortescue Banyjima.
5. In Paragraph 525 Palmer (2010) refers to fundamental rights 'to the Juna Downs area'. Palmer notes that Slim Parker was of the view that such people 'had to have a command of relevant ritual objects and traditions'. Eric Carey also confirmed that 'the exercise of fundamental rights to country should be underpinned by ritual qualifications' (Paragraph 525). Palmer also cites Brian Tucker's reference to 'ritual esoteric items which signify country', knowledge of which comes through 'ritual induction' that equips a man to "speak for" country (Paragraph 526). The late Johnny Parker likened the right to 'a ticket' (Paragraph 527). Based on cited interviews, Palmer (Paragraph 530) concludes that ritual instruction, and it follows, rights to country, is 'more likely to come from a man's father or father's father than from matrikin'.
6. Distinguishing 'use rights' from 'fundamental rights', Palmer (Paragraph 564) states that the latter 'are realised through the acquisition of relevant ritual knowledge' and that 'fundamental rights take precedence in their exercise over use rights'. In Palmer's view, (Paragraph 569) 'use rights ... relate to

¹ Interestingly, Palmer (2010) does not refer to this article in his report.

economic exploitation or use of that country that does not effect the spiritual integrity of the country either physically or spiritually' while 'fundamental rights' are 'more focussed on ancestral country [and] ritual action related to it'.

7. Writing of the Kimberley region, Kolig (1980s:42) differentiated 'ownership rights' from 'usufruct rights'. According to Palmer (Paragraph 567), Kolig was of the view that 'patrifiates were those who held absolute rights in the religious property of the clan estate'. Others including Kim Barber (1997) also discuss 'primary' rights to country. In conclusion, Palmer (Paragraph 571) cites Radcliffe-Brown's work in the Pilbara region that members of the land owning group 'may have traced descent from common ancestors in the male line'. Writing principally of the Kariera people, Radcliffe-Brown states:

Membership of the horde is determined by descent in the male line; that is to say, a child belongs to the horde of its father and inherits hunting rights over the territory of the horde. The horde is exogamous and since marriage is apparently always patrilocal a woman changes her horde on marriage, passing from that of her father to that of her husband. (Radcliffe-Brown 1930-1: 208 cited in Palmer, Paragraph 198)

8. Almost twenty-six years earlier, Clement (1904, 6-7) also described patrilineal descent of rights (Paragraph 197). However, possibly reflecting his description of a combined native title claim group, Barber (1997:62-3) takes a much more inclusive view of rights to land in the central Pilbara.² Barber (1997:62-3) states:
9. Previous research in the area in question has focussed on a narrow set of rights to land relating to site issues. These rights equate to those who have primary spiritual responsibility over areas of land. The ideology of land ownership in the region is linked to this approach. There are, however, others in addition to those with primary spiritual responsibility who have ownership interests in the Project Area through the kinship system. The two structures are, therefore, (a) a ritual and religious framework which defines a narrow set of rights to land based on a spiritual responsibility and (b) the kinship network and system which allocates and formalises responsibility and authority for land (and things of social and material value) through the kin matrix. Yandicoogina, and Marandoo before it, have highlighted the existence and interaction of these two elements of land ownership.

² 'On 20th November 1996 a Memorandum of Understanding was signed by Hamersley Iron Pty Ltd (HI) and representatives of Gumala Aboriginal Corporation (Gumala). Gumala represents the interests of the Bandjima, Nyiabali and Inawongga peoples in the Project Area. The Memorandum preceded a formal agreement between Gumala and Hamersley for the benefits to come from the development. That formal agreement was signed in March 1997.

At the time of the formation of Gumala a Native title claim was lodged by signatories who are members of the Gumala Aboriginal Corporation. The area of the claim comprised the area of the Yandicoogina Project and a large area of surrounding land' (Barber 1997:13-14).

10. In *The Gurama Story* (Brehaut and Vitenbergs 2001:20), the Gurama elder, Peter Stevens, is quoted as saying:

When they get into that tribe, say if a Yinawangka's married to a Panyjima man, well that family's got to be all the time Panyjima. Panyjima daughter go back to the Yinawangka. That's how they go, you can't change that, can't get tangled up with each other.

11. O'Connor (1991:15) notes:

Criteria for membership of the estate group and, by extension, for inheritance of land varied across Australia. In the [Central Pilbara] region of the survey, if we analyse the historical record and contemporary Aboriginal usage, patrilineality appears to have been the major criterion, although matrilineality and place of birth also gave secondary rights of membership.

12. Palmer (Paragraph 467-469) acknowledges that 'a small group of IB claimants' insist on the exclusivity of matrilineal descent. Indeed, in a front-page story of the newspaper, *Pilbara News* (September 2, 2009) under the heading, 'Native title claims clash over burial', a IB claimant emphasises that Banyjima, 'follow the culture of your mother...'. The same claimant earlier stated:

We Milyuranpa Banjyma also follow the mothers line - even for the land - this has been structured long time ago - anyone can be the father we get our skin group grandmother/granddaughter - me banaga as my grandmother, my mother burrungu like her grandmother - heaven knows if we followed the father - where the bloody hell everyone would end up - Lots of white people have been coming in and telling us -fathers line etc. You follow the man through the bush line but not for land line, paternal line is followed by white people, we follow the maternal line - if uncle David [Stock] followed his fathers line he would be Banjyma [sic].³

13. Of course, the correspondent has a point, that 'anyone can be the father' and this has been the case since humans walked on two legs. However, as I will discuss in the following paragraphs, Banyjima society generally acknowledges that the step-father or the male spouse 'who reared up' the child is accepted as the father. Similarly, claimants told Palmer (Paragraph 464) 'that a child adopted into a family was accorded the same rights with respect to country as a biological child'.

14. After presenting well-supported evidence of patrilineal descent of rights in Banyjima society (Paragraphs 205, 528, 530, 571), Palmer (Paragraph 496) speculates that it is possible that a preference

³ Email from IB claimant, May Byrne, to the author on 14/12/2006.

for patrilineal descent may have become lessened as a result of miscegenation or demographic change. Palmer then uses the historical evidence of descent of rights to support a supposed movement towards a cognative system as a legitimate extension of a customary system (Paragraph 206).

15. Similarly, Palmer (Paragraph 499) describes a change from defined estates to ‘coalesced estates’ as ‘radicular, since the contemporary way of defining country is developed from and based upon the customary system’ and therefore not a break with the past. The former analysis of continuity may be justified; however, within the Fortescue Banyjima there is evidence that the patrilineal descent of rights has continued through apical ancestors Pirripuri and Wirrilimarra, and that male descendants continue to be keepers of ‘fundamental rights’ and esoteric ritual knowledge.
16. Palmer (Paragraph 463) gives examples where Banyjima claimants said they could ‘follow’ either their father or mother with respect to country. However, Palmer (Paragraph 465) continues: ‘[A]s I will show in the next chapter (see Paragraphs 528-530 below), there is a preference on the part of at least some claimants for asserting rights in the country of FF or MF. Presumably, if Palmer is to be consistent with the evidence for ‘fundamental rights’ that are associated with men’s ritual knowledge, ‘following’ the mother is referring to secondary rights.
17. Apparently, Palmer’s discussion of primary rights passed from father to son throughout his report is to develop an argument in support of the ‘radicular’ legitimacy of a contemporary cognative descent system, as a continuation of a previously recognised customary system of patrilineal descent of rights (see Paragraph 528-530). In Paragraph 205, Palmer states:
18. My expert view is then not to discount the former importance of patrilineal systems, but to favour a shift away from patri-filiative principles and a greater acceptance of cognation built upon existing processes and certainly maintained adherence to the principle of descent
19. While a cognative system of descent of rights may be justified in native title claims, in the following paragraphs, with reference to the Banyjima genealogies, I will suggest that the recorded system of patrilineal descent of ‘fundamental’ or ‘primary’ rights as described by Palmer (above) and others like Clement (1904), Radcliffe-Browne (1930-1) and Kolig (1980) remains the basis of rights within the Fortescue Banyjima group, while being less clear in the Milyarumpa Banyjima group.
20. Palmer suggests that cognative descent of rights may have gained more acceptance ‘where patrilineal systems were broken by miscegenation or other demographic upheavals’ (Palmer 2007:49, cited in Paragraph 206). However, ‘miscegenation’ does not seem to have weakened the patriline. For example, the

biological father of Herbert Parker was a white station owner, Ronald Parker (Day 2004), while the biological father of Horace Parker was said to have been a Chinese cook on Mulga Downs (O'Connor 1991:26-27). Gregory Tucker's white father is an unknown station worker on Winning Pool Station (Olive 1997:90-91). The respected Gurama elder, the late Peter Stevens had an English father (*pers com*).⁴ However, in each case, the male line is kept by following the male spouse of the mother. Miscegenation therefore is not viewed as an interruption of patrilineal descent, even in the case of children who were removed from their mothers at an early age. An example of a removed child who later returned is Ronald Mills, the son of a Banyjima man, Wobby Parker, and an Indjibandi woman, Egypt, of Mulga Downs. Horace and Herbert Parker are accepted as having inherited their rights from their common grandfather, Pirripuri. In each case, 'miscegenation' does not appear to have changed the traditional practice of patrilineal descent because the fundamental rights have been passed from father to son within a Banyjima system of customary law. Likewise, the descendants of Wobby Parker, who was a brother of Horace, Herbert and Ginger, are following the male Banyjima line.

21. In contrast to the patrilineal lines of the Fortescue Banyjima group, the late Nellie Jones and the late Herbert James have Gurama fathers or step-fathers and Banyjima mothers, as do Alice Smith and her sister, Annie [Black] @ Kardily. Alice is also the daughter of a non-Aboriginal man, but 'follows' her Aboriginal parents. In keeping with their patriline, Nellie Jones identified as Gurama in Noel Olive's biographies (Olive 1997:30-31) and her brother Herbert James identified as 'Kurrama/Punjima' (Olive 1997:26).⁵ In the example of Alice Smith, the father of her children was a Gurama *marban* man who had inherited rights to Gurama country, as described in a segment of *The Gurama Story*, 'Alice Smith talks about her husband, a traditional healer' (Brehaut and Vitenbergs 2001:99-100). Alice Smith's brothers, Jirriwin @ Gerry Wing or Gerry Wednesday and Bodaderry @ Nugget have Gurama names, while elsewhere Jirriwin is recorded as a Gurama man.⁶

22. In 1980, Palmer (1980:13) documented Jerry Wing's ancestry:

Jerry Wing is approximately 70 years old, and now lives at Peedamulla Station. His mother's mother and

⁴ The eulogy to Peter Stevens, 14/01/2006 states: 'He was born on Hamersley station behind the homestead in about 1927. His marlpa father was one of six sons of the famous Gurama leader, Windawarri. He was reared up at Hamersley until he was about eight years old, then went to Rocklea - all the time walking or riding packhorses all around Gurama country with his father Alec, his cousin Waggin, his brother Mirru George and old aunties Naji, Jiti, and Jinki. In his book, he said, 'them three's the one reared me up; they shared me all the time, them mob.'

⁵ Herbert James states: 'my step-father was Johnny. My father was Wakin... Kathleen Johnny, Nellie Johnny, Eileen Parker [Park] are my three sisters and Mirru George my brother, the younger one is gone. This country [Wakathuni] was my father's country and the hill on the horizon [Mt Tom Price] was my father's' (Olive 1997:26).

⁶ Alice Smith (2003) tells how her brother was born at 'Date Palm Spring ... They call him Jeruwiny - that's the name of that place. It's the Aboriginal name, but whitefella made it short: Jerry. My second brother was Babadarri - Baba, and Nugget was his whitefella name. And then the first sister: Kardily was her Aboriginal name, whitefella name Annie.'

Mother's father were both Bandjima from Weeli Wolli and Mindi springs respectively, and his second mother's father and his mother were Bandjima from Hamersley Station. His father's father was from lower Turee Creek (Inawunga), his mother's father was Gurama from Rocklea Station, and his father was Gurama from an area to the west of Paraburdoo. .⁷

23. Alice Smith (2003:211), adds that her mother was married to a Gurama man, George Pintangarti, whose second wife was a Banyjima woman, Dinah @ Bumbah (p. 27).

24. In *Under a Bilari Tree I Born*, Alice Smith (2003) discusses her family history:

My grandmother, Kujinbangu, she had two sons and one daughter with her first husband. He was a Banyjima man from Mount Bruce...⁸ My grandmother was the first one who crossed into Kurrama country, when she had all her little ones. She had her second husband there, Bindimayi, a Kurrama man,⁹ and my mother was born in Hamersley station. My nana died in Hamersley Station; she buried there.

My mother was a full-blood Aborigine; Banyjima mother, Kurrama father.¹⁰ Her name was Yalluwarrayi, that's her Aboriginal name, Yallu for short. Yalluwarrayi is the name of the windmill where she born. Maggie is her whitefella name... (Smith 2002:211).

25. The above examples reveal a predominantly Gurama male descent line, which in the example of Alice Smith is continued through her spouse, Gurama *marban* man, Jack Smith. Although secondary rights would obviously be passed through the Banyjima mothers of these families, the passing on of esoteric knowledge for Banyjima country from father to son or even through MF need be would follow a confused pathway. Evidence seemingly confirming a Banyjima maternal line is the listing of the woman, 'Gawi', the MMM of Alice Smith, as an apical ancestor for the Top End Banyjima group (Palmer 2010: Paragraph 726).

26. Furthermore, Police and Native Affairs records reveal that in the 1940s at least, 'the Rocklea mob' attended Law meetings at Turee Creek. A letter from Constable J C Maller dated June 2, 1941, states:

⁷ Palmer reveals a complicated web. Jerry's mother, Maggie Yalluwarra (1899-1959), had children from Gurama men, George Pintangati and Johnny. His mother's mother Kudjipangu (TE Banyjima) was married to Gurama elder, Bindimai (1871-1931) and Idinggananha, mother of Kunyanbina (TE Banyjima).

⁸ Alice Smith (2002:211) claims that Mount Bruce Station was called Birdibirdi, or Dignam, and 'they changed the name to Karijini.' Wobby Parker says: The ranger's station is at Dignam's Well, a part of the station, the place that Dignam's homestead was moved to ... the top side of the Hamersley Ranges we call that Karijini.' (Olive 1997:46)

⁹ Bindimai is said to have died in 1931 at the Ashburton River meeting camp.

¹⁰ Tindale (1953) also noted that Maggie was Banyjima.

‘Mr Walter Smith assured me that all the other natives were camped somewhere on the Turee creek about 100 miles or more from Rocklea.’ Maller added that Alice was ‘in the Pinkeye camp with the rest’.¹¹ This appears to be the same ceremony camp attended by the Aboriginal people involved in a ‘big corroboree’ at Turee Station in July 1941. The names listed below (many from Rocklea station): are mentioned in witness statements concerning an alleged poisoning at Turee Creek.¹²

1. Tumbler [Ngarlawonga, Turee]
2. Cuboo [Ngarlawonga, Turee]
3. Tommy [Innawonga]
4. Cookie [Innawonga]
5. ‘Jerrawing’ [Jerry Wing]
6. Nugget ‘Bobadarry’ [brother of Alice]
7. Mummy [Innawonga, wife of Nugget]
8. Little Billy [Brumby Billy, Nhunawonga]
9. William ‘Jooalong’ [Innawonga, brother of Mummy]
10. Wingbuddy
11. Reuben [Banyjima]
12. Alex [Gurama]
13. ‘Old Bobby’
14. Jack [Smith], [Gurama]
15. Charcoal [Prairie Downs]

27. A ‘Pinkeye camp’ is held for initiations, where ‘esoteric knowledge’ through ritual is passed to a succeeding generation. The source of this knowledge amongst ‘the Rocklea mob’ appears to be through a Gurama male line.

28. In his earlier analysis of the descent of rights, Palmer (1983:175) wrote:

Aborigines at Yandearra differentiate between effective and ineffective land-owners. Effective land-owners are those with inherited rights in an estate which rights are realised through ritual induction, and are exercised. An ineffective land-owner, on the other hand, either has not realised his *de facto* control over the estate, or does not exercise his rights in practice.

29. Again the importance of inherited rights through ‘ritual induction’ is emphasised, as it is amongst Fortescue Banyjima. Furthermore, Palmer emphasises the importance of sacred paraphernalia for land-owners. Palmer (1983:176) notes: ‘Physical possession of [esoteric ritual] objects is of critical importance to land-owners. To have such paraphernalia at hand is to demonstrate land-owning status to other land-owners, for the artefacts are the witness of a man’s rights to country.’

¹¹ J C Maller, Constable 1506, to Commissioner, Dept Native Welfare, Perth, June 2, 1941

¹² Police report, Accession AN5/3 Acc430, Item File 4697/1941

30. At Yandearra, according to Palmer (1983:177), ‘Primary rights are inherited, either through matri-kin or patri-kin’; however, ‘Rights must be realised through ritual induction and by a land-owner being showing himself to be active in religious matters relevant to his country’. Primary rights are therefore conditional and may be passed on through a male on the mother’s side, presumably MB. Palmer adds, ‘[At Yandearra] Secondary rights are not inherited but exist by virtue of the spiritual conception site (p.177).’
31. Fortescue Banyjima leaders maintain they it is they who have inherited the primary rights to land by continuing the customs of ritual induction and instruction that is passed through the male line.
32. In Paragraph 195 Palmer claims that Dench described the two Banyjima dialects as, ‘Pantikura (plateau, that is the southern areas) and Mijaranypa (lower areas, that is the northern areas; Dench 1991, 126)’. Confusing the high and low areas is easily done from the plateau looking to the ranges, but it is obvious that Dench understood the Mijaranypa dialect to be the ‘Top End’. In his chapter of *The Handbook of Australian Languages, Volume 1* (pp.124-243), Dench includes a following sentence which Palmer conveniently does not quote (p.126): ‘The Pantikura dialect was spoken on the higher plateaus of the Hamersley range, while the Mijaranypa dialect was spoken in lower areas. *The data on which this description is based was collected from people who identify with the Pantikura dialect*’ (my emphasis). Dench’s acknowledgements make clear who were his ‘Pantikura’ informants. Below is the section from Dench (1991) in full:

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My association with the Panyjima community extends over ten years and I count myself very lucky in having had the support of people of Onslow throughout that time. In particular, I thank the Parker family for the encouragement and friendship. The late Herbert Parker effectively sponsored my research from the beginning by introducing me to the best speakers of the language and keeping a close eye on my education. He was very quick to put down any illusions I might have had that I could understand the language without immersing myself in the everyday life of the community, and I thank him for that.

But my greatest debt is to the late Percy Tucker who devoted six months of the last year of his life to this project. I believe that he was well aware of his terminal condition some time before I met him and knew that the time we had to work on the language was limited. I hope that this description does justice to his memory. (Dench 1991:243)