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Peter Sutton

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NORMAN TINDALE AND NATIVE TITLE: HIS LATE APPEARANCE IN THE JANGO CASE

Peter Sutton¹ and ²

¹ South Australian Museum, North Terrace, Adelaide, SA 5000, Australia

² University of Adelaide, North Terrace, Adelaide, SA 5000, Australia

Abstract

When he was seventy-two Norman Tindale published his opinion that the Pitjantjatjara people of the south-eastern Western Desert were divided into patrilineal descent groups or clans. Their members, by birth, shared inheritance of a particular totem and its locality, and therefore possessed the same territory (Tindale 1972:223). In this paper I examine in detail his own very substantial 1933 field data on these people, as well as that of several other anthropologists who worked in the same region from 1930 onwards. These primary sources reveal that there were no descent groups, whether patrilineal or matrilineal, at all, in this part of the Western Desert. People born well before the arrival of European colonists, and many after them, often had totems and birth districts that differed from those of their fathers, and those of their siblings from the same father. The privileged pathway to country was instead place of birth, though complemented by multiple other factors providing connection to country that were acquired during a lifetime. Although presented with this comprehensive analysis, the Federal Court in the *Jango* native title case decided that Tindale's 1972 verdict was correct. Since the applicants did not follow patrilineal descent of country, the Judge, Sackville J, concluded that their laws and customs were no longer traditional. The applicants lost their case.

Introduction¹

It was fascinating to have overlapped in time and professionally with Norman Barnett Tindale (1900–1993). He gave me free access to his field word lists in 1971, and in 1974, when he was in Canberra for an international conference, we had conversations that were the first of quite a number over the years. We corresponded from 1973 through the 1970s and 1980s, often about access to his primary field materials, sometimes on questions of mutual interest and, at his request, I sent him a copy of my MA thesis (Sutton 1973). Even in his last years he remained an honorary member of the Anthropology staff of the South Australian Museum, as pictured here on his 1985 visit to Adelaide (Figure 1). Our last conversation was by telephone from my home in Aldgate, South Australia, together with Philip Jones, to ‘Tinny’s’ and Muriel Tindale’s home in Palo Alto, California, in 1992, just before his death the following year.

One of the great strengths of Tindale as a field worker was that he recorded and reworked the sources of his ethnographic knowledge with a strong and generous regard for those who would follow him. His working notes and lists are usually transparent, well-organised, self-consistent, legible, and properly provenanced—in short, they were a gift to others as much as they were *aides mémoires* for himself. It is not surprising, then, that Tindale’s ethnographic work has played some significant role or other in probably the vast majority of the hundreds of land claims and native title cases of the various jurisdictions of Australian law.

¹ This is a revised version of the 2006 Norman B. Tindale Memorial Lecture. It draws significantly on parts of Sutton and Vaarzon-Morel (2003) written by myself. That report was funded by the Central Land Council (CLC).

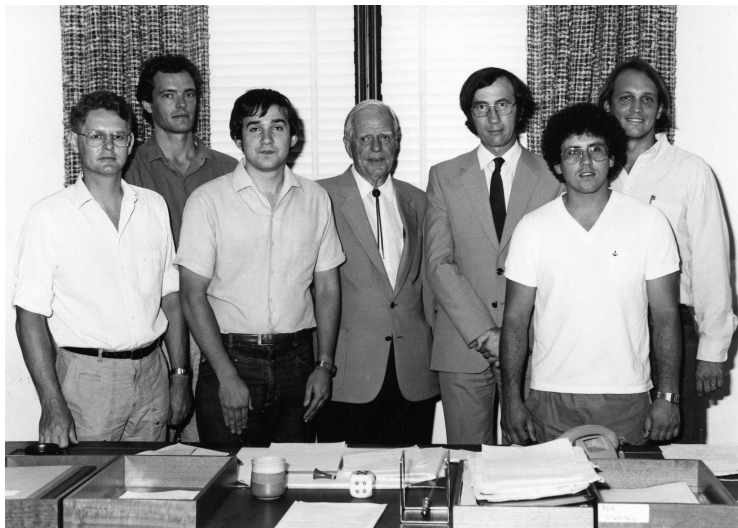


Figure 1 Anthropology Division staff, South Australian Museum 1985 (some not present). L to R: Peter Sutton (Head), Philip Jones, Philip Clarke, Norman B. Tindale, Graeme Pretty, Steven Hemming, Christopher Anderson. Photo: Roman Ruehle (South Australian Museum Archives).

The Yulara Case

Tindale's influence is perhaps nowhere so evident as in what is usually referred to as the *Yulara* case, but in the legal world is called *Jango* for short. The Australian Federal Court hearing of *Jango v Northern Territory of Australia [2006] FCA 318* was the first in which Aboriginal applicants sought a determination of compensation as the result of extinguishment of native title over land. The land in question was the block in which the tourist township of Yulara is located, not far from Ayers Rock.²

The proceedings were brought by the applicants under the *Native Title Act 1993* (Commonwealth) on behalf of the members of a 'compensation claim group'. Members of this group came from the eastern part of the Western Desert, and were predominantly Yankunytjatjara people along with some

² I follow local Aboriginal practice at the time of my field work in the region during 1999–2002 by preferring 'Ayers Rock' (*Itjaraku*, from the English name) to 'Uluru' because of the possibility that someone bearing the name Uluru may be recently deceased.

Pitjantjatjara. The applicants lost their case, appealed it in the Federal Court in Darwin, and lost it again. There the matter rested until the land and development in question, here referred to as the Yulara block, was purchased on behalf of the traditional owners by the Indigenous Land Corporation for \$300 million in 2010.

The main legal reason Justice Ronald Sackville rejected the case was apparently because there was an inconsistency between how the case was plead by the lawyers and how the evidence from Aboriginal witnesses and an expert witness (myself) shaped up. There was also doubt over whether the laws and customs of the witnesses had normative content but this question in the end was avoided.

The main reasons given by the judge for rejecting the expert evidence was my own lack of long-term research in the region; the fact that field work was conducted in the context of the litigation itself; the informants were reluctant to impart to me sacred knowledge that was part of the basis of their claims; I did not have reliable translation services; I had too much influence over the way the applicants framed and presented their case; I had been defensive when giving some of my evidence; my view of a normative system of Aboriginal laws and customs was an anthropological one, not a legal one, and was thus of limited assistance to the Court; and I did not repeatedly write down every instance where local people emphasised that their link to the land was through Aboriginal Law, and in fact seldom did so as it was one of those fundamentals that I considered uncontroversial in such a tradition-oriented people. On the question of a normative system of laws and customs in *Jango*, I have already dealt with this in detail in Sutton (2007).

The main reasons for the cloud cast over the Aboriginal witnesses' evidence were that, according to Sackville J, it did not conform to their ancestral (patrilineal) traditions, and it was at times contradictory and inconsistent. Here I concentrate on the chief anthropological issue of the case: had the applicants lost their traditional patrilineal land owning system or had they never had one?

The conventional anthropological construct of a patrilineal group can be represented by a genealogy like this:³

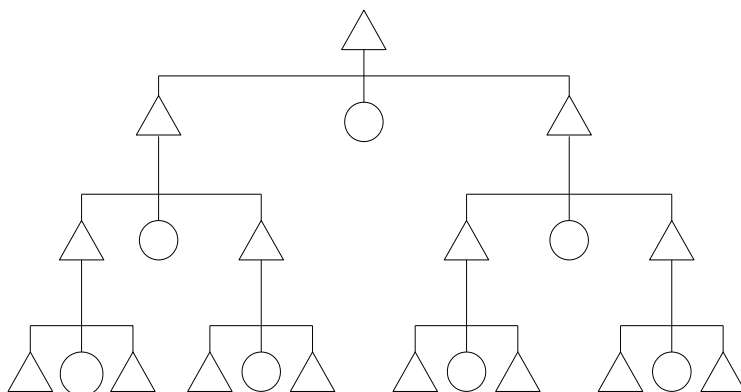


Figure 2 A patrilineal descent group. Note that it includes women, but not their children (after Keesing 1975:18).

A patrilineal descent group owning land is one in which the owners are usually recruited by belonging by birth to such a group, and under a rule of the society which consciously assigns the newborn to groups in this way. A patrilineal totemic group is one which assigns identification with a particular totem or several totems, which are thus emblematic of group membership, to those born into such a group.

In an anthropological report prepared by myself and Petronella Vaarzon-Morel (2003), I examined the existing literature on land tenure in the Western Desert region as a whole (Figure 3) and in its eastern reaches in particular. Much of this paper is drawn from that examination. Additional ethnographic source material is included here for the first time.

³ Triangles are males, circles are females.

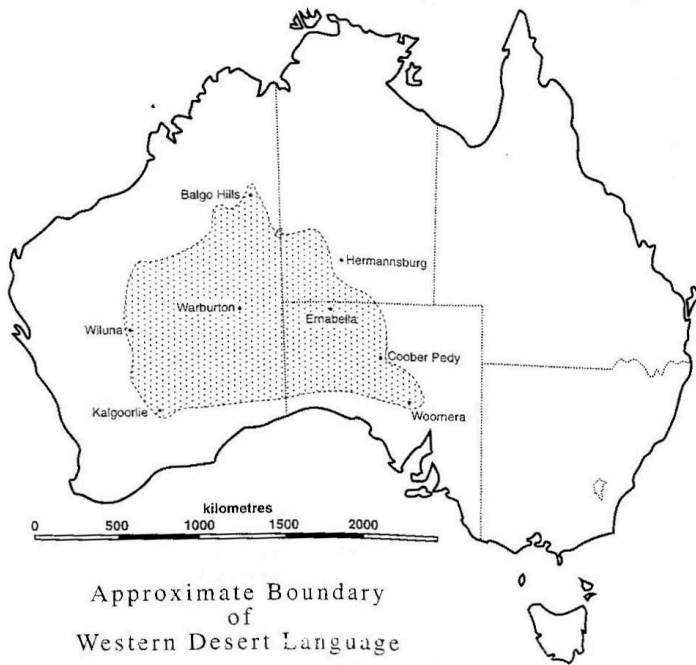


Figure 3 Approximate boundary of Western Desert language (Glass 1997:1).

The Western Desert region is characterised as that of people with a single language that has a number of minor to moderate internal dialectal differences. The cultural pattern is similarly one of relative unity and localised variance. For recent analyses of Tindale's mapping of linguistic entities onto geography in the south-east of this region, see Sutton and Vaarzon-Morel (2003:89–124), Monaghan (2003) and Sutton (2010).⁴

⁴ Sutton (2010) was essentially a revised version, for publication, of a section I had written in Sutton and Vaarzon-Morel (2003:89–124), and was written without the benefit of seeing Monaghan (2003).

After careful consideration Petronella Vaarzon-Morel and I found ourselves unconvinced by those anthropologists who had asserted or implied that a principle of patrilineal descent of totemic land-owning groups applied in the Western Desert region (see details below). Some instead reported a 'patrilineal bias' rather than a patrilineal rule but offered no statistical substance as to how this bias was manifested. We argued that no one had produced any concrete or detailed evidence of either patrilineal or matrilineal structures in the Western Desert region. Instead, the concrete evidence we did examine and produce showed that individuals acquired rights and interests in places cumulatively and from many different sources, *including* from their parentage, even though some of those sources were more important than others. Some men stressed paternal connections, while some women stressed maternal ones. The 'countries' that resulted were egocentric and biographical in construction. The degree of strength of a person's rights in a place depended on a 'points system' in which they had accumulated multiple legitimating links to the place. This is discussed in much more detail in Sutton (2007).

Despite this role for multiple pathways to rights and identification, in the 'nomadic' past a central source of land interests in the eastern part of the Western Desert had been a person's 'borning place' (local English), defined either as the place of parturition or the location where the infant's umbilical cord dried out and dropped off. The role of borning place had been reduced as a result of town hospital births, especially in Alice Springs, beginning in the mid 20th century. But no single source of rights necessarily guaranteed the strongest rights. Among the Yulara applicant group members, when playing their roles as anthropological informants, and as was shown in the evidence of Aboriginal witnesses during the Yulara hearing (Sutton 2007:182-185), it was clear that the geographical clustering of parental, grandparental, sibling, spousal and other cognatic and affinal links to places, the genealogical depth and frequency of those connections, one's knowledge of the sacred geography of the landscape, one's commitment to the ceremonial life of the area, the length of time a person and/or their antecedents had spent living in the area, and the degree of one's preparedness to assert and defend one's claims over the area, were all potentially significant sources of recognised rights in

places. The system was accretive, but it had been going through transformations as a result of post-colonial conditions, mainly in the 20th century, and was no longer the same as it would have been in 1825, the date of the establishment of British sovereignty in this case. Nevertheless there were significant continuities. This was transformation not revolution.

The author most emphatically wedded to the assertion that land tenure in the eastern Western Desert had originally been based on patrilineal totemic groups was Norman Tindale who last published on this in 1972. However, he also left us the invaluable legacy of his unpublished field data covering hundreds of individuals in this particular region, especially the information he gathered in 1933 on the Mann and Musgrave Ranges expedition.

I want to focus here on the relationship between Tindale's field data and his published views, and the way the Court in the Yulara case was, somehow or other, misled into privileging a few lines of generalisation in Tindale's publications over the hundreds of details contained in his 1933 field notes.

Tindale's 1933 field research time in the region, in and near the Mann and Musgrave Ranges, had been a little less than 90 days. Petronella Vaarzon-Morel and I, for the purposes of the case, carried out a combined total of 99.5 days of field work in the region. In addition, I carried out 245 days of desk research and non-ethnographic interviews for the project in 1999–2002. Petronella Vaarzon-Morel carried out 154 days of desk research and non-ethnographic interviews in 1999–2002. This desk research involved careful analysis and systematic databasing of biographical, genealogical, mythological, site-based and other information from the extensive field work conducted in the same region by the earlier ethnographers including Herbert Basedow, Adolphus Elkin, Norman Tindale and Theodore Strehlow, and, since the 1930s, Charles Mountford, Bill Harney, Frederick Rose, Nancy Munn, Annette Hamilton, Robert Layton, Bill Edwards, Daniel Vachon, Jon Willis, officials such as Jeremy Long, site recorders from the Aboriginal Areas Protection Authority and others. We therefore had the benefit of literally years of local ethnographic work by our predecessors.

Detailed data on individuals, families, sites and districts drawn from these weighty bodies of hard-won ethnography were extracted into databases in rigorous detail in our 2003

report's appendices. I had asked and expected them to be produced only as electronic files, for rapid on-screen reference in the hearing. Paperless trials were already happening well before this time. The Central Land Council thought otherwise. When the report appendices were wheeled into court on sack-trucks, printed out at over 6000 pages per copy, Counsel for the Commonwealth used their bulk to suggest that we were trying to snow the Court with paper. In the event the crucially relevant data in the appendices were largely ignored by the Court.

While it is true that Tindale also carried out field research in other parts of the Western Desert, including Ooldea, Warburton, and Mount Liebig, his definitive statement of patrilineal totemic land ownership in the region (Tindale 1972) was focused on the Pitjantjatjara. If his 1933 field data mainly from Pitjantjatjara and Yankunytjatjara people, and the great weight of evidence gathered by others in the same area, contradicted this broad statement about patrilineality, then it was disproven. This would have been true even if his researches elsewhere, at Warburton, say, had uncovered factually grounded patrilineal descent groups holding countries. No such facts have ever appeared.

Of course, in 2003–4, when these issues were being examined in the Federal Court, Tindale was no longer able to be called as a witness so as to have his contributions tested or to allow him to reconsider what he had published. But then again, neither of the respondents called any living expert anthropological witness, even though both parties retained anthropologists for the case. John Morton was the expert for the Commonwealth, Basil Sansom for the Northern Territory (see their 2007 papers and Sutton (2007) for some post-*Jango* debate). The CLC team did not contemplate calling Morton independently. In my view this would have altered the outcome. Nevertheless, Tindale's work occupied a substantial role in the cross-examination and re-examination of myself. In this sense, Tinny managed a late if posthumous appearance as an expert in a highly adversarial piece of native title litigation.

Putting it briefly, the respondents in the Yulara case, the Commonwealth and the Northern Territory Governments, argued that Tindale's considered and settled opinion was in favour of Western Desert people having had a system of land-holding patrilineal descent groups, in spite of what appeared,

and what failed to appear, in his field record cards, genealogies and journals. The fact that in none of his notes from the region did even a single informant express a rule of patrilineality for anything did not deter them. They argued that Tindale may have relied on facts that he learned but did not pass down to us in his notes. For some miraculous reason his 'patrilineal' description only reached paper when Tindale went into academic print. This mystical approach to the evidence by the respondents seems to have appealed to the Judge.

The respondents failed, however, to offer any alternative analysis of what Tindale *did* hand down to us, namely a large corpus of great consistency and considerable time depth. Some living people of the time of the trial were able, via their own memories combined with the old documentation, to trace their ancestry back to named individuals born as long ago as c. 1825 in the relevant region. Although this was the date of legal sovereignty it was generations before effective sovereignty was established in the claim region by foreign occupation.

This was a corpus that could not be used to demonstrate the existence of land-owning patrilineal totemic descent groups at all. The evidence was not purely one of absence, because Tindale *did* record the principal totems and birthplaces and districts of his subjects and their parents. But he appears never to have tabulated this material as a whole in order to see how it was patterned. Instead, like some others, when it came to generalising he simply echoed the theoretical model propounded by Professor A.R. Radcliffe-Brown (1931:28) under which all Aboriginal people were supposed to be born into strictly patrilineal local groups.

The influential power of this model in the past is difficult now to realise. For once, Tindale had abandoned his own vast field database, the work of a practical and systematic recorder of fact, in favour of a metropolitan mandarin's theoretical construct that it did not support.

Tindale's 1972 View Versus his 1933 Field Notes

In 1972 Tindale generalised about the kin group organisation, totem inheritance and territorial group composition in the Pitjantjatjara area in this way:

As we have seen, the whole population of the Pitjandjara is divided into a series of smaller groups with patrilineal descent. These groups are called clans. The basis of their clan organization is a ceremonial one and is linked with a patrilineal and patrilocal inheritance of the totem of a specific locality, and [sic: an] inheritance shared by all men who are directly descended from a common paternal ancestor...Brothers are of the one clan and therefore possess the same territory.
(Tindale 1972:223)

In order for these statements to be correct, Pitjantjatjara people of Tindale's era and prior to this should have been found in the majority of cases to have the same totems as their fathers and the same totems as those of their siblings who had the same father. As is abundantly clear below, this was not the case. These same people, on this theory, should also have had the same countries. It is complex to explore Tindale's evidence on this last matter because in this region Tindale mostly recorded his subjects' birthplaces (under the heading 'where born') rather than their total claims on country stated in so many terms. However, there are some cards recorded in 1933 by Tindale on which 'country' is assigned to individuals whose country is explicitly identified as being a place that was *not* their birthplace. In my view this reflects Tindale's realisation that birthplace was traditionally an important focus of one's interests in land in this region, unless those interests were otherwise specified, a kind of default recognition of birth district as a principal (if not exclusive) pathway to landed identity. Some births—'holiday bornings' as they are called in the region's Aboriginal English—would be discounted as a source of landed identity because they were beyond some acceptable definition of a home area for the child. Often a reason, such as temporary attendance at a distant ceremony, is given for the birth having taken place outside the home region of the parents. Such cases occur in the 1933 data as well as in more recent records. They only make it clearer that birthplaces were, until their recent centralisation, important

bases of personal identifications with particular areas and their Dreaming (mythological and ceremonial) legacy

This classical eastern Western Desert emphasis on deriving a country identity from one's birth district is in accord with Elkin's original conclusions from his own field work in the same region in 1930 (Elkin 1930, 1931, 1934, 1938a, 1938b, 1939, 1940), and the work of Annette Hamilton in the same region decades later (Hamilton 1979, 1982, Hamilton and Vachon 1985).

Whether recorded as 'where born' or as *ngura* or 'country', Tindale's field data on people's territorial links in this area do not establish a predominant pattern whereby people always or merely regularly had the same country links as their fathers or those siblings with whom they shared a father. At best there is a modest achievement of birth in the same district as the father, although this is well below half the cases in his data. This seems to reflect the widely reported tendency of men to want their children born in or close to their own countries. If this is the kind of evidence which lay behind the term 'patrilineal bias' as used in the past, it is actually evidence of 'bias' towards being born in one's father's area, not a rule of patrilineality or even a modest amount of patrilineality.

If there *had* been patrilineality in the Western Desert there would have been no need for expecting parents to try to reach the husband's principal country so that the birth could take place there, a practice that was reported by several different anthropologists who wrote about the region (see below). This is because in a true patrilineal system, as is the case recorded across much of north Australia and elsewhere, the child would traditionally take the father's country as principal country *no matter where it was born*. That is part of the point of a lineal system. It operates independent of the accidents of conception or birth place. In the Western Desert the so-called 'accidental'—whether it is the birthplace or umbilical cord dropping place or place of conception of the child, or the place of the death of a parent, for example—is also the basis of a spiritual link that is or can be at the forefront of belonging to a place in strong terms. The Western Desert's legendary harshness as an environment is usually considered to underlie this biographical and opportunistic, survival-oriented and migratory tendency in the allocation of country rights.

Where Western Desert parents succeeded in having the birth of a child occur in or near the father's country, this was not, of course, an 'accident' but an achievement. In a patrilineal system, by contrast, the child's membership of its father's clan is not achieved. It is a given.

It is important to note that a majority of Tindale's 1933 birthplace entries in his field records, certainly those recognisably from within about 300km of Yulara, are names of *districts* such as Uluru, Kata Tjuta, Mantarurr, Aparara, Artilla, Piltarti, Kikinkura, Malara and Ulkiya, and not names of sites *per se*, even though such district names were usually based on those of important sites. A minority of the 1933 birthplace entries are names of specific sites that do not also function as district names. In a number of cases Tindale specifies the mountain range, for example, to which a birthplace belongs, or in a very large number of cases we have the site's or district's location well fixed on the basis of Tindale's mapping work or that of others such as Robert Layton (with Bill Edwards) and Daniel Vachon who came after him. Later in this paper I explore how far apart were the birth districts of fathers and offspring in Tindale's data.

But first, in order to explore whether people shared birth districts and/or totems with siblings and offspring as well as with a parent, I have extracted from Tindale's 1933 data those cases where a subject had the same birthplace or totem as a parent, and added data on the subject's siblings and offspring (Table 1 below; throughout tables [and the paper in general] I spell Aboriginal words as they are spelled in the sources except where it is my own spelling [based on Goddard 1986] and in those cases the words are in italics).

Parents and Offspring

Here I first address the question of whether there is support for the proposition that, under eastern Western Desert traditions of the pre-contact period or soon afterwards, people's territorial origins were anchored more firmly in the places where their parents or grandparents were born, as against the places where they themselves were born in more recent times, with or without a period of population disturbance. This question is central to the interpretation of the relationship between

historical movements and territorial group identities and territorial claims in the region.

From Tindale's 190 personal data cards of his 1933 Mann and Musgrave Ranges field trip I have selected those cases where there are entries for both parents of the subjects showing their places 'where born' and their 'totems.' In most cases the 'totems' are Dreamings which visited the birth country of the individual and thus are beings with whom individuals were spiritually identified. The sample analysed here therefore consists just of those 97 cases where it is possible to compare birthplaces and totems for a person and both of their parents.⁵

It is significant that in only a minority of the sample of 97 cases could I find a common birth country (district) or totem between child and parent. This is especially so, given the number of subjects born between the 1860s and 1890s (i.e., before major European influences), the plentiful occurrence of sites associated with two or three major Dreamings in particular, the fact that a number of people have two birthplaces recorded, and the tendency for there to be a greater frequency of births recorded for the small number of reliable waters or districts named after them ('big name' places or districts, Layton's 'estates'). Dual places 'where born' arise from the fact that parturition may take place at site X, but the infant's umbilical cord would dry out and drop off about ten days later, at site Y. Both sites could be regarded as important places of 'birth', though this English term is not a good translation. The polite expression for asking a person their 'birthplace' in Yankunytjatjara or Pitjantjatjara is e.g., *Nyuntu ngurra yaaltji itingaringu?* literally 'Where did you become a child?', because direct reference to the birth process is highly sensitive.

⁵ In a very small number of cases Tindale noted that a particular parent's totem had been 'forgotten.' I have counted these as cases where the totem of the offspring is not said to be the same as that of the parent.

Table 1 Birthplaces and totems of parents and offspring compared (from Tindale 1933b).

Record No	Birthplace same as	Same totem as Father	Same totem as Mother	Same Totem as neither
2	Neither			X
7	Neither			X
9	Neither			X
14	Neither			X
18	Neither	X	X	
19	Neither			X
27	Neither		X	
28	Neither			X
29	Neither	X		
30	Neither			X
34	Neither			X
40	Neither			X
43	Both (subj m. c56)			[F diff, M's totem forgotten]
44	Neither			X
45	Neither			X
46	F (subj m. c63)			X
48	Neither	X		
49	F (subj m. c21)	X		
50	F (subj m. c50)	X		
51	Neither		X	
52	Not F, M not stated			X
53	Neither		X	
54	Neither			X
55	F (subj f. c21)	X		
57	Neither			X [same species, different Tjukurrpa]
64	F (subj m. c45) ⁶	X		
65	Neither			X
66	Neither			X
68	F (subj m. c50)	X		
71	F (subj m. c48) ⁷	X		
72	Neither	X	X ⁸	

⁶ Father long dead, died at Charlotte Waters.

⁷ Subject 'born' at two places, Malara and Apuna. Note father died when subject was a boy.

⁸ NBT: 'Same as father, checked.'

Record No	Birthplace same as	Same totem as Father	Same totem as Mother	Same Totem as neither
73	Neither ⁹			X
75	Neither			X
76	Neither			X
77	Neither			X
78	Neither			X
79	Neither			X
82	F (subj m. c57) ¹⁰	X		
83	Neither	X		
84	Neither	X? (subj c56) ¹¹		
85	F (subj m. c50)	X		
87	F (subj m. c47) ¹²			X ¹³
90	F (subj m. c34) ¹⁴	X ¹⁵	X	
93	F (subj m. c20) ¹⁶	X		
94	Neither			X
95	Neither			X
96	Neither			X
97	Neither			X
98	Neither			X
100	Neither (subj m. c6)	X		
102	Neither			X
103	F (subj f. c10)	X		
105	Neither	X		
106	Neither			X
107	F (subj m. c9)			X
108	Neither			X
110	Neither	X	X	
111	F (subj f. c11)	X		
116	Neither			X
118	Neither			X ¹⁷

⁹ Birthplace only one mile from each of father's two places 'where born' (NBT), but this may be wrong if his Angata = Angatja.

¹⁰ Father's 'where born' entry has Jara and Tjanggi, own has Tjanggi and Jara; father has mallu and ngintaka totems, self has mallu.

¹¹ Both involve mallu but details differ.

¹² Father dead.

¹³ Under Father's totem: 'no tjukur,' which may be a polite refusal.

¹⁴ Two places 'where born', one same as F. F still living (said to be 'at Kulal').

¹⁵ The three mallu totems of self, F and M may not be same being or story, as details differ.

¹⁶ F died when subject was a boy, at same place as birth of subject and self (F) (Foster Cliff).

Record No	Birthplace same as	Same totem as Father	Same totem as Mother	Same Totem as neither
119	Neither	X		
120	Neither		X	
121	F (subj f. c29)	X		
122	F (subj f. c30)	X		
124	Neither			X
125	Neither			X
126	M (subj f. c37) ¹⁸	X ¹⁹	X	
128	F (subj f. c17)	X		
129	Neither			X
130	Neither	X	X	
132	M (subj m. c38) ²⁰		X	
133	Neither	X		
139	F (subj m. c18) ²¹	X		
140	F (subj m. c19) ²²	X	X? ²³	
141	F (subj m. c48)			X
142	Neither			X
147	M (subj m. c17) ²⁴			X
149	Neither			X
150	Neither			X
152	Neither			X
158	Neither			X
159	Neither			X
161	Neither			X ²⁵
162	Neither			X
164	Neither		X ²⁶	

¹⁷ Subject aged 60+ (i.e., born before 1873), birthplace and totem different from F, birthplace different from M, no totem listed for M but birthplace suggests windaru (golden bandicoot).

¹⁸ Subject born at Walpa pukunja near Pulpalnga, mother born at Pulpalnga, probably reason for commonality of totem.

¹⁹ Same totem as mother's husband, own father dead.

²⁰ Subject's F was Yankunytjatjara tribe, but subject's tribe matches mother's (and both birthplaces).

²¹ Subject born Malara, F born Konkonkeia near Malara.

²² F dead at Antjini 'near Konanja' (Konanja given as birthplace of both father and son).

²³ F and S totem is watti papa Kantju (old man Kantju dog), mother's totem wild dog.

²⁴ Both born Eterininja, Alberga Creek. Andy is subject.

²⁵ Both parents' totems mallu (red kangaroo), own totem kalaia (emu).

²⁶ May not be same being, both are papa (dog), but M's is specified as papa Kantju.

Record No	Birthplace same as	Same totem as Father	Same totem as Mother	Same Totem as neither
165	Neither			X
166	Neither			X
170	Neither			X
171	Neither			X
173	Neither			X

Table 2 Summary of Table 1.

Birthplaces		Totems	
Same as F	23	Same as F	24
Same as M	3	Same as M	6
Same as both	1	Same as both	7
Neither	70	Neither	60

Implications

The majority of the 97 people referred to in the above table identified their language as Pitjantjatjara, and the rest were identified mostly as Yankunytjatjara or by a term Tindale concluded was its regional equivalent. It is clear from the birth place data that in most cases the totem people gave to Tindale in this context was a Tjukurr(pa) associated with their place of birth. Just over 58% (60 people) had a principal totem that differed from those of both parents. About 6% (6 people) had the same totem as their mothers (but not their fathers), about 23% (24 people) had the same totem as their fathers (but not their mothers). Seven (6.8%) had the same totem as both parents. If we add these seven to the former figures we conclude that 13 people (12.6%) shared a totem with their mothers and 31 people (30%) shared a totem with their fathers. This is the sort of base data which naturally gives rise to the common statement that in the Western Desert there is a bias toward patrilineation or patriliney, even when so infrequently achieved. But it is not consonant with Tindale's sweeping claim of a patrilineal system for totems and countries, combined, in this area.

It is arguable that even this last and rather modest figure of about 30% is 'culturally inflated'. That is, some retrospective alignment of fathers' totems and birth sites and even death sites with the totem and country of ego may be expected, particularly if the fathers being spoken of are long dead. This would accord with my own experience in the region.

It is probably significant that about a third of the people claiming the same birthplace as their fathers were senior men whose own fathers were dead, yet these men were otherwise a small minority of Tindale's total sample. Given this cultural factor, and what it may reveal of a patrilineal preference especially among men, plus the high frequency with which a minority of sites, namely those also used as the 'big names' for districts, occur as birthplaces in this body of data, it is remarkable that, even so, around 68% of people were recorded as born at places different from those of either parent.

Parents and Grandparents

In a system of predominantly patrilineal descent, or even merely one which showed a preference for patrilineation, one would expect as a rough rule of thumb that at least half the individuals would share a principal totem with their father and with those of their siblings who were fathered by the same man (in a strongly patrilineal system the great preponderance of cases should reflect the rule). One would also expect a large number of cases where three generations of consistent transmission of the same 'totem' were visible, from father to offspring, and from male offspring to their offspring. Analysis of the 190 Tindale 1933 cards, which contain genealogical data on several hundred people, reveals only the following nine cases where there are totems or birthplaces common to three generations of kin. There is only a single case where the data matched Tindale's model of patrilineal clans, that of subject 49, the name of whose birthplace (Piltarti, Mann Range) is both a site name and district name:²⁷

²⁷ This is one of the most dramatic cases known to me where Tindale theorised a local system in ways that were utterly at odds with the detailed data which he himself had collected. It reinforces the view, which I hold, that Tindale was far better at amassing fine-grained ethnographic information such as census and genealogical data than he was at understanding complex relational problems such as land tenure systems.

Table 3 Three generations of common birthplaces or totems (1933).

Persons	Three generations of sharing	Sites and totems
Subj 49	Same birthplace & totem as F + FF	Born Peltardi (Mann Range); Wanambi (Water Serpent)
S of 71	Same birthplace as F + FF, different totem	Malara (Tomkinson Range) ²⁸
Subj 18	Same birthplace as M + MF, different totem	Born Puka (Mann Range) ²⁹
2 Ds of 82	Same totem as F + FF, different birthplaces	Mallu (Kangaroo)
Subj 39	Same totem as F + FM, different birthplace	Mallu (Kangaroo)
2 Ds of 119	Same totem as M + MF, different birthplaces	Mallu (Kangaroo)
D of 110	Same totem as M + MF, different birthplaces	Mallu (Kangaroo)

It is notable that six of the nine cases are three generations of sharing of *Marlu* (Red Kangaroo, 'Mallu') Dreaming. This is the most common of the 'totems' recorded in the 1933 data of Tindale. It comes as little surprise that when exemplifying his model in print he chose a set of people united by *Marlu* Dreaming as 'an example of a western Pitjandjara clan of relatively large size...the kangaroo totemic clan of Malupiti at Mt. Davies in the Tomkinson Ranges' (Tindale 1972:224; Mount Davies is in the area of Pipalyatjara and Kalka in the far north-west of South Australia). There is, however, no evidence of anything like a pattern of three (or more) generations of consistent transmission of both totemic and district-based affiliations in Tindale's material from the 1933 expedition, even though there is evidence of quite substantial sharing of totems between siblings and some significant but less substantial evidence of sharing of totems between two generations.

Aram Yengoyan also recorded interests in Mount Davies. Yengoyan is an anthropologist of international repute who has carried out anthropological work based at Ernabella from the 1960s (most relevant here are Yengoyan 1966, 1967a-c, 1968, 1970). When it came to claims to enjoy the opportunity of mining chrysoprase at a common place, Mount Davies, Yengoyan found that instead of being ideologically patrilineal, the claims were disparate in basis. The elders of the Mount Davies group

²⁸ Slightly complicated by the fact that 71's place of birth is given as 'Malara & Apuna 2 places; two totems at Malara: wanambi (son's) + mallu (father's); two waterplaces side by side one snake, the other mallu' (card 71). Malara, at least, is a district name as well as a site name.

²⁹ Puka is a district name as well as a site name.

considered the country belonged only to those who could claim either one of the following:

1. that they were born in the Mt Davies area
 2. that they have a Kangaroo [*Marlu*] Dreaming
 3. that they have kinship relations with one who is from the area.
- (Yengoyan 1970:84)

He then added:

The third factor and its interpretation is most interesting. Many of those who claim kinship ties base their case on matrilineal [sic: matrilial?] or affinal linkages. Some of these claims are valid, others are somewhat slim. Distant consanguines or affines from the area are 'discovered' and a case is made. The Mt Davies elders view matrilineal and affinal ties as quasi-acceptable, but some of the more distant 'creations' are regarded as dubious at best. **The flexibility by which kin ties are arranged with the Mt Davies mob is not a new phenomenon. In general, one is permitted a set of varied means by which access to the area is gained.** (Yengoyan 1970:84, emphasis added)

Yengoyan (1970:82) said that, while most of his informants stressed an ideological patrilineal bias:

[i]n reality the picture is more confusing and flexible. In over half the cases, matrilineal kinsmen and affines were listed as members of a particular residence group.

Nevertheless each local group had a 'core' of patrilineally linked married males (Yengoyan 1970:82). Yengoyan's writings on the subject at times seem to confuse residence groups with sets of people belonging to certain places, and thus a confusion of camps with territorial claims. However, at times he makes a distinction between assertions of rights versus physical occupation that is clear, as in the Mt Davies case above.

In one of his talks, as recorded by Rod Weathersbee, Yengoyan said that 'territorial claims' on Mount Davies had 'led to considerable argument, but generally, the old men have accepted Kinship [sic] through the wife, mother or grandmother as providing a legitimate claim on the area' (Yengoyan 1967c:17). Earlier in the talk he was recorded as stating:

It was commonly held that family connections were patrilineal and that groups were strictly confined to one area. He felt that this was not correct and that lineal descent could change through several groups by marriage and that an individual's knowledge extended beyond his own geographic territory to neighbouring areas, although this knowledge would not be so detailed for areas outside his own.
(Yengoyan 1967c:16, emphasis added)

Yengoyan's picture of the way claims on places were pursued by people of the south-east Western Desert was highly compatible with our own as recorded in 1999–2002 (Sutton and Vaarzon-Morel 2003). Like our own, it also contradicted Tindale's Radcliffe-Brownian model of patrilineal clans.

Siblings and Offspring

The data Tindale collected in 1933 on siblings and offspring in Table 3 may be summarised as:

Table 4 Summary of Table 3—Three generations of common birthplaces or totems (1933).

Subject same as offspring	Subject same as sibling
Birthplace: 4 ³⁰ (9%)	Birthplace: 7 ³¹ (25%)
Totem: 10 ³² (23.8%)	Totem: 13 ³³ (48%)
Different from offspring	Different from sibling
Birthplace: 40 ³⁴ (91%)	Birthplace: 21 ³⁵ (75%)
Totem: 32 ³⁶ (76%)	Totem: 14 ³⁷ (52%)

³⁰ All four were father/son (F/S) pairs.

³¹ B/B pairs: 2, B/Z pairs: 3, Z/Z pairs: 2.

³² Of these, only one was a F/S pair, five were F/D pairs, three were M/D pairs and one a M/S pair. Most of these (7 out of 10) were mallu i.e., Red Kangaroo, of which there are many manifestations at many different places in the region and its various forms are among the most important and extensive of Dreaming tracks in Central Australia. Of the others, two were kanjala (Euro) and one wanambi (legendary Water Serpent), also common.

³³ Of these 8 were mallu (Red Kangaroo), two were ngintaka (Perentie), and one each for kanjala (Euro), wanambi (Water Serpent) and kalaia (Emu). It is significant that these are only five out of the very many totems listed for subjects in this sample by Tindale.

³⁴ F/S pairs: 17, F/D pairs: 13, M/S pairs: 5, M/D pairs: 5.

³⁵ B/B pairs: 11, B/Z pairs: 9, Z/Z pairs: 1.

³⁶ F/S pairs: 18, F/D pairs: 8, M/S pairs: 4, M/D pairs: 2.

³⁷ B/B pairs: 6, B/Z pairs: 7, Z/Z pairs: 1.

Distances Between Fathers' and Offspring's Birth Districts

The question remains, however, as to how much distance there was between the birth districts of fathers and offspring, given that adjacent or nearby birth districts could be regarded as 'one country' for certain purposes. The table that follows contains those father/child pairs—Tindale's primary subjects and their fathers on his data cards (Tindale 1933b)—where the location of the places 'where born' in both cases can be fixed with some confidence.

Summary

- 32 out of 62 (52%) of the birthplace pairs in the table below are mapped as less than 25km from each other.
- 41 (66%) of the birthplace pairs in the table below fall within 49km of each other.
- We do not have Tjukurrpa affiliations for all pairs, but we do have for 48 out of 62. Of those 48, father and offspring had the same Tjukurrpa in 19 cases (40%), and different Tjukurrpa in the other 29 cases (60%).
- Where father-child pairs have recorded birthplaces less than 25km apart, and we have Tjukurrpa data on them (27 cases), 15 share the same Tjukurrpa (56%), and 12 (44%) do not.
- Where father-child pairs have recorded birthplaces less than 50km apart, and we have Tjukurrpa data on them (34 cases), 18 share the same Tjukurrpa (53%), and 16 (47%) do not.
- Where father-child pairs have recorded birthplaces more than 50km apart, and we have Tjukurrpa data on them (14 cases), 1 shares the same Tjukurrpa (7%), and 13 (93%) do not.
- That is, the closer the child's birthplace was to that of the father, the higher the likelihood that they would share the same Tjukurrpa. If the child's totem was determined automatically by that of the father, this pattern would not occur. This is compatible with the observation that there is a very close relationship between a place's Tjukurrpa and the Tjukurrpa of people recorded as being born there, in the Tindale data. I have not had time to quantify this but it

stands out starkly from a scan of the Tindale data in conjunction with the site records.

- Where a father and child have the same recorded place of birth but different Tjukurrpa, the most logical explanation for this would be that the births occurred in the same district but on different Tjukurrpa tracks, or, if at the same site, the presence of more than one Tjukurrpa there would allow for some choice between them.
- In this table there are 34 birthplaces of fathers/offspring recorded for the 19th century, of which 22 (65%) are up to 49km apart. The remaining 12 (35%) are over 50km apart.
- There are 28 birthplaces of fathers/offspring recorded for the 20th century, of which 12 (43%) are up to 49km apart. The remaining 16 (57%) are over 50km apart.
- This shift from more than a third to more than a half of father-child birthplace pairs being over 50km apart is compatible with the hypothesis that the extent or rate of movement was increasing over the period concerned.

Table 5 Distances between fathers' and offspring's places of birth prior to 1934 in the eastern Western Desert (source: Tindale 1933b).³⁸

Rec. No	Native name	Where born & when	Where F born	Same totem as F?	Distance (km)
43	Penawera	Peltardi in Mann Ra. [Piltarti] c. 1877	Peltardi [Piltarti, assuming Mann Ra]	no	0
46	Njumbu nja(name)	Arakailpa nja near Jacky Pass S. side Musgrave c. 1870	Arakailpa	no	0
49	Jakeredja, Jakere	Peltardi c. 1912	Peltardi E. Mann. Ra.	yes	0
50	Tjaladjanma	Peltardi c. 1883	Peltardi E end Mann Range	yes	0
55	Kondjerea	Anmango, S. of Erliwanja c. 1912	Anmangu	yes	0
64	Jaldalpanu	Aputjilpi = Kelly Hill; E of Apparinja c. 1888	Aputjilpi [Apu Tjirlpi]	yes	0

³⁸ Conventions: '0' km in the rightmost column of Table 5 means the same place (frequently this is the same as a district name) has been given for both births. In the same column, 'close' means birth places were recorded as close to each other but one or both places lack map coordinates so a distance could not be estimated; and spellings in square brackets are my renderings in phonemic orthography (Hermannsburg Luritja style).

Rec. No	Native name	Where born & when	Where F born	Same totem as F?	Distance (km)
67	Njinani nga	Njimu c. 1878	Njimu		0
68	Tjikunga	Malara nja W of Mann Ra. c. 1883	Malara	yes	0
71	Entakutji	[1] Malara & [2] Apuna 2 places c. 1885	Malara	yes	0
82	Ngonandi (Tjinampara)	[1] Tjangi(nja) & [2] Jara(nga) WSW from here c. 1876	[1] Jara & [2] Tjangi long way WSW on other end of Mann Ra. S side	yes	0
85	Tjimilkurandjana	Malara SW from here ngura (camp) tjalu (spring) kanba (snake) bulka (big) c. 1883	Malara	yes	0
87	Etiminji	Alkatanja "peta" in sandhills, NW not far from here c. 1886	Alkata(nja)	no	0
93	Tjingo(nja)	Mandaro = Mandarawur = Foster Cliff c. 1913	Mandaro	yes	0
103	Angku	Malara c. 1923	Malara	yes	0
111	Imantura (Tjamboana) & Maiyara	Nalitji just W of Poka c. 1922	Nali(nja) near here, 1-2m W of here on hill	yes	0
121	Ngindja	Pelpere c. 1904	Pelpere	yes	0
138	Pailperenja (na)	Kalkanja S of Kunamata, W. of Pundi, S of Mt Kintore not localized c. 1911	Kalkanja		0
140	Enkadji	Konanja close to & N. of Angaltakutjara Mann Ra. c. 1914	Konanja	yes	0
176	Njuwara	Pokanja Mann Range = Poka [Puka] c. 1883	Poka	no	0
90	Tempa(nga)	[1] Kulal(nga) [2] Anumarapiti long way W of here c. 1899	Kulal	yes	[1]: 0
78	Ngolilja	[1] Atal(nga) near Tjitapiti has no tjukur, [2] country is Impinkeri [Impinkirri] c. 1878	nr. Trews Gap [near Puka]	no	[2]: 0
129	Njuwala	Kondeita pulta SE of here not v. far c. 1903	Erondja near (W)	no	close
88	Marupandjanu	Odanda, near Peltadi in Petermann Ra. [Utantja] c. 1899	[1] Petolo & [2] Okolka [Pitulu]		close

Rec. No	Native name	Where born & when	Where F born	Same totem as F?	Distance (km)
134	Nantamuru (gives as own name)	Pelperei [Pilpiriny] c. 1888	Jaluku(na) near Pelpere		close
136	Lanka tjukur	Ngankuru(nga) S side Mann Ra. [Ngarnkurr 4] c. 1916	Konalnga Mann Ra. near Trew Gap [Kunal]		close
139	Tjalkorei	Malara Tomkinson Range c. 1915	Konkonkeia near Malara	yes	close
177	Tjanganga	Mineri (Kopari near to = Mt Cooperinna, Deering Hills SW from [sic] [Miniri] c. 1904	Kopari nja [Kupari]	no	close
73	Tjanjendi, Kanjinti	Umbukulu c. 1901	[1] Tjitapiti & [2] Angata, 1m NW & 1m N respectively from Umbukulu [Tjitapiti, Angatja]	no	5 (Ump./Ang.) 15 (Ump./Tjit.)
182	Tjinjuna, Tjenjundu	Amaraltja Musgrave Ra (not precisely located) ³⁹ c. 1904	Aparana = Opperinna [Apara]	no	10
14	Kurodjana	Amaraltja E. of Aparara c. 1888	Meironba E of Appara [see Mirrunpa]	no	18
162	Janema	Kanpi [Karnpi] c. 1927	Peltardi [assume Mann Ra Piltarti]	no	20
178	Janunka	Ngari (Nareena) S side Musgrave Ra. c. 1883	Palaritja near Tjilpi [Tjirlpi] soak N side Musgraves same lat. as Konapandi [Kunapantii] ⁴⁰	no	c20
84	Ngonanti	Njira(na) near Poka Mann Ra. [Nyira] c. 1877	long way W. Atarango(nja) [Atarungu]	yes	25
142	Tjotjadja	Erandjijanga near T Bradys Well N of here c. 1915	Anapella [Anapala]	no	25
189	Minjungunja in "weaning" camp	Apara c. 1920	Kulpitjarta, W of & near Aparara [Kurlpi Tjarta]	no	30

³⁹ Location mapped by Layton.

⁴⁰ As Kunapanti is on the S side of the Musgraves, 'latitude' does not make sense here. He may have meant longitude.

Rec. No	Native name	Where born & when	Where F born	Same totem as F?	Distance (km)
166	Njungala nja	Kantjunja this side Poka near our lunch camp after Angaltakutjara (N. side Mann Ra.) [Kantju 1] c. 1928	Umbukulu [Umpukulu]	no	35
58	Njukupai	Ambukulu = Umbukulu [Umpukulu, Mann Ra] c. 1895	Pudalja = Pudal (our camp 8) [Purtaly (?), Musgrave Ra]		40
83	Malparinga na	[1] Itjakura & [2] Ilitjara [in sandhills N by W of here 2 days away] c. 1895	Wipu, W of here end of Mann Range where it becomes a tail	yes	40
130	Moinkorei	Anapala = Ernabella c. 1875	Owalinja (creek)	yes	40
165	Njingota nja	Kantjunja = Kona nja? This side [Ernabella side] Poka near lunch camp after Angaltakutjara [Kantju 1] c. 1920	Intarni W of Poka	no	at least 40
135	Peiatjilpi	Umbukulu c. 1898	Kunamata W of Mt Crombie		45
147	Andy	Alberga Creek, Eterininja E of here, 6 m SW of Pine Ridge [Itarini] c. 1916	Konaurna SE not far S of Mt Ferdinand, S of Donald Well on same creek	no	c55
146	Tjapalja	[1] Konalka [W of Malara] & [2] Minia W of Malara c. 1898	[1] Koruponja, [in Deering Hills] [2] Konalka		[1]:c60
75	Wakenbi	Tjitapiti 1m NW of here c. 1905	Mototja [Mututja]	no	c60+
42	Tjopinga-tjoping left handed	Aliwanjawanja [Arliwanyawanya ~ Arliwanyuwanyu] c. 1883	Wamapiti S. 3 days [Wama Pirti 1]		65
69	Lenga tjukur	Poka, near Trews Gap a little way along Range from here. S. side "c 12m." running creek goes S. [Puka] c. 1881	Wipu, WNW. towards W end of Mann Ra		65
170	Nanjuri	Alpara near Aparanja W. Musgrave Ra c. 1895	Wirangkara W of Mandaro [Wirangkarri]	no	65
51	Mulaiaparu	Kanpinja W of Peltardi [Karnpi] c. 1910	Teitu [Tjirtu, W of Mann Ra]	no	at least 65

Rec. No	Native name	Where born & when	Where F born	Same totem as F?	Distance (km)
149	Waljaruma nja	Waijara W of Trews Gap Mann. Ra [Wayarra] c. 1883	Pulpalnga [Pulpal]	no	c60-80
76	Ekota(nja)	Mototja, this side Apari N. Musgraves [Mututja] c. 1865	Konamata E of Mt Kintore [Kunamata]	no	c80
100	Tapalja = Teti	Walpa W by S from here [Warlpa 3, W of Puka] c. 1927	Odanda NW long way [Utantja]	yes	c85
7	Andumara	Peltardi, E Mann Ra [Piltarti] c. 1885	Konkonkeia nr Malara	no	95
65	Murundu	Apari = Opparinna, N. of Musgrave Ra. c. 1888	Kartatjuta (Mt Olga) [Kata Tjurtja]	no	95
77	Ngonanti	Tjitapiti c. 1876	[1] Umbukulu E end Mann Ra. [2] He really came from Apari mother walk this way	no	[2]: 100
40	Jange(na)	Kanjameita near Apari, Aparana where has name [Apari] c. 1910	Kanpi [Karnpi]	no	105
8	Moreika	Adiila, E. of Ayers Rock [Artila] c. 1900	Apari		110
1	Koneia tjukur [Kuniya Tjukurr]	Kularda, Goyder Springs [Kurlarta] c. 1914	Adiila Hill NW of Ernabella, E of Ayers Rock [Artila]		120
132	Kawari = Jankari	Pelpere W of Poka [Pilpirriny is W end of Tomkinson Ra] c. 1895	Umbukulu [Umpukulu]	no	c180
59	Tjankartu(nja)	Kondjanja W end of Mann. Ra. c. 1909	Wamapiti, 3 days S of Erliwanja, SE from here.		230
45	Djimindinja	Peltardi Mann Ra. [Piltarti] c. 1878	long way W. of Peltardi, Patuperi = W [Partupirri, Rawlinson Ra area]	no	250+
33	Nantje	Anapala = Ernabella c. 1929	Ngankuru long way W of Apari na [Ngarnkurr 4, Mann Ra]		275
28	Motjutjana = Inapa	Anapalla [Anapala] c. 1893	Tetu [Tjirtu (?) W of Mann Ra]	no	320+

Scholars other than Tindale

As to the anthropological legitimacy of questioning Tindale's conclusions I have also taken the step of carrying out an elementary analysis of Elkin's 1930 raw field data on the same question. Elkin did not find genealogically coherent, bounded and exhaustive kin groups as land holding groups in the relevant region. He concluded (Elkin 1934:173–175), that a man's *djugur* [totem] was frequently the same as his father's, but this can be rejected on the basis of the reanalysis of his own data below which shows such cases were in fact a smallish minority rather than frequent.

All these data in Table 6 are from Elkin's field notes.⁴¹ The table sets out the source data in detail for all twenty-one cases where Elkin recorded both father's and offspring's totems.

Table 6 Elkin's 1930 field data where both father's and offspring's totems are recorded.

Name	Totem name	WD Translation	Born at	Other Place	Fa's totem	Mo's totem
Notebook I						
Paddy	Ngandal	quiet snake		Ingadji - Opara country; Alberga side is 'all cousin, can't marry'	honey ant	eaglehawk
Jimmy Charlie (Kanbadjuga)	Malu	marlu red kangaroo		Bilpiri	Malu	
(Old) Charlie, Nanara	Djunagi	marsupial	Moorilyana	Charlie's country is Indalkina Ck.	Malu, born at Mala place	woma, born at Woma place, (and Br, and MBr)
Lilie	Waiyuda	possum			Kapi	
Tommy (Agangaga)	Malu		Lil[la]. Ck	Araldina (along Lila Ck.)	same	
Notebook III						
Butcher Dick	Kalea	karlaya emu	Lambina	From Lilla Ck way, Alberga. At Welbourne Hill.	Malu	Kunia 'carpet snake'

⁴¹ Elkin Fieldnotes SA, 1930, Series 2, Box 9 Notebook I and Notebook III; see MF110, Parts 8.5.6 and 8.5.7.

Name	Totem name	WD Translation	Born at	Other Place	Fa's totem	Mo's totem
Charlie	Wolauru	eaglehawk [warlawurru 'wedgetail eagle']	Officer's Ck (Everard Ra.)		Puny (sort of wallaby)	
Charlie (old man)	Kunia	carpet snake	kadilga ('maggot place')		karlaia 'emu'	
George	Laradja	green snake (poisonous); WD larrtja 'snake type, edible'	(bena) Laradja		malu, belongs this country (Officer's Ck way)	
Joe gar	Muleyango	red snake	Algai'ilbuna (other side of Everard)		Ili 'wild fig' from Kunamadana	wolauru from Djugalna
Ted	Kunia	carpet snake	Erldunda	Lilla Ck	Malu from Finke	Kun.ga (woman) near Anabella, from Mabuna
Charlie	Pidikarali	centipede	Idia (other side Moorilyana, near Anabella)	brought to Muldadi as child (born there)	Indaga (Pirinti) at Aduthana	Idjaridjari (small burrow- dwelling marsupial) at Wolidarina
young Charlie	Wolauru	eaglehawk [warlawurru 'wedgetail eagle']	Wolada		Waiyuda, at Kunaiildu	
Paddy	Wolauru		Karini (middle of Everard Ra.)		Kunia at Djundul	
Peter	Djalgu	nocturnal ground- dwelling marsupial	Purkuldja		Waiyuda at Kunaiildu, country Anabella way	country Aliwonyuw onyu; woma, parara snake/suga- r ants; Porkuldja
Moola (big nose)	Wonambi, Djalgu	warnambi (dreaming snake)	Djin.gun (where Djalgu sang corroboree) (Everard Ra. Way)		tauan (like a wallaby) at Kadindja	Djun.gu at Hila (or vice versa)
Ingangya	Waiyuda	possum	Wagulangana (close to Kunaiyuldu)		Ilbara (tree sp) at Magikunad- jaradja	wongauu (edible grass seed) at Unbern- bunga

Name	Totem name	WD Translation	Born at	Other Place	Fa's totem	Mo's totem
Peter	Malu		born at Malu place	ngura Pilpingya - Idambidambi	wonambi at Miniela	Malu, born at Kangaroo place, died at Irimirila [also her place]
Wolaurudugu	Wolauru		Waidjela	ngura Pilpingya - Idambidambi	Malu	
Nukabe	Indaga	Perentie	Purdjukalo	ngura Pilpingya - Idambidambi	Waiyuda, at Woldja'arab ila	Milbali (big goanna) at Kalgangambo or Yalidji [not sure if these names refer to places]
Billy	Malu		Pilpingya-Idambidambi	ngura Pilpingya - Idambidambi	Malu, born Andari	Malu

Table 7 Summary of Elkin 1930 field data in Table 6.

Paternal totem sharing	Percentage	Individuals
Same totem as F	3 (14%)	Jimmy Charlie, Tommy and Billy. ⁴² All are Marlu (Red Kangaroo).
Different totem from F	18 (86%)	Paddy, Old Charlie, Lilie; ⁴³ Butcher Dick, Charlie, Charlie (old man), George, Joe gar, Ted, Charlie, Young Charlie, Paddy, Peter, Moola, Ingangya, Peter, Wolaurudugu, Nukabe. ⁴⁴ Five of these had Marlu totem fathers but did not have Marlu totem themselves.

I have performed a similar analysis of the 1935 genealogies of T.G.H. Strehlow on the basis of their geographical relevance to the Yulara case, i.e., they are from the same region. Space does not permit me to present all the details here. They contain data

⁴² Elkin Fieldnotes SA, 1930, Series 2, Box 9 Notebook I pp. 26, 49–50 and Notebook III, p. 190; see MFI10, Part 8.5.6, pp. 86–87, 91–92; Part 8.5.7. p. 125.

⁴³ Elkin Fieldnotes SA, 1930, Series 2, Box 9 Notebook I pp. 16–18, 29–30, 34; see MFI10, Part 8.5.6, pp. 84–85, 87–89.

⁴⁴ Elkin Fieldnotes SA, 1930, Series 2, Box 9 Notebook III pp. 35, 42, 58, 59, 60, 62, 78, 84, 88, 90, 92, 100, 122, 130, 154, 156, 190, 192, 194, 196; see MFI10, Part 8.5.6, pp. 94–95, 98–99, 103–107, 114, 116, 119, 125–126.

on 42 father-offspring totem relationships which compare as follows:⁴⁵

Table 8 Summary of Strehlow 1935 eastern Western Desert field data in genealogies.

Same totem as F	7 (17%)
Different totem from F	35 (83%)

There is a close similarity between the Strehlow and Elkin figures. These cannot be figures showing that totemic patrilineal groups existed in the long past in this region.

Nancy Munn (1965:6-7) an anthropologist of international repute who worked with people from the same region of the eastern Western Desert based at Areyonga (some at Amoonguna), in the mid-1960s, leaned more in print towards an essentially patrilineal group model, but said it was modified by recruitment through birthplace and loss of identification with fathers' countries under appropriate conditions. This does not really match her field information, which remained unpublished but was keyboarded with Munn's approval in Chicago by Petronella Vaarzon-Morel in 2002 (see Munn 1964-65a, b, c).

Munn's field data on adult individuals were for people living mainly at Areyonga, some at Amoonguna, in 1964-65. There is a standard entry structure for each person in Munn's (1964-65a) field data:

Date	No [code number of individual]
NAME:	DREAMING
AGE (est.)	
COUNTRY (birth)	
LOCATION OF CURRENT RESIDENCE	
FATHER'S COUNTRY	DREAMING
MOTHER'S COUNTRY	DREAMING
SIBLINGS and 1/2s [half siblings]	
SIB. COUNTRIES	DREAMINGS
SPOUSE'S COUNTRY	DREAMINGS
SIB. SPOUSES' COUNTRY	DREAMINGS
CHILDREN:	
CHILDRENS' COUNTRIES	DREAMINGS

⁴⁵ From T.G.H. Strehlow's Genealogies VII 1, VII 2, VIII 3, VIII 4, VIII 5, VIII 6, VIII 7, VIII 8, VIII 9 and VIII 10; see Strehlow [dates various] in references below; see MFI10, Part 8.11.3, pp. 663-664, 666-673.

‘COUNTRY (birth)’ suggests Munn had come to view birth country as of particular importance. Entries here ranged somewhat in substance and reflected some flexibility in where a person regarded their main country to be, e.g., born at X but grew up in mother’s country Z so identifies more with Z. There are 72 records where both the informants’ and their fathers’ countries were recorded (in a large number of cases no pertinent data were recorded). Of these, 35 identified their countries as the same as their fathers’, five at places nearby to their fathers’ countries, and 32 identified their own and fathers’ countries as different and often separated by moderate to large distances (here I rely on the huge site GIS I developed for this case and which was graphically printed as Sutton and Vaarzon-Morel [2003:Map 3]).

In the table below these are combined with equivalent figures drawn from Tindale’s, Elkin’s and Strehlow’s data. To err on the conservative side I have combined the 35 Munn cases where ego’s and father’s country were the same with the five where they were adjacent, thus giving 40. *Tindale I* below refers to the figures based on all cases where the totems of *both* parents were recorded, and *Tindale II* refers to the figures based on all cases where fathers’ and offspring’s totems were recorded but mothers’ may or may not have been.

Table 9 Four sources compared.

Recorder	Strehlow	Elkin	Tindale I	Tindale II	Munn
Same totem as F	17%	14%	23%	40%	56%
Different totem from F	83%	86%	67%	60%	44%

The discrepancy between the Tindale and non-Tindale figures seems significant but I have no suggestion as to what lies behind it. The discrepancy between Munn’s material and the rest is striking. This material was recorded a generation or more later than that of the others. It is possible that what we observed in 1999–2002 in the same region, which included a modern settlement-based trend towards using parental descent rather than birthplace as a privileged factor in assigning country, had already started among younger generations at Areyonga by Munn’s time.

In any case I conclude from these further analyses that this region of the eastern Western Desert did not have a system of patrilineal totemic descent groups at the time of British sovereignty in the normally accepted sense of that terminology.

Other Sources

Very briefly, what had other writers than Tindale said about Western Desert land tenure? Ronald and Catherine Berndt's earliest raw base data on the subject came from their field work at Ooldea in 1941. Their informants were mainly from the south-east region of the Western Desert. In their report they concluded that:

It is the association with the "water" at which he was born that binds [the individual] to his own particular territory, and this bond is stronger than a bond with any fellow tribesman. His birth at a certain "water" determines his right of entry into a particular totemic cult lodge, his future ceremonial importance, religious beliefs, and to some extent his social prestige'...Male children born along the particular track of an ancestral being are members of the totemic cult lodge.

(Berndt and Berndt 1945:14 and 371, emphasis added)

But they also said this:

Membership in the totemic cult lodge is determined by the totemic locality, or ancestral *ga:bi* [water] at which the child is born. Because marriage is patrilocal, this is usually within the horde country of the father, and probably at or near the waterhole at which the latter and his predecessors were born...But when a birth takes place away from the horde country the totem of the locality in which the child is born must be taken. Even so, however, the father's totem is thought the most important and has frequently been adopted.

(Berndt and Berndt 1945:125)

They followed this statement with examples drawn from three informants, Jandut, Njien and Wingari. Jandut's father (F) and father's father (FF), like himself, were Wadi Gudjara Dreaming and born on that track in the same area—but so also were his mother (M), mother's brother (MB) and mother's mother (MM). Njien's case was simpler—he, his F and father's sister (FZ) and his FF were all Wadi Gudjara people. In Wingari's case, he also was a Wadi Gudjara person and so also were his F, FB, FF, and two brothers and two sisters—but so also were his M, MB, and

MM. One case of totem adoption then followed: Wongaba's birth area totem was *Keringga* (Small Hawk) but instead he took the *Baba* (Dog) totem of his F and FF—but his M, MB, MZ and Z were *Baba* also—and his B was a *Ma:lu* (Red Kangaroo). These examples did not, therefore, provide a picture of a tendency towards patrilineal descent groups, but rather a tendency to try to match a child's birthplace with their father's area and chief totem.

At that time the Berndts (1945:1) used the term 'Western Desert' as an equivalent of the 'Great Victoria Desert'. In a later publication on the Western Desert, a term he was now using in its present-day sense, Ronald Berndt (1959:99–101) provided more relevant examples, which I have condensed into Table 10. The region of his focus here was roughly from the Warburton Range north to Lake Christopher and east to the Western Australian/South Australian border. This following analysis was not part of Sutton and Vaarzon-Morel (2003) and has been carried out recently.

Table 10 R.M. Berndt's southern Western Desert case material. (M) = male, (F) = female, F = father, M = mother, S = son, D = daughter, FBS = father's brother's son.

Name	Relationship	Birthplace	Dreaming track
Mandjina (M)		Wirguran	Wadi Gudara (Two Men)
Not named (M)	Mandjina's F	Banamaru	Same local group as Mandjina
Jananggari (F)	Mandjina's wife	Malubidi	Malu (Red Kangaroo)
Garaba (M)	Jananggari's F	Ganga	Part of Ganga is in Malu country but F and D were of diferent local group
Badeii (M)		Babil (Wo:dud local group) near Minnie Ck)	Waru (Fire)
Wining (M)	S of Badeii	Mindjina (Limestone, N of Cosmo Newberry)	Nganamara (Mallee Hen)
Gawingawin (M)		Labagu (NW side of Rawlinsons)	Wanmala (Revenge Party)
Mangada (F)	D of Gawingawin	Jiringgan (Petermanns)	Malu (Red Kangaroo)
Manjunggu (F)	D of Gawingawin	Warako:na (Giles)	Wadi Gudara (Two Men)
Djibiri (M)	S of Gawingawin	Warako:na (Giles)	Wadi Gudara (Two Men)

Name	Relationship	Birthplace	Dreaming track
Djinagadaru (M)	FBS of Gawingawin	Jandjunbi (near L Christopher)	Gunia (Carpet Snake)
Guganjiri (M)	FBS of Gawingawin	Jandjunbi (near L Christopher)	Gunia (Carpet Snake)
Dadidjara (M)		Warabuju (Pass of the Abencerrages)	Waiuda (Possum)
Unnamed (M)	S of Dadidjara	Warabuju (Pass of the Abencerrages)	Waiuda (Possum)
Unnamed (M)	S of Dadidjara	Warabuju (Pass of the Abencerrages)	Waiuda (Possum)
Unnamed (M)	S of Dadidjara	Warabuju (Pass of the Abencerrages)	Waiuda (Possum)
Unnamed (F)	D of Dadidjara	Warabuju (Pass of the Abencerrages)	Waiuda (Possum)
Ngalilaman (M)		Wonana (betw Blackstone Ra & Giles)	Njirana (Lustful Man)
Unnamed (F)	D of Ngalilaman	Wonana (betw Blackstone Ra & Giles)	Njirana (Lustful Man)
Unnamed (M)	S of Ngalilaman	Wonana (betw Blackstone Ra & Giles)	Njirana (Lustful Man)
Jabuboi (M)		Manguri (NW of Rawlinsons)	Njirana (Lustful Man)
Imala (F)	D of Jabuboi	Wirindjara [same as M]	Gunggarangga (7 Sisters chased by Njirana)
Agajiri (F)	D of Jabuboi	Wirindjara [same as M]	Gunggarangga (7 Sisters chased by Njirana)
Djuandjuan (M)	S of Jabuboi	Wirindjara [same as M]	Njirana
Wudawuda (M)	S of Jabuboi	Wirindjara [same as M]	Njirana
Niljaba (M)	S of Jabuboi	Wirindjara [same as M]	Njirana
Jaramuna (F)	D of Djuandjuan	Wonggarin	Gunggarangga
Djubarula (M)		Badaga in Ri:ra country (W of L Christopher)	Wanmala (Revenge Party)
Unnamed (F)	D of Djubarula	Jirija (N side of Rawlinsons)	Two Boys
Unnamed (F)	D of Djubarula	Jirija (N side of Rawlinsons)	Two Boys
Unnamed (F)	D of Djubarula	Jirija (N side of Rawlinsons)	Two Boys
Unnamed (Sm)	S of Djubarula	Jirija (N side of Rawlinsons)	Two Boys

Name	Relationship	Birthplace	Dreaming track
Malwinggu (M)		Gulunanggada (N of Warburtons)	Malu (Red Kangaroo)
Mindalagu (M)	S of Malwinggu	Mudibung (N of Warburtons) (same local group as F)	Malu (Red Kangaroo)

Table 11 Summary of data in Table 10.

Same birthplace and/or Dreaming Track as F	14 (60%)
Different birthplace and Dreaming Track from F	9 (40%)

Among these examples are the cases of Djinagaduru and Gunanjiri, two men who were sons of Gawingawin's FB. In a patrilineal system these men would normally (and normatively) be of the same country and chief totem as Gawingawin, whose Dreaming was Revenge Party from Wabagu. They were not, being both Carpet Snake Dreaming from Jandjunbi (Berndt 1959:99–101).

In any case, this was a high percentage of birthplaces achieved in the father's area when compared with data from other sources, but it is still a consequence of a normative rule that children took the same country as their fathers if their mother managed to give birth to them in his area, not by a descent-phrased rule of patriliney.

Robert Tonkinson, working in the Jigalong region of the south-west Western Desert from the early 1960s, found there were no unilineal descent groups or clans. While 'estate' groups had a core of patrilineally related people, their membership was not rigorously defined, membership criteria were many, including birthplace and place of circumcision, people exercised choice over these group memberships, and the members were not all blood relatives (Tonkinson 1991:66-69)—hardly grounds for arguing that he found well bounded genealogically structured sociological entities of any kind, let alone patrilineal descent groups owning land.

Annette Hamilton (1982:101–102), working with south-eastern western Desert people east of Ernabella, in the early 1970s, flatly denied a principle of patrilineal descent for land rights and stressed birthplace instead.

Fred Myers, working in the northern Western Desert from 1973, at Papunya and Yayayi Bore, found an array of bases on which Pintupi people claimed country to be theirs, none of them involving membership of well defined genealogical subgroups. Landowners were instead 'bilateral descending kindreds', that is, egocentric sets of both consanguineal and non-consanguineal relatives, not sociocentric kin groups (Myers 1986:128-130 and 193-195). Sackville J in *Jango* took the view that because Myers had first conducted field work in the 1970s his findings were of less credibility as descriptions about the classical system than were those of Tindale who had started in the Western Desert much earlier chronologically (c. 40 years). But in terms of length of contact with the post-colonial world in fact Tindale's and Myers' informants were highly comparable, given many of the Pintupi had their first experience of the outside world in the 1960s and one group of Myers' informants were 'nomads' who came to settle at Kiwirrkurra as late as 1984. They have not been reported as altering his views on the classical system of their people.

Robert Layton, working under the requirements of the *Aboriginal Land Rights Act (Northern Territory 1976) Commonwealth*, found there were descent groups in the Ayers Rock region in 1979, but on closer inspection one finds that these recruited people through filiation to either parent or any grandparent, through birth, and, in a case such as Donald Frazer, through decision,⁴⁶ but also that a person's own estate became the one where they most frequently exercised their inchoate rights (Layton and Rowell 1979:3; Layton 1983a:25, 1983b:228-229). This made it pretty clear these were not well bounded genealogical structures *per se*. In such a case the *Northern Territory Land Rights Act*, which specifies that traditional owners must be members of a 'local descent group', has acted as a selective pressure to emphasise recruitment to the claimant group of those whose parents came from the land in question. Layton (1995:210-230) in later publications failed to sustain his earlier emphasis on 'local descent groups' and admitted that his anthropology had been influenced by legal requirements.

⁴⁶ Frazer 'has been incorporated into the Kulpitjata descent group by common consent, by initiation and instruction in country': Robert Layton, *Uluru (Ayers Rock) Land Claim*, Transcript pp. 283-284).

A number of those who, in Layton's submission, had claims on the Ayers Rock area through their fathers, for example, and who were indeed found to be traditional owners of land in the area by Justice Toohey in 1979, were interviewed by Petronella Vaarzon-Morel and myself in 1999–2002 and in fact denied that Ayers Rock or Yulara were their primary countries and therefore declined to be regarded as claimants in the Yulara compensation case. This did not mean that they had no connection to the area through their fathers, and indeed they continued to receive money as 'traditional owners' on that basis. But it certainly indicated that they did not regard themselves as holding primary interests in an estate to which they acceded through patrilineal descent. The inevitable conclusion is that men with fathers from Ayers Rock did not routinely pass on such interests to their offspring.

Kingsley Palmer (1984:131–132), in the Yalata region of the south-eastern Western Desert, found that land ownership was the holding of superior economic powers by large sets of interrelated and interacting people but made no suggestion that they were defined kin structures such as descent groups.

Annette Hamilton and Daniel Vachon (1984:15–19) in the north-east Western Desert, in the Lake Amadeus region, found that affiliations to country were based on links to parents, grandparents, spouses, in-laws and birthplaces, among which people made choices.

Reanalysing the relevant Lake Amadeus land claim data John Avery (1989:74) found that the 18 Western Desert claim groups in the *Lake Amadeus* case were probably egocentric kindreds rather than descent groups.

Michael Niblett and his collaborator Strong, again in the same Lake Amadeus region, found 18 bases of affiliation to the Mereenie oilfield lease area, not one of which was membership in a genealogically defined structural kin group (Aboriginal Land Commissioner 1989:para 210). A patrilineal descent group would, had it been findable, have been such a kin group.

Lee Sackett (1994), working on a Land Rights Act claim at Tempe Downs nearby to the south, found there were, in the language of the *Aboriginal Land Rights Act 1976*, 'local descent groups' mainly based on patrification, but people without such ties could also activate 'borning' (birthplace) rights as a basis of a major claim, and others who had long lived on and learned a

country could make that link enduring, such people thus also achieving *ngurraritja* status (Sackett 1994:33–34; *ngurraritja* refers to those who belong strongly to a place). The possibility that the composition of the claimant groups was influenced by the requirements of proof in the *Aboriginal Land Rights Act* cannot be discounted. It was, according to Sackett (pers. comm. 11 May 2015), influenced by the country's proximity to Arrernte country, where patrilineal groups were long established, and a number of the claimants had lived at Hermannsburg in Arrernte country. It was also influenced by the powerful figure of Bruce Breadon who was chairman of the Central Land Council. Further, one of the four claimant groups was descended from Syd Coulthard's father's mother, so its patrilineal links were shallow. Claimants were concerned that Sackett also list as traditional owners about twenty-five people whose link to the country was not by patrilineal but by birthplace. The latter were not recognised as Traditional Owners by the Aboriginal Land Commissioner.

Jon Willis, based at Mutitjulu next to Ayers Rock, in his PhD thesis wrote in terms of descent groups and even lineages but in fact made no demonstration of their existence, and such matters were not part of his focal topic of men's health. Instead Willis provided the valuable insight that people of the region use a kind of 'points system' by which different links to a place can be amassed accretively (Willis 1997:i, ii, 63, 68, 69, 180, 196, 213 and 216–217).

Scott Cane, in the south-western Western Desert, in the Tjuntjuntjarra region, and on the basis of fine-grained ethnography, found no genealogical land holding groups at all, but instead found that people's primary land connections were through place of birth and umbilical cord loss, parental birthplace, filiation to a parent, connection with other kin countries such as those of spouses, and sites for which individuals held spiritual responsibility. Together these could form a 'composite' justification for ownership and authority claims (Cane 2002:64, 119–124, 126, 128–130, 134–136 and 140). Once again Western Desert 'country' was found to be an egocentric construct built from multiple sources, and operating on a kind of 'points system'. Despite the historical lateness of his field work, Cane's (2002) informants had been among the last

desert 'nomads' to come into contact with the outside world and many were born deep in the bush.

Most of these authors have been fairly free of the modelling pressure of anthropological theory or legal frameworks, but Tindale, Berndt, Munn, and to an extent Willis, were in my view over-influenced at points by anthropological descent theory, particularly the patrilineal model put forward by Radcliffe-Brown. It was precisely this model which Tindale echoed in his 1972 description of Pitjantjatjara land ownership. The earlier land claim report of Layton and probably also the land claim report of Sackett were influenced—by selection more than distortion—by the legal context of their work under the Land Rights Act.

'Hordal' Groups

While in the 1972 paper Tindale referred to the asserted patrilineal totemic land holding groups of the Pitjantjatjara as 'clans', elsewhere he called them 'hordes' (e.g., Tindale 1974:16). But some of his Western Desert 'hordes' are dialectal groupings rather than totemic or kin-based groups. For example, Tindale's 'horde' recorded as Maiulatara (Tindale 1972:220; 1974:217) is the same term as Elkin's, but in Elkin it appears from the context to be a dialectal term (Elkin 1931:61). Tindale also treated Maiulatara (and 'Maiulatjara') as a non-favoured alternative for the dialectal terms Pitjantjara and Matuntara (Tindale 1974:288). It appears nowhere in Tindale's 1933 field data and its source is obscure to me.

In another case Tindale said that 'Mulatara' was a horde of the Pitjandjara (Tindale (1972:220; 1974:217 and cf. 292), but in his own field data he recorded 'Yangkudjadjara = Mulatara' (Tindale 1933d loose sheet), and also 'Mulatjara (= Jangkundjajara t. 65 [i.e. *testatur* = according to Paddy Murundu, the translator and also Subject 65])' (Tindale 1933b:card 187). That is, he recorded it as a dialectal term equivalent to or falling within the scope of certain other terms. However, he did not reflect this record in his published work nor the fact that he had recorded Mulat(j)ara as an equivalent of another dialectal name. It means 'those who say *mula* for 'true'.

While Elkin wrote of 'hordes' in the eastern Western Desert he never asserted they were named, descent-based groupings but wrote of them as residential aggregates (e.g., Elkin 1931:67) and, somewhat confusingly, also as a group of people of the same local totem (Elkin 1931:70). This was not descent-based however, as he also said this:

This variety of local totemism is similar to the conceptional variety of totemism of the Aranda tribe at Alice Springs, in that a person's totem depends somewhat on chance, and that members of any one totem tend to belong to the one local horde. But here [in the 'Western Group'], the fortuitousness lies in the accident of birth and not of conception. There is no doubt about this in any part of the western area...
(Elkin 1931:70)

A descent-based rule for passing down totems or country cannot be described anthropologically as an 'accident'.

Conclusions

On the balance of probabilities, the evidence thus is that at the time British sovereignty was established in this particular part of Australia (1825), those who formed a set of people with strong traditional connections to the Yulara block, or to any other place in the eastern Western Desert, were not constituted by named or unnamed pre-existing social-structural entities, genealogical or otherwise, such as patrilineal clans. Cultural factors did produce sets of people with shared bases of claim over the same area, and there were most likely also people with claims to the same area that were made on both similar and quite different bases. Filiation to fathers was one such basis, but it was far from being the main or only such basis. If any basis was privileged it was the place where one 'became a child' (*itingaringu*).

This apparent if illusory disarray, still present if to a modified degree among the *Jango* applicants, was argued by the respondents to be the result of a breakdown in traditions. The appearance of disorder was exacerbated by the fact that applicant witnesses tended to make generalisations about the principles for rightful claims on land only in terms of their own personal basis of attachment to Yulara. This adherence to their tradition of egocentric reckoning cost them dearly. Yet their

common recognition of a core of people with rightful but variably based claims on Yulara revealed that other bases of claim than their own were also acceptable, although seldom did they say this.

With one notable exception (Doctor Frank), witnesses gave only very partial and fragmentary accounts of their system of laws and customs surrounding the acquisition of country, some of them contradictory, and some of them seemingly unintelligible. A number of claims by other people, living and dead, were disputed and even rejected out of hand. There was some non-agreement on who was *ngurraritja* (only very roughly glossable as 'traditional owner') for the Yulara block. The first named applicant, Johnny Jango (*Tjiyangu*) would not cite himself as *ngurraritja* for the land in question but instead for Lyndavale Station (transcript p. 215), although others claimed he was *ngurraritja* for Yulara, and his own claims on the area were indeed deeply rooted in the past.

There was, in short, a perceived lack of self-objectification and a scarcity of the systematic and the unified in the way the applicants presented themselves to the Court. I am of the view that this perception was very much due to cultural differences between the witnesses and the culture of the Court, but also to the Western Desert's general paucity of social organisation *per se*. Some of the apparent disarray in the way people described their own land tenure can be attributed to the historical impacts of events of the last century, although not, I think, the greater part of it. But a scarcity of systematisation was not the same as an absence of recognisable system altogether.

Ironically, in view of the Judge's conclusions in this case, a few subgroups among those with traditional connections to Yulara have in recent decades begun to privilege parental and grandparental filiations in assigning country identities to young people, and in some of these cases it is possible to see a latent patrilineal tendency emerging. But this is arguably a product of settlement or sedentisation plus the centralisation of birth events outside the Western Desert at Alice Springs Hospital, rather than a 19th century reality that has come alive again.

The fact that the patterns in Tindale's 1933 field data were similar to those of two other bodies of raw field notes from the same region and period—those of A.P. Elkin in 1930 and T.G.H. Strehlow in 1935—and that all three failed to record

primary evidence of the presence of patrilineal descent groups, might have seemed an insuperable problem for the acceptance of Tindale's (1972) or Ronald Berndt's (1959) view to the contrary. Ignoring the large amounts of evidence submitted, and failing to apply standard anthropological usage of terms of art such as 'patrilineal' and 'descent', the presiding judge in *Jango*, Ronald Sackville, reached the conclusion that he was:

not satisfied that any laws and customs relating to rights and interest in land that may have been acknowledged and observed by the Aboriginal witnesses are the **traditional** laws and customs of the Western Desert bloc, within the meaning of s 223(1) of the *NTA* [Native Title Act]. The evidence has not established that any laws and customs now observed and acknowledged are sufficiently related to those observed and acknowledged by people of the Western Desert at sovereignty. In particular, I find that the traditional laws and customs of the Western Desert bloc followed a principle of patrilineal descent, which is largely absent from the practices described in the evidence.⁴⁷

Norman Tindale foresaw the value of the reanalysis of his data by others in the future. In the words of Philip Jones (1995:167): 'Tindale's concern was not to preserve an account of culture for its own sake, but to document [it] in sufficient detail to enable further analysis by others'. In this case, some of the most traditional people in Australia were found to have abandoned their traditions, not on the basis of what their forebears told Tindale and others in the 1930s, much of which still functioned, but on the basis of his echoic theoretical relationship to Professor A.R. Radcliffe-Brown.

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⁴⁷ *Jango v Northern Territory of Australia [2006] FCA 318* para 11 (2). Emphasis original.

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