Madjayin Law System; The Assent law of the Yolnu of Arnhem Land

This is the paper from Dr Djinyini Gondarra's presentation to the The Law and Justice within Indigenous Communities conference in Darwin, NT, Feb 2011.

The Assent law of the first people:

Principles of an effective legal system in Aboriginal communities

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This conference is "Law and Justice within Indigenous Communities". BUT for there to be a real rule of law and true justice for our people, then the Law our people have assented to for thousands of years must be understood and recognised by all Australians. This will require an education and negotiation process between the Australian government and our Traditional Parliaments.

This morning I want to start that education by talking about our law that Yolngu[1] people from north-east Arnhem Land have assented to for many generations.

First we must remember that in different regions across Australia other groups of first Australians (Aboriginal people) have their own law and I have no right to talk about their Law systems.

Having said that, I must say that all the first Australian peoples have a common foundation of Law. This common foundation of Law still exists where some of these peoples may have lost many elements of their particular Law. Even where they have lost most of the elements of their Law they still have a common foundation of law together with us and all other first Australians. It is the common law of this land that precedes all laws and systems of law. It does not matter how hard other people try to deny and suppress this fact, we still have a common foundation of Law that has been practiced in this land since the beginning of human history.

However all of my comments this morning will refer to the traditional Law of the Yolngu people from north-east Arnhem Land of which I am first, a citizen, and second a political leader.

I am a citizen because like all Yolngu people I have assented to our Law through a ceremonial process called Waja Luthpun. And although we have been telling the NT and Australian Governments this for many years, still no one seems to want to understand or recognise that we are citizens of our own Clans and Nation States; it's like we are a non people and no one can hear us or have serious dialogue and diplomatic relationships with us.

Strangely enough, although we have assented to our own Law we have never assented to the Law of the Federation of Australian or any of its States or Territories: who we call "Balanda Law". Some of us know that this new Australian Law does try to protect and nurture us but we still find it very strange, unfamiliar and very confusing – and it continues to offend us by opposing, harming and destroying us and our rights established under the Original Law of this land.

Let's hope one day that things will change and we will be respected as a real sovereign people. Then other Australians will sit down and talk to us about some real solutions to the problems we face. This would begin a new era of hope and prosperity where a true rule of Law existed, offering law and justice on an equal footing to all the people of this land. Then we would start to solve some of the very difficult problems we face and change the very uncertain, dismal and sometimes frightening future that many of our people face.

The Magayin

Let me start by explaining the Yolngu system of Law (Rom) that is called the Magayin [ma – djal – iay – in]. I think it is very hard to translate this term Magayin into English as English does not seem to have a word like Magayin. The closest picture I can give you is like when we say, "The Westminster system of law" we are talking about all the laws and legal processes and practices that come from the Westminster origins. In many ways the Magayin can be used in the same way as the "Westminster system of law" as the Magayin is the name for our complete system of Law.

When we think about the Magayin we think about all our law that relates to our rights from personal, property, our corporate clan rights through to the highest rights we have as citizens of our Rinjiti Nation States.

The Magayin also covers our legal institutions like our parliaments, legal teaching places and processes for dispute resolution, which most Australians call "councils". We call these places "Magayin places" and like most legal places they all are restricted in one way or another.

The Magayin also controls and determines the process we carry out at these Magayin places and how we interact with each other legally. These processes are called by their different names but can also be called Magayin dhukarr mala or Magayin processes. That is, if a new agreement needs to be made there are Magayin ways as to how we should talk, come together and how we should interact in these meetings to come to consensus decisions. In times of dispute we have Magayin processes that instruct us about how we move towards dispute resolution. All of our life processes from how to harvest and prepare our foods through to birthing (women’s domain), healing and health care, social, economic, dispute management, environmental care, living, interacting and even how to die, have Magayin processes that we should follow.

The Magayin also has all our constitutional Law and all our wayuk laws statutes covering criminal, corporate, resource sharing, religious Laws and sanctions that apply to the breaking of these laws[2]. So the Magayin is an all encompassing system of law.

A. Illustrating Aboriginal Customary Law as a rule of law, not rule of men

Magayin’s Origin

Many people asked us where this Magayin law came from. Our Magayin law comes from time immemorial and was handed down to us from Warajar [Waj - ar] the Great Creator Spirit.

Warajar sent two female creator spirits called Djangawu and Barama. Djangawu was a Dhulwa [i] people, their virrilka estates of land and sea, gave them their languages and their Magayin Law. Barama was a Yirritja spirit creator and created all the Yirritja people, and their estates, giving them their languages and their Magayin Law.

It was Barama and Djangawu who carried the Magayin law with them from Warajar and gave it to the people.

So our Magayin Law came from the djalkiri [djal – kir - i] foundation of the world; when we first stood, the Magayin Law stood beside us. It came from the highest authority in the universe, Warajar the Great Creator Spirit, and so it should be respected and followed by all citizens and foreigners alike who come to our land.

This foundational law gave us the structure and process of our Law and Made us responsible to maintain the Law and to paint our wakuy [waki - i] law. Our magayin law is the defining standard and law that we all live by. So Yolngu people are ruled by the rule of Magayin Law not by man.

[2]
A. A framework that is underpinned by: good government, consistency of laws and consensus by the people

Clan Groups
All of the Yolŋu Bāpurru Clan Groups are recognised within the Maḏayin legal structure. Every Yolŋu person is a member of one of those Bāpurru Clan Groups. The Bāpurru Clan owns the Yirralka estates and have the Economic and Political rights at surface level of their estates. Within the Bāpurru Clan structure everyone is respected and protected within the political structure of the Bāpurru Clan. It protects our rights and gives us the processes so we can live together in a peaceful way. No one is seen as wakinju illegitimate, with no rights. This knowledge and structure unites the clan in a common purpose as they live, work, and learn together. Every member of the clan should, malthun māgaya-kurr dhukarr-kurr, accompany or dwell in the way of peace which the Maḏayin creates.

Rīŋgitj Nation States
The Bāpurru Clans are connected together into federations (Rīŋgitj Nation States). There are a number of Rīŋgitj Nation States across north-east Arnhem Land with about five Bāpurru Clans in each federation. These Rīŋgitj Nation States are all known to us by separate names. It is within the Rīŋgitj Nation States that we have higher responsibilities and rights. The Rīŋgitj Nation States each have their own Nārra parliament, constitution, army and national anthem. Each Rīŋgitj Nation States holds the rights to the subsurface of all the Bāpurru Clans yirralka estates within each federation. So it is the Rīŋgitj Nation States that determines all matters of sovereign rights and land title matters for the Bāpurru Clans within each Rīŋgitj Nation State.

Our Political Leaders
Each clan also has selected political leaders. These political leaders are not always the head person of the clan which is usually the oldest male or female of the clan. The political leader can be the youngest of a line of brothers; they are selected by the people according to their political knowledge and ability and their personal good character and ability to listen to the people. In the Yirritja Clans they are called dalkaŋkay and in the Dhuwa Clans they are called djirrikay. The dalkaŋkay and djirrikay are appointed to their position through an internal clan process called Gararrak, where all the Bāpurru Clan members are represented. The office of dalkaŋkay or djirrikay holds the selected individuals to a position of account to uphold and maintain the Maḏayin laws and ways. During their ceremonial appointment they are hoisted up into a solid tree fork above all their Clan members. They may not only change the legal processes that have given them this power so the people can also take it away. According to the Maḏayin law nobody can be harmed. If there is conflict between two people or say two families the dalkaŋkay or djirrikay should step in right away and proclaim a legal sanction. This law is also protected by the people because it is the people through their legal processes that have given them this power so the people can also take it away. If there is conflict between two people or say two families the dalkaŋkay or djirrikay should step in right away and proclaim a legal sanction.

Wana Lulpunha
As I have already mentioned above, all Yolŋu people have assented to our law. This is done through a ceremonial process called Wana Lulpunha [2]. This accords across all the Wāyuk Law statutes have been finalised in the Nārra parliament and brought out to the public. The Gararrak / Djudda process is then completed and then all the people move off to the beach where the Wāyuk Law statutes are assented to by all the people. To do this the men and women of the clan go into the sea and immerse themselves in the water, while the Wāyuk Law statutes are held up above all the people, by the head Yothu or Djanggaya. (see below).

C. The Separation of Powers and the roles and responsibilities of the three arms of government

1. Nārra.
   Each Rīŋgitj Nation State has a Nārra parliament where the Bāpurru Clans are all represented in the meeting of their respective Rīŋgitj Nation States. There is also a top Dhuwa Nārra where all the Yirritja Clans and Dhuwa clans are represented.
   Some people including some anthropologists have tried to tell us that our Nārra are not parliaments. But we know that our Nārra are our parliaments. This is where all the dalkaŋkay law men talk and teach and maintain Wāyuk acts of law. This can only be done when a Nārra parliament has been opened.
   A Nārra parliament has to be in session for at least 3 months and is a highly restricted place and does not have a public gallery inside the chamber; the public gallery is outside the restricted Nārra area. We also have smaller Nārra' or chambers of law that are decision making places for all our smaller Rīŋgitj alliances so decision making is done in a legal way following due process. These smaller Rīŋgitj alliances cover conservation and breeding areas, trade embassies, teaching campuses and many other forms of alliances between different Bāpurru Clans across Arnhem Land and beyond and have operated for tens of thousands of years.

2. Dalkaŋkay Djirrikay Dhuni Meeting
   To start any legal process and organise things, the dalkaŋkay djirrikay political leaders meet together in a closed meetings called a dhuni; a dhuni is like a confidential closed meeting much like a cabinet meeting or a corporate board meeting. Each Rīŋgitj Nation State has a dhuni and the smaller Rīŋgitj alliances each have their own dhuni. There is also a dhuni for both the top Dhuwa and Yirritja Nārra. The dalkaŋkay djirrikay political leaders represent the wishes and interests of their own Bāpurru Clan in all of these dhuni meetings.

3. Djanggaya Sworn Servants of the Clan
   Djanggaya are a special group of law officers or servants. They are sworn to their role, similar to police. They have a range of responsibilities including policing, corrective service officers, public servants, lawyers, legislation drafters, estate managers and workers. They take direction from the dalkaŋkay and djirrikay.
   Djanggaya work in these roles for their mother’s people. That means they are born in one clan and spend most of their life working for another clan. If their mother’s clan is Yirritja they will be from a Dhuwa clan, if their mother’s clan is Dhuwa they will be from a Yirritja clan. This relationship represents the yothu yindi relationship that existed in the Yothu Yindi rock band. However all clans in Arnhem Land are yothu to one clan and yindi to another.
   That is, Gumatj people in the rock band are the mothers’ people in the relationship. They are called the yindi big people and the Marika members are the yothu children of the Gumatj mothers. In this case the Gumatj people are Yirritja and the Marika people are Dhuwa. This yothu yindi and the Yirritja Dhuwa division create a separation of powers and roles between these two Clans. If the Gumatj (owners) have a
legal process to undertake they will call their yothu (Marika, legal sworn workers) or Djugguya to organise it and carry out all the work for them.

Milak and Gapan

Milak and Gapan is seen as the authority that comes from the Maayin Law to keep the peace and apply sanction to Law breakers. Milak symbolises the military force and weapons of the Bapurr clan and the Rinyiti Nation States. The weapons that are carried by the Djurguya are to protect the people and maintain and to keep the peace within and between the Clans.

Gapan is the body paint that is worn like a uniform when the dikkarra djirriyak and the Djugguya and their associates are on official duties or on special occasions.

D. Establishing treaties that respect Indigenous law and custom and dialogue between

Customary Law and the Westminster system

If the Australian community really wants to solve the “crime” and escalating imprisonment rates that our communities are now experiencing, while increasing early intervention, and have a re-investment in justice with integrated support we need to find a way where there is a true rule of law and where real justice prevails.

This can only happen when the Maayin law that we have assented to, for many thousands of years, is accepted by all as the Law of our region.

For this to happen the Australian and NT governments need to start diplomatic discussions with our dikkarra djirriyak political leaders and not some ad hoc group of Yolnu citizens chosen by the Australian or NT governments. We need to following the legal processes of both the Maayin and the Westminster system of Law. That is the only way the process will succeed.

The issues discussed need to cover a whole range of things including land/seas rights, mining, mineral resources, minor and major criminal offences and many other things. This diplomatic dialogue might end up in some form of a legal treaty or a statutory harmonisation of both legal systems, the process will determine this.

This process should be just as it is when the Australian government has diplomatic discussion with other governments like the Indonesian or New Zealand governments. It needs to happen through due process so that both Balanda and Yolnu can accept it as legally valid.

In 1957 our elders at Galiwiru brought the Maayin law symbols. This was the only way that these law symbols have been revealed. They did this so that the Balanda and The Yolnu governments would come together and talk to each other in a diplomatic and legal way, but this dialogue has never happened.

Then in 1975 the Australian government established the Lands councils under the NT Aboriginal Land rights Act 1975. When this happened the established Lands Councils started acting as middle men. I believe this was done for the convenience of the Australian government. Now we have to bow down to the Northern Territory government representatives to both the Australian and NT Governments.

When the government wants to talk to us about something they talk to the NLC or sometime they come themselves without invitation or appointments. Then the NLC send anthropologists to talk to us as individuals denying the correct legal Maayin processes.

These anthropologists and the government do not see us as having Law and systems of Law so they just talk to us as individuals or in mixed up illegal meetings like they are talking to us about football or some little thing. Then they want us to give them an answer straight away. Even though they have been talking about things for months back in Darwin or Canberra we have to come up with an answer in five minutes.

This is making our people very angry and depressed and our young people very rebellious, by forcing us to do illegal things all the time. It is this lawlessness that will turn us from being a law-abiding society which some of our people are now acting out. We must return to a real system of Law when the Australian government come to negotiate with us through proper diplomatic processes and not run around the community just telling us what we need to do.

Law and justice can never exist for our people and the communities we live in. So we will continue to fill up NT hospitals and jails.

We have been legally marginalised from the mainstream Australian society and the result can be seen in all the bad statistics we have all heard so much about.

I call for a new approach that will bring real law and justice, and make Australia a leader amongst Nations in relation to their Indigenous people. This can only be done by recognising us as the First Australian People and our legal system.

We believe we have never been conquered and we are not subject to the Australian or British law but still maintain our own sovereignty. We

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decision or in relation to decisions of that kind.


About Richard Trudgen

Born in Orange NSW, trained as a fitter and turner. To Arnhem Land 1973 for one year voluntary work, stayed 37 years, learnt language and trained in community development work. Wrote "Why Warriors Lie Down and Die" in 2000. Established Yolŋu Radio in 2003. Was CEO of ARDS Inc for 10 years. Developed discovery education methodology. Runs 'Bridging the Gap' seminars and training workshops, does conferencing speaking. Wants to build an e-learning school for Yolŋu people using both their own language and English so Yolŋu children and adults have a schooling system that works for them, plus one they can access anywhere. Trying to write the next book "When a New World Drops in on You".