Chapter Nine

Finding Bwudjut: Common Land, Private Profit, Divergent Objects

ELIZABETH POVINELLI

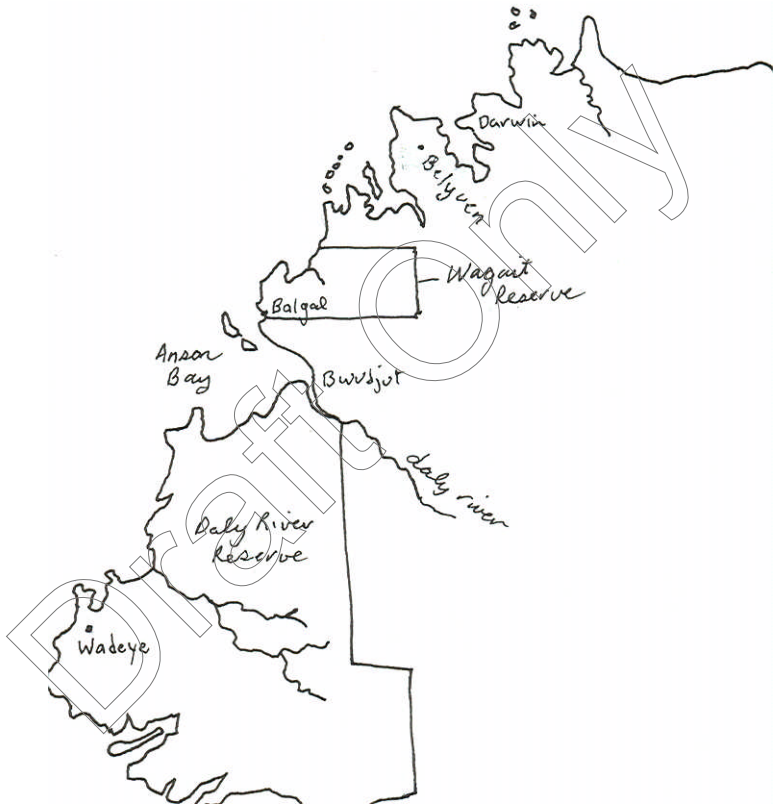
This essay examines the multiple modes of social and legal incommensurability that crisscross indigenous worlds today, including incommensurate local social beliefs and practices and incommensurate bureaucratic and legal institutions. The essay asks of what our social and legal analysis of indigenous land struggles might consist if we began with the actual social complexity that indigenous men and women inhabit. It concludes that, rather than disabling indigenous social life, recognising the field of incommensurability that compose indigenous life-worlds would support a fuller range of indigenous manoeuverability in contemporary fields of power.

1.

What if our social and legal analysis of indigenous land struggles began with the actual social complexity in which they occurred—with what looks initially like confusion, indeterminacy, lost traditions, confused knowledge, and the onslaught of foreign legal regimes and property relations?[1] What would happen, for example, to our analysis of a set of social struggles in one little corner of the northwest coast of the Northern Territory?

One day, during the dry season of 1993, I was driving to Balgal, a small indigenous community on the coast of Anson Bay near the mouth of the Daly River, with friends of mine from Belyuen. Balgal lies at the southwest corner of the Wagait Aboriginal Land Trust, a statutory body established under the auspices of the *Aboriginal Land Rights (Northern Territory) Act* 1976 (ALR). The Land Trust recognises Wadjigiyn and Kiyuk as the rightful owners of the coastal region that includes Balgal. Belyuen lies to the north of Balgal, on the Cox Peninsula, and was also designated Land Trust under the ALR. I have travelled the road to and from Balgal many times. It was on this occasion, however, that I first encountered a new ancillary road, stretching into the bush just as we were approaching the final leg of our journey. I asked my friends in

the truck where the road led. They said it led to a new farm. And sure enough, when we followed the road to its end, stretched out before us was a small fruit and vegetable farm. At the time, I was confused by this development. As Aboriginal Land Trust, the land we were on was held in common by all those indigenous people with traditional entitlements to it, including the people in my truck. And yet, when I asked these same people who was responsible for clearing such a large swatch of land and who profited by the produce being grown on it, they identified only one of the indigenous residents of Balgal ('bla that wulman'). They had not been asked about, and had not agreed to, this use of the land.



Soon after returning from this trip, I asked friends of mine at the Northern Land Council (NLC) if it were really the case that a single member of an indigenous group recognised by the relevant Land Trust could run by him or herself ecologically transformative business on the land and solely profit from it. They said 'no' to the question of whether a person could act on his or her own. But, they added that an Association could indeed develop the land for pecuniary profit.[2] The 'wulman' was actually the chairperson of an incorporated

Association with the requisite five members. I later found out that several Associations crisscrossed the Wadjigiyn section of the Wagait Aboriginal Land Trust. Each of these Associations claimed some sort of exclusive membership and each was engaged in plans that could potentially profit its members. This kind of property arrangement—the private exploitation of common land and the 'tragedy of the commons' it may well forebode—has legal precedent in Anglo-American property law and a vigorous scholarship in the international academy (Hardin 1968; Thompson 1976; Ostrom et al. 1999).

Another year, another day, I was again driving the road to Balgal, this time during the dry season of 2005. My friends from Belyuen and I had come in search of *moiyin nyini durlg* (sometimes referred to as the *devin nyini durlg*, dog dreaming). *Moiyin* is located near Balgal, at an area called Bwudjut that lies just south of a very exclusive non-indigenous resort, Channel Point Reserve (Ngadpuk) , itself just south of Balgal. Just a couple days before this trip, I had been on this same road with some of the same Belyuen people. We had come with an old anthropology colleague of mine, Frank, who worked at the Northern Land Council during the 1980s, but was now doing free-lance consultancy. His job in this instance was to do a site clearance for the Aboriginal Areas Protection Authority (AAPA). The Labor Party Northern Territory Government had decided to build public parkland at Bwudjut, in part to counter (some said, harass) the exclusive Channel Point Reserve, populated primarily by rich members of the Country Liberal Party (CLP) establishment. Bwudjut would now be home to a limited group of non-indigenous campers and recreational fishers. Channel Point was nestled between the Aboriginal Reserve to the north and the Labelle Station to the east and south. But the only access road to Bwudjut ran through the Labelle Station and the Wagait Reserve. The ALP government had won agreement from the Wagait Land Trust to build the access road through the Reserve, primarily by pitching the road as a road to Balgal. They had compulsorily acquired another part of the road from the current owner of the Labelle Station under the *Lands Acquisition Act 1978* and *Lands and Mining Tribunal Act 1989*. As we drove down, we marvelled at the splendid road the ALP government was building for these tourists. Gone was the gut wrenching rutted track. Here was what in the Territory is called a proper dirt road. Perhaps, not surprisingly, the good road led to the Park and not to Balgal. The Balgal road remained its usual rutted self.

Frank's job was to get traditional clearance for the road and that part of Bwudjut on which the park would be built to ensure that no sacred sites were disturbed. I accompanied him on the request of indigenous men and women from Belyuen. He was happy to have me along, both as an old friend and as an anthropologist who had worked in the area, submitting in 1990 a report to the AAPA listing among other sites, a dog dreaming at Bwudjut. Frank did not know this at the time, but in 2002 I had also served as the senior anthropologist

on a land claim that stretched across the two sides of the mouth of the Daly River. The land on the south side of the Daly River mouth is called Banagula; the land on the north side is Bwudjut. The land claim initially covered only a few rocks and riverbanks in the mouth of the Daly River, but the claimants asked the lawyer working for them to claim as much of the river area as was allowed under the strongest interpretation of the ALR.

Prior to that the claimants' lawyer and I had decided that the claim should be run on a conservative model of clan-estate, in part because this was one of the ways local indigenous people described the land and in part because the claim was to be heard by a Land Commissioner known to favour such conservative models. Banagula was said to be an estate of the Wadjigiyn language group (as well as the estate of one elderly Emiyenggal woman, even though Emiyenggal land is considered by most people to lie much further west of Banagula). The claimants for Banagula were said to be members of two patrilineally defined descent (clan) groups whose *durlg* (dreaming, totem) is located within the estate. Bwudjut was also said to be a Wadjigiyn language estate. And the claimants of Bwudjut were also members of a patrilineally defined descent (clan) group—the descendants of Bobby Lane and Andrew Henda. However, although the Bwudjut group knew what their patrilineal *durlg* was—dog, *moiyin*, some said *devin*—neither they nor anyone testifying on their behalf knew of any dog dreaming within the Bwudjut estate. Remember, I had listed a dog dreaming for Bwudjut in my 1990 AAPA report. But most of the informants for this report had passed away. The senior men and women testifying on behalf of the two claimant groups—the members of which, I should note, were on average quite young—did not know of any *moiyin durlg* at or near Bwudjut. As a result, while the Banagula group was recognised as traditional Aboriginal owners, the Bwudjut group was not. During the site clearance work in 2005, two senior women accompanying us repeated this position: Bwudjut was the estate (*rak*) of a specific patrilineal group who had a *moiyin durlg*, but they knew of no *moiyin nyini durlg—piyawa moiyin nyini durlg*, no dog dreaming there.

Frank and I parted ways. The next day, I was in Darwin at the Cullen Bay ferry, part of a family delegation on their way to the Royal Darwin Hospital to conference with doctors about the health status of one of a close Belyuen friend who had just had surgery for oral cancer. Her sister was with me. She spotted an Emiyenggal woman who had lived most of her early life at Balgal and approached her asking *themiya moiyindurlg kama?* (Where is the dog dreaming?) 'Bwudjut, really there, waterhole'. This location was confirmed at the hospital, when, before the meeting about her cancer, my sick friend took the time to berate me for 'giving up' on the *moiyin* at Bwudjut. I agreed to take the Emiyenggal woman we had met at the ferry, the same group of older women who had already made the trip, and as many of the Bwudjut family as possible back to Bwudjut so that we could 'properly finish this business.' Later

that same day as I was dropping off some people at a small indigenous community in Darwin, one of the Banagula group, who had travelled with us to Bwudjut, told me that Frank was himself driving back to Bwudjut. The same man who had cleared the land for the small fruit farm knew the whereabouts of the *moiyin durlg* and had agreed to show my colleague, Frank. The following day, as we looked at the moiyin site, the two older women, who had previously denied the presence of a *moiyin durlg* at Bwudjut, told me the story of the dog dreaming, a story I had heard in 1990.

These scenes could easily be read as a parody of the epistemological, bureaucratic and social confusion that characterises land rights, land usage, and land meaning in rural Australia today. When we begin with the thick sociological details of contemporary indigenous life, we often seem to encounter landscapes of indeterminacy, incommensurability, and incoherency. Multiple disordered and overlapping rights appear to collide—residential, genealogical, and ritual; legislative, judicial and capital. As a result, one impulse within the scholarly academy and the legal community has been: to separate social practices into their distinct modes of genesis, particularly to separate state practices from indigenous practices; to thematise social practices into distinct kinds, particularly to distinguish indigenous social life into traditional and historical components; and to create hierarchies among these separated and thematised indigenous practices, in particular to elevate models of sociocentric descent over other kinds of models of descent and to elevate tradition over history.

In this essay, I push against this reaction to complexity, incommensurability and indeterminacy. Rather than trying to rid our models of the complexity of indigenous social life and demanding that they either reflect our anxiety about complexity, incommensurability and indeterminacy or suffer the consequences, this essay advocates that we embrace these conditions and begin developing models that reflect them. To this end, I begin by elaborating the numerous state bureaucratic and legal regimes operating simultaneously in the Anson Bay region, the social relations they presuppose and entail and the numerous indigenous views about the composition of the region and the social relations on which they are grounded and towards which they aspire. The point is to reanimate social life by shattering the fantasy of simplicity and determinacy that grips many persons working within bureaucratic orders. And it is to interrogate what a truly anthropological response to complexity might be if we are truly interested in actual indigenous life, rather than merely in normative indigenous social rules.

2.

Let me start with just a few of the major types of legislative regimes that effect land usage in the above scenes. Before I do so, a few words of interpretive

caution. First, these regimes exist simultaneously even where they are not explicitly referred to or mobilised. They exist—and because they exist, they provide a potential path of manoeuvre. Second, these legislative regimes derive their meaning, often explicitly, from their surrounding legislative and discursive contexts without these surrounding contexts fully determining that meaning or its ultimate direction. Take, for instance, the *Aboriginal Sacred Sites Act*'s use of the phrase 'Aboriginal tradition'. 'Aboriginal tradition' is defined within the act by reference to the *Aboriginal Land Rights Act*. However, although cross-referencing another piece of legislation, the internal textual, bureaucratic, and procedural logics of the AAPA invest this phrase with a different power and scope than the same phrase within the ALR. An act might not explicitly cross-reference another act, and yet, in the practical implementation of one piece of legislation, another piece might weigh heavily on how people understand what they are doing. In the Northern Territory, for instance, the *Native Title Act* has been strongly coloured by the concept of the 'traditional Aboriginal owner' as defined in part by the ALR and in part by ongoing struggles between indigenous groups and within indigenous bureaucracies about its social referent.

Here then are just a few major bureaucratic entities and their legislative regimes affecting land usage in this small coastal region. These few legal regimes do not begin to saturate the density of property relations in the area which would also include, at the very least, forms of title such as freehold, leasehold, life estates, ground leases, and pastoral lease and rights regimes based on common law, international law, and statutory law. Through these various bureaucratic entities and the regulatory regimes pass numerous kinds of goods and services, including housing, land development, land management and protection, employment schemes such as the Community Development Employment Program (CDEP), and more recently, shared responsibility agreements.[3]

LAND TRUSTS were initially a legislative mechanism that the South Australian ment devised to grant powers over land to Aborigines (*Aboriginal Land Trusts Act 1966*, [SA]). *Land Trusts* for the Northern Territory were established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (after, ALR) to hold aboriginal title in fee simple for the 'benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land concerned'.[4] But while the Land Trusts have these functional responsibilities under the ALR, the relevant Land Council, in this case the Northern Land Council, was given ultimate authority over the land, including who was ultimately designated the 'traditional Aboriginal owners' rather than an 'entitled Aborigine'. Nevertheless, it is important to note that Land Trusts were not established to hold title for 'traditional Aboriginal owners' (a phrase also defined in the ALR around the trial concepts of the 'local descent group', of 'spiritual affiliation', and sacred sites). Nor, at the time that the ALR was

passed, had the concept of 'traditional Aboriginal owners' been elaborated by years of often bitterly adversarial land claim struggles.

LAND COUNCILS were also established under the auspices of the *Aboriginal Land Rights Act* 1976 (amended 1993). Their primary function has been to claim and manage land for 'traditional Aboriginal owners' and other indigenous people with traditional interests in lands in the Northern Territory. The phrase 'traditional Aboriginal owners' is defined in P. I s. 3 of the ALR as 'a local descent group of Aboriginals who: (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and (b) are entitled by Aboriginal tradition to forage as of right over that land'. In most cases, the traditional Aboriginal owners of an area are determined by a land claim. In these cases, a Land Commissioner must decide whether there exists, at the time of the hearing, 'traditional Aboriginal owners' for the land under claim or any part of it. If the claim is successful and the Commonwealth Minister makes a recommendation that a grant be given back to the traditional Aboriginal owners, a Land Trust is established for these owners and managed by the Land Council. However, two significant variations to this pattern need to be noted. First, once the relevant Minister grants the land, Land Councils have the power to define who the Aboriginal owners are, whether or not this definition is in accordance with the Land Commissioner's findings. Differences between the findings of a Land Commissioner and the Land Councils have led to court challenges, one of which, has pitted the Malakmalak, close affine of members of the Banagula group, against the Kamu.[5] Second, some Land Trusts were established under Schedule 1 of the ALR, outside the mechanism of a formal land claim. This, for instance, was the case for the Wagait Aboriginal Reserve. It was designated Aboriginal fee simple land at the passage of the ALR. The NLC has subsequently held an internal hearing to determine the interests and boundaries of various indigenous groups and countries. These determinations have also led to, often bitter, ongoing struggles among indigenous groups.

Distinct from the Land Councils, the ABORIGINAL AREAS PROTECTION AUTHORITY (AAPA) was established under the revised *Aboriginal Sacred Sites Act* (ASSA) in 1989 'to protect sacred sites and the traditional interests in sacred sites by Indigenous custodians by documenting and securely holding a record of the traditional information on which legal recognition of these interests depend and providing authoritative advice so these interests are incorporated in decisions about land use' (AAPA 2004:195). The AAPA acts as a mediator between potential land developers and indigenous custodians of the land. The notion of the 'custodian' is significantly different from the notion of the 'traditional Aboriginal owner' enshrined in the ALR. 'Custodian refers to an Aboriginal who, by Aboriginal tradition, has responsibility for a sacred site'.[6]

Responsibility for a site may derive from genealogical, birth, residency, ritual, or any other traditional mode of attachment. And unlike the ALR, the ASSA does not rank these modes of custodial attachment—it does not distinguish between primary and secondary responsibilities. Thus, when Frank was conducting the land clearance in the Bwudjut area, he tried to meet with any and all custodians no matter the social grounds of their custodial duties and no matter whether they had been recognised as traditional Aboriginal owners within the mechanism of the Land Trust.

NATIVE TITLE emerged as the result of a landmark decision *Mabo v the State of Queensland*. Mabo acknowledged the validity of native title in Australia and rooted its validity in the difference of indigenous cultural traditions. When originally announced, this High Court decision and the Commonwealth legislation, the *Native Title Act* (NTA) , which was meant to reflect it, seemed to herald a radical new day for indigenous land usage and rights, not merely because it recognised native title's existence but because it seemed to expand the basis on which native title might exist away from the rigid regime of descent. But after a set of revisions to the NTA, vigorously pushed by the Howard government, a series of rulings about the meaning and extent of native title, and the bureaucratic procedures established to make a native title claim, few advocates of indigenous land rights were left with any serious optimism about the radical nature, or even usefulness, of native title. Case after case has limited: claims for past and future extinguishments; lands and seas subject to native title; the extent of exclusive rights over lands and seas on which native title does exist; and what counts as cultural and social continuity necessary for native title.[7] Nevertheless, many indigenous Australians have seen the NTA as offering either important substantive or symbolic benefits to their internal struggles over land. In the mid-1990s, I was asked by indigenous groups living along the coastal region stretching from the Cox Peninsula to Wadeye to research and mount a Native Title claim on the seas. Some indigenous people saw such a claim not so much as a means of gaining substantive rights from the Commonwealth government but as a means of countering or reinforcing decisions about ownership made under the ALR regime.

The Commonwealth *Aboriginal Councils and Associations Act 1976* regulates ABORIGINAL COUNCILS AND ASSOCIATIONS. The Act outlines the bureaucratic form and function of councils and associations, including membership requirements, registration protocols, and practical applications.[8] Multiple associations might exist over the same stretch of land, the members do not need to be traditional Aboriginal owners as defined by the ALR. Each association might be oriented to land development and pecuniary profit. The *Associations Incorporations Act of the Northern Territory* is distinct from the Commonwealth act as well as the *Local Government Act (NT)*. The possible 'duplication' and 'blurring of roles' that result from a commonwealth and state act covering the same kind of bureaucratic organisation was raised by the

Standing Committee on Aboriginal Affair during its 2002 review of 'capacity building' on Indigenous communities (SCATSIA 2002:197).

In the Northern Territory, there are two kinds of LOCAL GOVERNMENT. On the one hand are Municipal Councils over the large municipal areas such as Darwin, Katherine, and Alice Springs. On the other hand are Community Government Councils established under the auspices of the *Local Government Act 1978* intended for small urban settlements and rural Aboriginal Communities (Rowse 1992; Saunders 2003). Jackie Wolfe has noted that, although eventually supported by both major parties in the Northern Territory, the CLP and ALP, the various Land Councils set up under Commonwealth Legislation, opposed this form of government, especially when on or pertaining to aboriginal land, because it saw its powers as potentially limited or newly overlapping (Wolfe 1989). Local Government for Aboriginal communities whose members are not recognised as the traditional owners of an area might want this limiting power. Daly River, Belyuen, and Wadeye present examples of large populations composed of persons not recognised by Land Councils as the traditional owners of the land they sit on and are surrounded by. As a result, decisions affecting who can travel, build, or live on land might be made by what appear to be absent or tangential landlords.

3.

This maze of, often incommensurate, legislation encounters an equally complex, often incommensurate, maze of indigenous social relations in the Anson Bay region. The different kinds of indigenous social relations operating within this region would probably be familiar to people living or working with indigenous peoples in the Northern Territory. Scholars typically describe these social relations in terms of clan and ritual membership, residence and birth, class and racial relations, and epistemological distributions. The various indigenous social relations are differently reflected by the various pieces of above legislation. The ALR and Native Title have increasingly pivoted on a human descent model of the clan-estate. Associations presuppose the relevance of capital forms of property. Local Government is based on residential principles. And the determination of custodians under Aboriginal Areas Protection Authority is based on any or all of these relations. All of these kinds of relation exist in the Anson Bay region.

Most Wadjigiyn describe Bwudjut as the country (the ESTATE, *rak*) of a specific patrilineally defined family (CLAN) who 'pick-up' a dog dreaming (*moiyin*, *devin*) from their fathers. Some people know a story associated with this Dog Dreaming. Some people know where the Dog Dreaming waterholes are located; many of these are, however, neither within the moiyin descent group, nor Wadjigiyn. Some people think there is a difference between *moiyin* and *devin*. Some people speculate that the dog dreaming at Bwudjut may have

travelled from a similar site located on the Cox Peninsula where many Wadjigiyn and Kiyuk were born. However, when a land claim for Bwudjut was held in 2001, all the indigenous people who testified at it agreed that Bwudjut was the country of the *moiyin* clan, but that they did not know of a Dog Dreaming at Bwudjut. As detailed above, this opinion changed in 2005.

The failure to find the Dog Dreaming during the 2002 hearing was due in part to a disagreement about the relevance of the clan-estate model for the region and in part to class and racial conflicts in the area. Many of the residents of the Balgal community, administered under the *Local Government Act*, refused to testify at the land claim because they did not recognise the relevance of the clan-estate model to Anson Bay region. These residents were the descendants of three sisters, Maggie Rivers, Kitty Moffat, and Rose Cubillo, who lived for most of their lives at Balgal. Their descendants believe that these sisters were Wadjigiyn through a shared Wadjigiyn mother and, further, that the entire northern and southern coastal region around Anson Bay, including the Perron Islands, were given to Maggie Rivers, and by extension her two sisters and their descendants, by the last 'real' Wadjigiyn living in the area, Nym Akuk. On Akuk's death, Maggie Rivers became 'Queen of the Wadjigiyn', a phrase used in many documents presented during the initial investigations before the passage of the ALR and the early years of the Northern Land Council. One of the signatures on one of these documents naming Maggie Rivers as 'Queen of the Wadjigiyn' was Bobby Lane, the now deceased father of contemporary Bwudjut *moiyin* claimants.

These 'shared beliefs' among the descendants of Rivers, Moffat, and Cubillo mask, however, some serious disagreements within this group about the identity of these women. Not all of the descendants of these three women now agree that they were sisters—in part because of personal conflicts within the small community. And many other Wadjigiyn living at Balgal and elsewhere simply refuse to recognise the sisters, all of whom are now deceased, as Wadjigiyn. Some refuse to recognise them as Wadjigiyn because their father(s) are thought to have been Chinese and Philippino, some because they live on and use the land 'like white people', putting up 'private property' signs, running white tourists across dangerous Dreamings through their Associations, and some because they believe to be ignorant of their own totemic identity. However, the eldest son of Kitty Moffat did know the location of the Dog Dreaming at Bwudjut—it was he who took Frank to the dreaming site in 2005. Moreover, an Emiyenggal woman, who lived at Balgal for much of her life, showed us where the dreaming was located. Neither of them knew the story associated with the site. And neither of these two people was willing to testify at the land claim in 2002. Nor did the claimants in the land claim want them to testify. The eldest son of Kitty Moffat did not want to testify both because he did not recognise the relevance of the clan-estate model and because

he thought that a successful claim would impede plans he had for capital development in the area, including potential gravel pits.

Most of the same people who consider Bwudjut to be the country (estate, *rak*) of the *moiyin* descent group, also claim primary rights over country surrounding Belyuen, on the Cox Peninsula, based on conception from a local dreaming site, long term residence in and ritual authority over the land. However, they refuse to recognise that those people living at Balgal have primary rights over the surrounding country based on birth, residence, or ritual. They claim that there is no spiritual basis on which the descendants of the three sisters can ground their birth and residential claims as opposed to their own claims to the Cox Peninsula through the Belyuen dreaming. The descendants of the three sisters do not contest the claim that their birth and residence is not attached to a sacred site or a ritual, but claim that, nevertheless, their social relations to land differentiate them among Wadjigiyn, giving them greater say over what happens in the region. Some residents have thought to lodge a native title claim over the region in order to solidify their views. Others have used the mechanisms of Local Government and Aboriginal Associations in order to garner housing, employment, and development opportunities that *de facto* constitute their authority over the region.

We have here then a set of incommensurate, though often mutually referring, state regimes sitting alongside a set of incommensurate, though often mutually referring, local social regimes. Both sets are constantly invaginating each other as people make use of them to advance their particular social aspirations. The incommensurability between and within these grids and the indeterminate nature of their application present some fundamental questions about the status, quality, and duration of objects and relations in the region. Where is Bwudjut or Balgal? Or, more fundamentally: Is there a Bwudjut and Balgal? And when did they emerge? Have they emerged as a singular entity or a set of multiple exposures? What is the relation among the social relations that these places and their internal composition presuppose and entail? In other words, is there a relation of hierarchy among these relations—say, among descent and residence—as well as a relation of break—say between traditional relations such as descent and ritual and between historical relations such as race and class? Likewise Dog Dreaming: When did Dog emerge? Was it always Dog? Could Dog become a tourist destination? Could it become a gravel pit? Could it become the affective ground for a new kind of identification between the descendants of Bobby Lane and Andrew Henda and Bwudjut? And is this affective identification the same as the affective identifications that Lane and Henda's father had to the site and the land? Finally, as anthropologists, what should our stance towards this multiple exposures and divergent be?

One way of answering these questions has been to refuse the complexity of the actual life-worlds in which indigenous people live. In these cases,

scholars and advocates bracket the legislative background to land usage, arguing that the legislative and juridical field is incommensurate and indeterminate in ways that traditional Aboriginal life never was. So this argument goes, prior to settlement indigenous social relations operated on the basis of clear, widely known, and shared social rules. In order to see these rules in the present, all the distorting effects of present must be vigorously stripped from the scene—state legislation, class relations, and racial struggles. Here we hear the murmurs through time of Lorimer Fison's caution to researchers that if they wanted to understand Aborigines 'every last trace of white man's effect on Aboriginal society' must be 'altogether cast out of the calculation' (Fison 1991:29). But it also reflects the cunning of cultural recognition in the contemporary state. Elsewhere I have elaborated how laws of cultural recognition, and the public culture supporting them, establish a specific relation of responsibility between dominant and subordinate groups for managing these encounters of difference (Povinelli 2002). Indigenous groups are responsible for constituting cultural interactional space as if they were living on a separate continent and as if they were living there in such a way that it did not disturb the national body; and more, as if living there mended the internal incoherence of dominant law and state. Over the last ten years this tactic has become more explicit, to such an extent that an editorial in *The Australian* noted 'Multiculturalism was never supposed to mean the eclipse of mainstream values—in our case, the liberal values that flow from our Westminster inheritance. It simply means that, while recognizing these overarching values…Australians are free to celebrate their cultures of origin' (Editor 2005:14).

Another way of answering these questions—that presupposes the first way—has been to describe the conflicts between indigenous people as the result of the social breakdown of epistemological and moral orders. The task of the anthropologist is to recreate this idyllic social order by, first, sorting traditional indigenous social forms from the 'merely' historical and, second, sorting the various kinds of traditional social forms into a hierarchy of values. Peter Sutton's scholarly and advocacy work is perhaps the clearest example of this kind of approach to complexity. Social context is stripped from the scene, the traditional sorted from the historical on the basis of a belief about what indigenous life was before settlement, and the various kinds of traditional social forms of land attachment are ranked. Decontextualised, sociocentric models of descent rule are produced as applicable across contexts. Other 'traditional' social contexts such as birth, ritual, residence, *et cetera* are said to be relevant only at moments of social transition and crisis—say when a descent group is dying out and ritual or conception is used as a means of establishing a new descent group for a region. This approach has been celebrated as a perfect match between anthropology and law, the scholarly academy and the bureaucratic state, and the legislative regimes discussed above and the social conflicts they encounter. Those who do not agree are often separated from the

rule of law by other means—the brand of the postmodern and the poststructural whether or not these terms actually apply to the researchers' theoretical position or not.

Of course, labelling anthropologists is hardly serious in the face of other disciplines that emerge from this way of approaching complexity. The demands of pieces of legislation like the ALR and NTA are not merely that indigenous people present a specific social form in exchange for a limited set of rights and goods (that is, a specific model of kinship, marriage, and descent), but also that they produce their social practices as ruled, and rule-able, by a set of social abstractions that do not mandate a person actually living with people to discern how they live and why they live as they do.[9] Like the genealogical method that W.H.R. Rivers promoted in the early 1900s, contemporary anthropologists and state actors promote a version of kinship on the basis of its simplicity and the minimal impact local systems of meaning and sociality have on the collection of data (Rivers 1910). And insofar as these become the political and social conditions through which indigenous people must move—become written into the very laws that this approach then seeks to bracket as a social force—these discourses continually change the facts on the ground. In other words, although these discourses may not have had any substantial hold in many places to which they initially referred, over time the actual material and discursive conditions of places change to meet and mirror the presumptions of these discourses. What at first was a misrepresentation becomes an accurate description.

What might be alternatives ways of approaching the multivalent and multifaceted complexity of human relations in indigenous countries where this complexity manifests as incommensurable and the undecidable arrays and social over-exposures—ways that do not think that the only analytic answer to this kind of complexity is to drive it out of the scene?

4.

If we are to develop new strategies for analysing the kind of complexity that characterises some regions of indigenous Australia, one of the first things we need to do is clarify what we mean by the incommensurable and the indeterminate. Many people have used 'incommensurability' and 'indeterminacy' as if they were simply synonyms for 'confusion'. In contrast, scholars in the philosophy of language have understood incommensurability to refer to a state in which an undistorted translation cannot be produced between two or more denotational texts. In this sense, the concept of incommensurability is closely related to linguistic indeterminacy. Indeed, they are sometimes used interchangeably. Indeterminacy is also used in a more narrow sense to refer to the condition in which two incompatible 'translations' (or, 'readings') are equally true interpretations of the same 'text'. In other words,

if indeterminacy refers to the possibility of describing a phenomenon in two or more equally true ways, then incommensurability refers to a state in which two phenomena (or worlds) cannot be compared by a third without producing serious distortion.[10]

Most of this literature in language philosophy, as this summary suggests, has focused on formal texts—that is, 'text' usually refers to a written text.[11] But 'text' can refer to a set of cultural beliefs, a legislative field, or an anthropological theory (Silverstein & Urban 1996). Whatever kind of text is under discussion, language philosophers, and cultural critics more generally, have focused on the question of whether indeterminacy and incommensurability is an aberration or normal feature of translating within and across languages and cultures. Philosophers such as Gadamar (1982), De Mann (1979), and Derrida (1972) have vigorously argued about the degree of distortion in translations (and interpretations) across incommensurate semantic fields; about the risk of assigning and acting on these translations in ordinary life; and about the social productivity of foregrounding indeterminacy and undecidability as a progressive social ideal. Answers to questions of whether texts can be made commensurate and whether the very practice of commensuration results in or forecloses truth has divided structural-semantic and poststructural approaches to language and culture, as well as structural and pragmatic approaches.[12]

Let me move this discussion into the social life of Anson Bay so that we begin to see how it might affect our analysis. In 'The Complexity of Social Organization in Arnhem Land', A. P. Elkin (1950:19) observed, with some surprise, the 'fluidity of boundaries and even changes of clan countries' of the region. Elkin believed that the considerable flexibility in land tenure was the result of, on the one hand, the multiple social mechanisms people used to make claims on land—ritual, residence, conception and descent—and on the other hand, the manner in which each of these social mechanisms could be transformed into the others. Elkin provides the basic blueprint for how ritual, residence, conception and descent can be understood as different manifestations of the same cultural logic. Elkin suggested that the long-term residence of a 'foreign' clan (*durlg*) group in a territory, for whatever reason, resulted in that group receiving a child (*maruy*) from a seemingly ordinary or a sacred site. Looking after a country leads the country to look after the person by giving him or her a child from the country. This *maruy* may remain just that, a personal conception dreaming. Or the *maruy*, over time, may be passed down to a man's children. These children may consider this dreaming a patrilineal dreaming since, indeed, they 'picked it up' from their father. Over time, what was originally a 'personal' *maruy* becomes a descent *durlg*. These reflections on Elkin's part are not mere philosophical speculations. He recorded just these kinds of transformations. Moreover, recent disputes in the region have pivoted exactly when and in what context these transformations matter socially.

The transformation of these kinds of social relationship over time is *not* a case of indeterminacy and incommensurability. Quite the contrary—these transformations suggest the dazzling seduction of structural-functional analysis. And yet, even within this seemingly crystalline traditional scene indeterminacy reigns. This becomes crystal clear once we re-embed them in immanent social life. Even when thick ties of social and cultural cohesion are present, this thick social and cultural cohesion does not end disputes it merely shapes how disputes will proceed. They make relevant questions such as: At what point does an ordinary site become a sacred site? When does a *maruy* become a *durlg* or a *durlg* merely a *maruy*—at what point had the transformation occurred? Can a site, or a relationship, be multiple things as the same time? If so, does the fact that something could be an entire range of things matter to how we approach what it is? Who decides the answers to these questions? Fred Myers (1986) has described, for instance, how disputes arise among the Pintupi when a person claims to have been given access, through ancestral mediation, to sacred sites, narratives, and designs previously unknown. Rather than a problem, these disputed dreamings about ancestral beings offer 'enormous interpretive possibilities' (Myers 1986:52). These interpretive possibilities can be mobilised for political and social gain within a community.[13]

Analysing how these social worlds are produced on the ground takes us into the question of what happens when two or more of these incommensurate fields collide. What determines the hierarchy of principles that emerge in these collisions? After all, one of the arguments that those who wish to objectify and abstract so-called traditional modes of descent make is that descent is always seen as a more important mode of human-land organisation than other kinds of social relationship such as conception, ritual, and residence. Let me play my own devil's advocate and agree that in such games as they are played today—which is the only time period we can say with any authority that this might be true—descent wins. This hardly says why and when descent came to hold such a tight grip on the social imaginaries of some indigenous people. When indigenous men in the region, testifying before the Woodward Commission, argued against various models of descent for how land ownership should be organised were they just confused or historical? When Elkin (1950) wrote about the flexibility in land tenure was he just a bad ethnographer or listening to people trying to regroup in the wake of violent settlement? How far do we go back? When do we stop the clock of social transformation? And why is it so vital we do so?

Instead of insisting on a commensurate field of social action in indigenous life, we might ask two other kinds of questions. First, we might ask, what is being done to produce the world in the image of one or another of the national legislative imaginaries—say the concept of the 'Traditional Aboriginal

Owner (TAO)' as a human descent group? But there is a second question that seems to me as important and that touches directly on the issue of social incommensuration and indeterminacy; namely, how does the distribution of the social complexity, insofar as this complexity manifests as incommensurability and indeterminacy, reflect and reproduce social power. After all, the liberal democratic state has long used the internal complexity, incommensurability, and indeterminacy of the law as a means, rather than an obstacle, to the maintenance of its power. This kind of complexity allows state actors a large field in which to manoeuvre. Depending on the context, state actors can refer to the law's support of traditional culture such as in the *Mabo* decision or to its repression of the same such as in the criminal code; to the difference between a criminal charge and a criminal sentence; and to the difference between the meaning of 'traditional owner' in one piece of legislation and its meaning in another. The rationality of the law is normative. In actual social life, state actors find comfort in the indeterminate and incommensurate field of law.

Even as state actors do so, they often insist that the only true law of its colonised people is a law that is simple, with a hierarchy of social orders that is easy to follow, and that is seamless across its various social facets. This is the case even when indigenous people must navigate the multidimensional and multifunctional intersection of law, public culture, and practical knowledge that they continually confront even when doing nothing more than drive to an outstation on a rutted road. They must navigate clinics, dreaming sites, legal protocols and camping grounds as well as navigate the games of truth each of these social facts project about the indigenous self. Ironically, if not tragically, anthropologists have for too long been mesmerised by this *camera obscura*—that because the liberal state says that the law and the social *should* be rational it is rational in fact—and have been too willing to impose this ideological inversion on those who most suffer from it rather than on those who profit by it. What if, instead, we allowed for the possibility that incommensurability and indeterminacy were a normal feature of indigenous social life—turning away from viewing these states as a sign of social chaos or decay or as a state that must be overcome by the rationalising model of the anthropologist—that allowed indigenous actors a range of ways of manoeuvring among themselves and others for power?

Notes

1 For other excellent essays focusing on just this question see Bauman (2001); Austin-Broos (2003).

2 Victor Moffat, Chair, Perron Island Enterprise Aboriginal Corporation.

3 Shared Responsibility Agreements were announced after the Howard government decommissioned the Aboriginal and Torres Strait Islander Commission (ATSIC). The government's official propaganda sheet describes these agreements as the 'new

approach in Indigenous affairs' that is linked to wider Indigenous reforms being pursued by the Council of Australian Governments (COAG) (DIMIA 2005).

4 P. II s. 4, 1.

5 Jimmy Tapgnuk, Tommy Wurran, Albert Myoung, and Biddy Lindsay v Northern Land Council, Arthur Que Noy, Marjorie Foster, Frances Storer, Maxine Hill, Micky Foster, and Rhona Foster. Land Rights (1996) 108 NTR 1 (1996) 5 NTLR 109.

6 *Northern Territory Aboriginal Sacred Site Act*, 1989, Part 1, s. 3.

7 Citing the *Mabo* decision recognising native title, Olney cited the very language of the *Mabo* decision that recognised native title in order to nullify its effects in this case. 'The tide of history has indeed washed away any real acknowledgement of their traditional laws and any real observance of their traditional customs'. The Full Federal Court upheld Olney's judgment stating, 'the Yorta Yorta community had lost its character as a traditional Aboriginal community'. In his minority dissent, Blackburn argued that Justice Olney was in error for having applied too restrictive an approach to the concept of what is 'traditional' and having failed take seriously much of the oral evidence provided by the claimants. The Yorta Yorta submitted an application to the High Court to appeal his second ruling. In December 2002, the High Court upheld Olney and the Full Federal Court. As well as weak title, the interpretation of Act under *Western Australia v Ward on behalf of Miriuwung Gajerrong, High Court of Australia* and *Fejo and Mills v The Northern Territory and Oilnet (NT) Pty Ltd* ruled that native title was more akin to a bundle of rights than an underlying title to land, and thus was inherently vulnerable to the greater sovereignty of common law divestiture. Lisa Strelein (1999; 2001) has written most extensively on this topic.

8 In the wake of the Howard's assault on ATSIC and other Aboriginal bureaucracies, a Bill was introduced to Parliament that would, according to the language of its proponents, bring the Act into line with 'modern' practices of accounting.

9 For a fuller discussion of this process of abstraction and its relation to liberal power, see Povinelli (2002).

10 For a longer discussion see Povinelli (2001).

11 For instance, the language philosopher, W. V. Quine used as an example of this kind of problem the translation into the Arunta language of a theory first formulated in English. Assuming that English sentences have 'their meaning only together as a body, then we can justify their translation into Arunta only together as a body. There will be no justification for pairing off the component English sentences with component Arunta sentences, except as these correlations make the translation of the theory as a whole come out right. Any translations of the English sentences into Arunta sentences will be as correct as any other, so long as the net empirical implications of the theory as a whole are preserved in translation. But it is to be expected that many different ways of translating the component sentences, essentially different individually, would deliver the same empirical implications for the theory as a whole; deviations in the translation of one component sentence could be compensated for in the translation of another component sentence. Insofar, there can be no ground for saying which of two glaringly unlike translations of individual sentences are right' (Quine 1960:80).

12 The debates between structural and poststructural philosophers are perhaps best known, such as between Gadamer and De Mann and Derrida (see Derrida 1972; De Mann 1979; Gadamer 1982). But new approaches to metapragmatics also foreground the incommensurability and indeterminacy of textuality as it emerges in real time. See for instance Silverstein (1993).

[13] Francoise Dussart (2000) has observed, among the Walpiri at Yuendumu in central Australia, the process by which any particular truth claim pertaining to the geophysical world is ratified is a matter of enormous interpretive struggle.

References

AAPA---See Aboriginal Areas Protection Authority.

Aboriginal Areas Protection Authority 2004, 'Overview', *Aboriginal Areas Protection Authority*, Northern Territory Government. <http://www.nt.gov.au/ntt/financial/budget02-03/docs/bp3/Chapter%201/Aboriginal%20Areas%20Protection%20Authority.pdf> [2 December 2005].

Austin-Broos D. 2003, 'Places, practices, and things: the articulation of Arrernte kinship with welfare and work', *American Ethnologist*, 30(1):118-35.

Bauman T. 2001, 'Shifting sands: towards an anthropological praxis', *Oceania*, 71(3):202-25.

De Mann P. 1979, *Allegories of Reading*, *Figural Language in Rousseau*, *Nietzsche*, *Rilke*, *and Proust*, Yale University Press, New Haven.

Department of Immigration and Multicultural and Indigenous Affairs 2005, 'Shared Responsibility Agreements'. <http://www.indigenous.gov.au/sra/kit/what_are.pdf> [2 December 2005]

Derrida J. 1972, *Dissemination*. University Chicago Press, Chicago.

DIMIA---See Department of Immigration and Multicultural and Indigenous Affairs.

Dussart F. 2000, *The Politics of Ritual in an Aboriginal Settlement: Kinship, Gender, and the Currency of Knowledge.* Smithsonian Books, Washington, DC.

Editor 2005, 'Moderate Muslims isolating the fanatics', *The Australian*, 27 July, p. 14.

Elkin A.P. 1950, 'The complexity of social organization in Arnhem Land', *Southwestern Journal of Anthropology*, 6(1):1-20.

Fison L. 1991 [1880], 'Kamilaroi marriage, descent and relationship', in *Kamilaroi and Kunai*, eds L. Fison and A.W. Howitt, Australian Aboriginal Press, Canberra, pp. 21-96.

Gadamer H.G. 1982, *Truth and Method*, transl. G. Barden and J. Cumming. Crossroad, NewYork.

Hardin G. 1968, 'The tragedy of the Commons', *Science*, 162:1243-47.

Myers F. 1986, *Pintupi Country, Pintupi Self: Sentiment, Place and Politics among Western Desert Aborigines*, Smithsonian Institute Press, Washington.

Ostrom E., Burger J., Field C.B., Norgaard R.B. and Policansky D. 1999, 'Revisiting the Commons: local lessons, global challenges', *Science*, 284:278-82.

Povinelli E.A. 2001, 'Radical worlds: the anthropology of incommensurability and inconceivability', *The Annual Review of Anthropology*, 30:319-34.

Povinelli E.A. 2002, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*, Duke University Press, Durham.

Povinelli E.A. 2004, 'At home in the violence of recognition', in *Property in Question: Value Transformations in a Global Economy*, eds K. Verdery and C. Humpheries, Berg Publishers, New York.

Quine W.V. 1960, *Word and Object*, MIT Press, Cambridge.

Rivers W.H.R. 1910, 'The genealogical method of anthropological inquiry', *The Sociological Review*, 3:1-12.

Rowse T. 1992, *Remote Possibilities: The Aboriginal Domain and the Administrative Imagination*, North Australia Research Unit, Darwin.

Saunders W. 2003, 'Dispersal, autonomy and scale in Indigenous community governance: some reflections on recent Northern Territory experience', text from seminar series *Contemporary Indigenous Issues in North Australia*, North Australia Research Unit, Darwin. <http://naru.anu.edu.au/papers/sanderspaper.pdf> [2 December 2005]

SCATSIA---See Standing Committee on Aboriginal and Torres Strait Islander Affairs.

Silverstein M. 1993, 'Metapragmatic discourse and metapragmatic function' in *Reflexive Language*, ed J. Lucy, Cambridge University Press, Cambridge, pp. 33-58.

Silverstein, M. and Urban G. 1996, 'The natural history of discourse', in *Natural Histories of Discourse*, eds M. Silverstein and G. Urban, University of Chicago, Chicago, pp. 1-20.

Standing Committee on Aboriginal and Torres Strait Islander Affairs 2002, *House of Representatives, Official Committee Hansard 27 November*, Commonwealth Government Printer, Canberra.

Strelein L. 1999, 'Extinguishment and the nature of Native Title: Fejo v Northern Territory', *Land, Rights, Laws: Issues of Native Title*, no. 27, AIATSIS, Canberra.

Strelein L. 2001, 'Conceptualising Native Title', *Sydney Law Review*, 23(1):95-124.

Thompson E.P. 1976, *Wigs and Hunters*, Pantheon, New York.

Wolfe J. 1989, '*That Community Government Mob': Local Government in Small Northern Territory Communities*, North Australia Research Unit, Darwin.