MADAYIN

ABORIGINAL LAW OF ARNHEM LAND

Dr Danial Kelly
Terminology

- Arnhem Land
- Yolngu
- Madayin
- Ngarra
- Dhuwa/Yirritja
Solicitor at NAAJA

North Australian Aboriginal Justice Agency
Gupapuynu Ngarra

This is to certify that Danial Kelly is authorised by the Senior Gupapuyngu Clan Leaders, in Ngarra at Milingimbi, Ramingining and Galiwinku, to be our lawyer to assist us in our efforts to have our Ngarra law known by the Balanda legal system.

Gilbert Gubiyn
Gilbert Gubiyn Gaykamangu
Dalkarramiri (Senior Custodian of Ngarra Law)

Joe Djembgnu
Joe Djembangu Gaykamangu
Dalkarramiri (Senior Custodian of Ngarra Law)

Matthew Dhulumburrr Gaykamangu
Dalkarramiri (Senior Custodian of Ngarra Law)

Lesley Wothungu Gaykamangu
Dalkarramiri (Senior Custodian of Ngarra Law)

David Marrpiyawuy Gaykamangu
Dalkarramiri (Senior Custodian of Ngarra Law)

George Milaypuma Gaykamangu
Dalkarramiri (Senior Custodian of Ngarra Law)

MUTUAL RESPECT AGREEMENT

This MUTUAL RESPECT AGREEMENT is made on the 29th day of June 2009 between

THE YUGUL MANGI GROUP OF ELDERS, being the peak body for all seven language and clan groups (Mara, Ngandi, Alawa, Nunggubuyu, Rittarrngu, Wandarang and Ngalakan) in the Ngukurr area
James Gaykamangu, dalkaramirri

- *Ngarra law: Aboriginal customary law from Arnhem Land* (2012) 2 NTLJ 236
James Gaykamangu, dalkaramirri

- Senior Elder from Gupapuyngu Clan, with full sanction of the Yirritja Moiety in Ngarra, to bring understanding to non-aboriginal Australians about the Madayin System of Law of the Yolngu people of Arnhem Land
- James currently worked for the Darwin Magistrate Court and Darwin Supreme Court as a Court Indigenous Liaison officer and Interpreter for more than 10 years
Three generations ago

- Under *Ngarra* Law the leadership is passed on to the next generation
- Three generations ago: Nuwa Garrawarba Gaykamangu (no photo)
Two generations ago

- Ngarritjngarritj Garrawarba Gaykamangu
One generation ago

- George Dhawadanykulili Gaykamangu
- Jimmy Lipuntja Gaykamangu
- Tom Djawa Gaykamangu
- George and the other clan leaders ensured that young men, woman, boys and girls were taught properly about *Ngarra* law and *raypirri*.
Current generation

- Gilbert Gubiyun Gaykamangu
- Matthew Dhulumburk Gaykamangu
- Joe Djembangu Gaykamangu
- James Gurrwanng Gaykamangu
This law painting is not just a painting. It is a legal document in *Ngarra* law. This painting is based on the honey bee (Ganiny or *Niwuda*) ceremony.
General Madayin law

- It teaches *Yolngu* how to live properly
- This law teaches that children must go to school
- Child abuse is not allowed
Much of the Ngarra law is very practical, such as how to use clap sticks and a didgeridoo, how to make a letter stick, spears, woomeras and boomerangs, when to burn a bush fire for hunting, how to build humpies, how to trap fish, the special seasons for gathering bush foods. The Ngarra law also has authority to regulate economic activity, housing and employment. Ngarra law can work together with Balanda law if the Balanda law will let it.
George Pascoe Gaymarani, dalkaramirri

- An introduction to the Ngarra law of Arnhem Land (2010) 1 NTLJ 281
For _Yolngu_ society, the court which has authority to decide these matters is known as the _Ngarra_ Court – actually a shade structure that might change in the future.

The _Ngarra_ Court is sanctioned by the whole of _Yolngu_ society including the grieved family and tribe. For this reason, decisions of the _Ngarra_ Court are completely authoritative and binding on all parties and all lower institutions of dispute resolution in _Yolngu_ society.
Ngarra

- *Ngarra* is also like a parliament where the law of the land is discussed. We talk about policies for education, land management, the justice system, employment, marital laws, child protection and the environment.
Court of Law operated through Yolingu Ngarra Law

Victims' Family

Decision Makers

Male Clan Leaders

Djungaya (Speaker)

Female Clan Leaders

Decision Makers

Story through speaker

Story through speaker

Accused

Accused's Family

Gallery

Gallery

Gallery

Gallery

Gallery

Gallery

Gallery

Victims' Family

Victims' Family and Accuseds' Family

Gallery
How the law evolves in the Madayin system

- Mythical origins
- Network of systems of authority
- Rapprochement between the alien and the indigenous
- Contemporary generation of elders declare the law in Ngarra
- Example: Ngarritjngarritj and makarata
  - (ceremonial spear punishment)

Yolngu Ngarra Law
customary law painting presentation
Parliament House, Friday 12 August 2011
PhD – seeing worlds collide

- ‘Law from the earth, law from the demos and law from heaven: nature and intersections of authority of Madayin, Australian law and Christianity in Arnhem Land’

Sources – always secondary

- Case law
- Legislation
- Law Reform Commission/Committee Reports
- Anthropology
- Theology
So... Madayin can now be known to English speaking audience:

- Madayin is a system of customary and religious law of mythical origins that is largely concerned with fertility.
- Holistic yet welcomes syncretism with other legal and religious systems.
- Relative, not universal; eclectic; expects pluralism.
- Rights and wrongs are described as preferences rather than absolutes.
- It is an inherent characteristic of the Madayin system to attempt ‘a rapprochement between
Primary source of authority is the ancestral wanggar beings.

Spiritual power, marr; both positive and negative qualities.

Madayin is promulgated and enforced primarily by Ngarra, a combined legislative and judicial institution.

Dalkarmirri (or djirrikaymirri) who is described as a legal, religious and political leader.
### Basic Aspects of Madayin

<table>
<thead>
<tr>
<th>Primary sources of authority:</th>
<th>Primary purpose of authority:</th>
<th>Method by which the primary purpose achieved:</th>
<th>Universal or relative authority claims:</th>
<th>Absolute or open to syncretism and pluralism:</th>
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<tbody>
<tr>
<td>Wanggar, ancient mythica l past</td>
<td>continuity of an ancient past source of spiritual authority (wanggar) to achieve magaya, a state of balance, order and peace</td>
<td>the practising of a fertility philosophy</td>
<td>relative</td>
<td>Syncretic and open to pluralism</td>
</tr>
</tbody>
</table>
The essential nature of Madayin is the continuity of the ancient mythical past source of wanggar spiritual authority, executed predominantly by the practising of a fertility philosophy the outcome of which is described as magaya, that is a state of balance, order and peace. Madayin is relative and exists only in the localised jurisdiction of Arnhem Land. It is open to syncretism and engages in pluralism with other normative systems.
More research required

- There is very little published on Aboriginal customary law.
- One thing that makes it difficult to search for is that often you need to know the Aboriginal name of the legal system in order to search it.
- You need to take an inter-disciplinary approach.
Questions? Comments?

Thank You