

COMMONWEALTH OF AUSTRALIA

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Imagining Ownership

*Working disparate knowledge
traditions together*

HELEN VERRAN

A front page report in *The Australian* newspaper of 10 August 1994, began:

Cape York pastoralists and Aborigines have jointly called for state and federal governments to legislate . . . a form of statutory co-existence of title on pastoral leases . . . A marathon seven-hour meeting in the Queensland town of Coen last week . . . sought to address the uncertainty and financial difficulties flowing to Cape York pastoralists from the Wik people's claim to a large area of Cape York, including 12 pastoral leases.

Uncertainties? As things stand, the Wik people's claim to a large part of Cape York has every chance of being recognised. In June 1992 the full bench of the High Court of Australia delivered a significant ruling relating to land ownership in Australia. It ruled that the land of Australia and the surrounding islands had been owned by indigenous peoples before 1770 when British officials claimed the land for the British Crown. This means that most land not specifically claimed in the past under Freehold Title becomes eligible for claims by indigenous communities under Native Title.

And it is not only land title that the 1992 Native Title ruling recognises. Aboriginal systems of knowledge are recognised too, in a new way—institutionally. Recognising Native Title amounts to recognising the existence, and the rationality, of knowledge systems of indigenous Australians. Some non-Aboriginal Australians now have strong reasons to find ways to work western knowledge traditions together with the very different knowledge systems of indigenous Australians, because, frankly, if they don't they are likely to suffer 'uncertainty and financial difficulties'.

But there are some tricky questions arising at the negotiating table at Coen, North Queensland. In particular, I see questions such as 'who knows?', and the related question 'who or what has agency?' Is it only people who can 'know' land and can therefore act? Or can we conceive of the 'land' itself as having agency?

In the earlier years of this century, in the eyes of westerners, the Aborigines of Cape York were definitely not part of the knowing world. The Wik people were part of the undifferentiated black 'other' in the eyes of the grandfathers and grandmothers of those pastoralists who now have no choice but to sit around the table negotiating ways of knowing the land they both claim. Being 'of the natural', Aborigines could be known *about*. They could be studied by anthropologists. But more importantly, they could be shot and poisoned, or led away in chains from their land and imprisoned

elsewhere—to be civilised, to become part of the social.

Many Westerners might like to think that, near the end of the twentieth century, this has all changed and they may perhaps even point to the Native Title Bill as attesting institutional recognition of Aboriginal Australians as knowers. But, in practice, Aboriginal knowledge systems are often understood as being, at best, a partial knowledge. Aboriginal knowers are treated ambiguously as both knowers and known, simultaneously of both the social and the natural.

Related to the problem of 'who knows' is the problem of agency: 'Who or what acts?' Perhaps the ways in which the White negotiators at Coen are coming up against quite different notions of 'who or what can act' is not yet sufficiently apparent or understood. Westerners need to know something of the content of Aboriginal ways of knowing to appreciate this. To demonstrate how this issue comes to life at the Coen negotiating table, I'll tell a little of the proceedings of a land-rights case which was an important precursor to the 1992 ruling on Native Title.

Some twenty five-years ago, Milpirrum and others, Yolngu men who are all now dead, made a High Court challenge over the Federal Government plan to develop a huge bauxite mine and build a large mining town on land they understood was owned by themselves and other members of their clans. The judgment, which went against the Yolngu people, with whom I am intimately involved, was handed down by Justice Blackburn in 1970.

In the judge's view, the claimants did establish the existence of a subtle and powerful knowledge system, recognisable as a system of law. Through this, particular clans were linked via identifiable sites, both to sections of land and to each other. However, '[it] did not provide for any proprietary interest in the clans in any part of the areas claimed'. Rather, 'it seems easier on the evidence, to say that the clan belongs to the land than that the land belongs to the clan'.

The judge was correct in identifying that quite different notions of agency are involved in Aboriginal knowledge systems—the Yolngu understand the land itself as being able to act. But whether he was correct in thus concluding that the clans had no proprietary interest is quite another matter. What did the judge consider the evidence for the land not being property of the clans? The crux of it was the limited rights of exclusion that clans had: 'The clan's right to exclude others is not apparent . . . the greatest extent to which this right can be said to exist is in the realm of ritual. But it was never suggested that ritual rules ever excluded members of other clans completely from clan territory; the exclusion was only from sites.'

Justice Blackburn's ruling is now all but irrelevant; however, the problem of agency he identified remains, paralysing many attempts to work western and Aboriginal knowledge traditions together. I suggest

that an important clue to how westerners might solve this problem is embedded in Justice Blackburn's reification of exclusion as the defining characteristic of ownership of land.

Looking at the negotiations which began with the August meeting in Coen helps us to see that problems of working disparate knowledges together, and over 'who knows' and 'who or what acts', are actually expressions of something else: the absence, in westerners' accounts of knowledge and knowledge-making, of what I am calling the *epistemic imaginary*. Westerners need to bring the *imaginary* inherent in the sciences back into view, in order to get on more easily with the business of working knowledges together and working other agents into our stories as we make and remake worlds.

Going back to the negotiations at Coen. Despite the optimism of the newspaper reporter, others involved report that the negotiations are not going well. The pastoralists seem unable to grasp what is being negotiated. For a start, they are having trouble with imagining Aborigines as knowers—they hope (in vain) that they are negotiating over whether Wik people can come onto their land to collect water lily bulbs or shoot a few kangaroos. They see Aborigines as 'really' part of nature.

Even further beyond the pastoralists' understanding are the implications for their own practices. How could pastoralists construe their corporations as being responsible to the places where their cattle roam, pulverising the soil with their hard cutting hooves? How could they think of their pastoral companies as being owned by the land? Like Justice Blackburn, the pastoralists are having trouble with agency.

The pastoralists don't know where to begin in institutionally recognising another system of knowing land (and thus owning land) than their own. They are suffering from an advanced case of hardening of the categories.

For their part, the Wik people are troubled to see that the pastoralists, having initiated the negotiations, don't seem to know how to go about them. As the Wik see it, they 'own' the land in the strongest possible sense, and they confidently expect the High Court to ratify this ownership. Their clans, distributed across the area, came into being with the land itself. The land was made meaningful as it was peopled, in a network of interconnected places. Through these places, the land owns them as they own the land. Owning the land is owning (and publicly articulating) the stories through which the land is meaningful as places interconnected with each other. And it is in the stories that the multiple and complex metaphors which comprise the stuff of negotiating in Aboriginal Australia exist.

In contrast to the pastoralists, on the Wik side it is likely that there are far too many who have ideas about how to negotiate. On the basis of my experience with the Yolngu people facing similar sorts of

questions, I expect that a whole range of metaphors is being worked up in discussion. These metaphors will provide the possibilities for imagining new categories, and for reworking old categories in new ways. Just which vision might eventually prevail as the Wik people's position is, at this stage, probably far from clear. As with any negotiations in Aboriginal Australia, these possibilities are likely to be tied up with the on-going struggle for cognitive authority, waged through pitting metaphor against metaphor.

Aboriginal Australian peoples understand themselves as having a vast repertoire by which the world can be re-imagined. In English this usually goes under the title of 'the dreaming'. I think a more helpful name for this conceptual resource is the *epistemic imaginary* of Aboriginal knowledge systems—story and picture as knowledge. Simply, if the land does not have 'a story' or 'a picture', then it does not live; it cannot be owned or own. It is this epistemic imaginary, celebrated, venerated and providing possibilities for a rich intellectual life amongst all participants in Aboriginal community life, which enables the eternal struggle to reconcile the many local knowledges which constitute Aboriginal knowledge systems.

The Wik know how to negotiate over fundamentals. They have the epistemic resources for devising a radical form of land title acknowledging *disparate ways* of knowing (and thus owning) land.

The pastoralists, on the other hand, are having trouble. They know there are no metaphors or images involved in the public knowing of the land which underlies ownership, not in their sense of 'owning'. Behind ownership as they understand it, there are just the rigid facts of quantifying the land. Various individuals can imagine, and use all sorts of metaphors in the ways they represent the land—it may well be beautiful and meaningful to them—but that is the domain of art and emotion and these have no place in negotiations over ownership. Enmeshed in their rigid facts, the pastoralists have no basis for imagining a *joint title*. Pastoralists of course see themselves, their lives and their families as belonging to the land; they are country people. But this 'belonging' for them can only be a turn of phrase. They might admit to strong feelings underlying their conviction that they are the 'real' owners of the land, but the love and the fear which motivate their loud protestations at land rights for Aboriginal Australians has absolutely no place in western land title—a cold, distant factual document, with its map of the land as mythical empty space, and legal words.

How might the pastoralists solve their paralysis? My suggestion is that there is a great deal they can learn from Aboriginal Australians, who understand that the making of new knowledge is a highly local affair. They see that true knowledge embeds a local balance which is achieved in negotiation over particular issues at particular places.

If I was asked to translate these insights for the pastoralists, I would

say that they need to understand that in negotiating over the possibilities of a joint title, they are involved in a process of knowledge-making which, necessarily involves an intimate enmeshment of both logic and the imagined. But coming to this understanding is likely to be difficult for the pastoralists. First, they find it difficult to see these negotiations as knowledge-making, and not just dirty politics. Second, they have always lived in a world where true knowledge has no imaginary. 'Modernity' circumscribes its imaginary as of aesthetic and emotional interest, but not an epistemic interest.

Seeing these negotiations as knowledge-making is tied up too with understandings of who or what acts; notions of agency. There seems to be too much agency involved here for westerners to understand this as knowledge-making. Each side has the capacity to interrogate the other. Westerners see true knowledge arising only out of one-sided interrogations; for them only one side can have agency in knowledge-making. Nature can only be known about.

As part of helping pastoralists to see these negotiations as knowledge-making, and in helping them come to terms with too much agency, I would focus first on the absent imaginary in western epistemological traditions.

On this issue, I would argue that asserting that our western imaginary has no epistemic role is a denial dependent on the privilege granted to the sciences, the model of true knowledge for westerners, with respect to all other knowledges. The pastoralists' grandmothers and grandfathers had no need of an epistemic imaginary to deal with the Aborigines. Only when westerners can see through the universalist pretensions of the sciences, and recognise the violence that lies behind these pretensions, can we admit our need for an epistemic imaginary—or else we'll never be able to get anywhere in working sciences together with other knowledges. Doing without an epistemic imaginary, denying the pictures and stories inherent in our knowledge system, is a luxury which can no longer be justified, if indeed it ever could be.

Where might the pastoralists turn to try to understand why they find themselves there at the negotiating table with so few resources? They need a picture of the ways in which the things they take for granted have been made. They need a story of the construction of the basic categories through which land is known by westerners in a public sense. Where do westerners turn if they need to get a fix on the basic categories of western life in order to understand themselves and their ways as other than just a universal given? How can westerners develop an imaginary that is also epistemic? Just as Justice Blackburn saw exclusion as the defining property of land ownership, the exclusion of the imaginary is, after all, the defining property of reason, as Kant first suggested some two hundred years ago. Reason then, was

a sufficient way of knowing the world for the men who conquered it. But times have changed. For the Cape York pastoralists now, reason must justify and imagine *inclusion* not *exclusion*.

To better understand the particular puzzles that confront the Cape York pastoralists, let us look more closely at the two systems of knowing and owning land that they and the Wik people are attempting to work into one title. I am imputing to the Wik people a system of knowing and owning land similar to that of the Yolngu people on the other side of the Gulf of Carpentaria, with whom I've worked a great deal.

We see that both systems have an identifiable logic through which land can be publically known and since known, owned. In each case these logics translate meaning invested in the land. But the forms of the meaningfulness, and explanations of its origins are quite different. It is the very different ways that western traditions and Aboriginal traditions take the land as meaningful that interests me here. This, it seems, is what the Cape York pastoralists and the Wik need to pay most attention to.

To begin with, the tradition with which westerners are familiar: westerners own land through the mediation of number. Number constitutes an ordering logic which 'translates' qualities taken to be in the land. Area and length, in an infinite extension of units (metres, hectares etc.), are the qualities conventionally used as the basis for quantifying land—publically knowing land, that is—and the basis for owning particular sections of land.

This explanation of our practices of quantification is thoroughly uncontroversial. But what about the origins and explanations of these practices? We are quite comfortable with recognising the pattern of tallying numbers on our fingers, but what is the origin of this inherent meaningfulness westerners find in land? They take it for granted that the landscape is somehow 'naturally' meaningful in that it contains qualities. Yet anyone who has tried to describe and explain qualities to small children will realise that they are rather mysterious things. We tend not to admit this, preferring to hide this mysterious making of the land as inherently meaningful.

Amongst members of Aboriginal communities, knowing land and making rational judgments and decisions about land are based on very different sorts of reasoning. In this conceptual system land exists primarily as sets of sites; there are inherent focii in the land connected in particular ways. Through this 'mesh' of places land is meaningful.

And the 'mesh' is connected in ways which echo the pattern of logic common to Aboriginal Australia. This is a logic strictly analogous to the number-based logic of the West, but one which takes its pattern not from the material pattern of tallying on fingers, but

from the material pattern of kinship relations. This ordering, modelled on kin relations, translates interconnected place—the inherent meaning of the land, in just the way that the pattern of number translates qualities, the meanings westerners take to be inherent in the land. But in contrast to the western stance, the mystery of the origins of these sets of sites, the focii of meaningfulness in the land, is celebrated in Aboriginal communities, through stories of the making of these focii; stories abounding with metaphor.

Imagination is as much valued as rigour is by westerners in the making of scientific knowing. However, in the telling of this knowing, there is a profound difference between westerners and Aborigines in the role ascribed to the imaginary. On the one hand denied; on the other celebrated.

Terra nullius was a way of saying that a land whose meaningfulness was not mediated by the logic of numbers was an empty land. We can recognise, surely, that to oppose the doctrine of *terra nullius* we must look not only to politicians and legislatures, and lawyers and courts. Westerners need to examine the very fabric of our lives. It is difficult to imagine our lives without numbers. The myth, the story of ‘empty space’ is woven into our lives in a myriad ways. We need a new story.

To be able to get on with their negotiations, the Cape York pastoralists may well need to recognise that *picturing* the land with its possibilities for emotional ladenness and material embeddedness is an inherent part of knowing it and owning it; and that western picturing is no more and no less rational than Aboriginal ways of picturing and thus knowing and owning the land. By restoring the stories, the pictures, to western theories of knowledge, westerners will rediscover the capacity to re-imagine themselves, and devise ways in which they can work with other communities—human and non-human.

Or, they can stay with their impoverished notion of reason, pretending that all that matters is coherence and rules and regulations.

As soon as the possibility, or necessity, however, of working disparate knowledges together is understood, the role of the denied epistemic imaginary comes into focus. How can westerners learn to celebrate rather than deny the epistemic imaginary involved in western knowledge and knowledge-making traditions?

For a start, recognising the epistemic imaginary brings with it the recognition that knowledge which is understood as representation is only a small component of knowledge, and that reasoning leads to far more than just representations. It leads to the performance of knowledge by a particular community. Performance of the pictures and metaphors is as important as performance of the rules and regulations.

If the western epistemic idiom can ever be expanded beyond mere representationalism, then this can lead to an expanded understanding of what a land title can be. Recognising story and picture as

knowledge—they are as inherent in reasoning as is following rules and regulations—can lead to an understanding of land titles as more than texts which neutrally represent both land (with a map) and testimony as to ownership (with legal words). We can begin to think of them as working in the performative mode. Storytelling, enacting.

Recognising titles in this way would involve at least two shifts. First, we would need to recognise the performative nature of the testimony element in titles. We have hidden the fact that the written components of land titles are no less and no more than testimony backed up by an elaborate set of ‘technologies’—social, material and literary—land surveys and grid making, titles offices, a whole vast enterprise which continually underpins the performance of testimony over land titles in western tradition. The second element is to recognise that maps themselves actually perform knowledge of the land. Land is not empty space and maps are not mere representations. Land is lumpy, bumpy, material place, and maps *perform* this place by encoding a complex set of conventions and standards that only hold because they continue to be performed as people make and use maps, and because a great deal of work is put into making them hold.

Titles which *perform* ownership can more easily be understood as working in both directions—mediating between the human and the non-human—compared to titles which are taken to *represent* ownership of empty space. When land titles are understood as performative it becomes easier to understand and to talk of ‘owners’ as being responsible to the land, implying therefore that they must learn to negotiate over practices with the land. We can then begin to explore the ways in which land owns its owners, and begin to work together disparate ways of owning.